


Name of Policy: <u>Consent for Human Immunodeficiency Virus (HIV) Testing</u> Policy Number: 3364-100-10-09 Department: Hospital Administration Approving Officer: Chief Executive Officer - UTMC Chief of Staff Responsible Agent: Chief Nursing Officer Scope: The University of Toledo Medical Center and its Medical Staff	 Effective Date: August 1, 2020 Initial Effective Date: 11/25/1987
<input type="checkbox"/> New policy proposal <input type="checkbox"/> Major revision of existing policy	<input type="checkbox"/> Minor/technical revision of existing policy <input checked="" type="checkbox"/> Reaffirmation of existing policy

(A) Policy Statement

Human Immunodeficiency Virus (“HIV”) testing may be performed on the order of a physician or health care provider who, in the exercise of the provider’s professional judgment and within the provider’s scope of practice, determines the testing to be necessary for diagnosis and treatment. No specific consent is needed for the HIV testing if the patient or patient’s designated decision maker has given consent for medical or other health care treatment. The patient or patient’s decision maker will be informed of their right to an anonymous test.

Disclosure of HIV test results or diagnosis will be performed in such a manner to protect the rights of the person tested/diagnosed and to share patient care information with health care workers with a medical need to know.

(B) Purpose of Policy

To provide procedures in accordance with Ohio Law for HIV testing and when HIV testing is positive, control the release of confidential information to persons with a need to know for the diagnosis, care, or treatment of HIV.

(C) Procedure

1. Consent

- a. When a physician or health care provider orders an HIV screening test, no consent is required if in the physician’s or the health care provider’s professional judgment the testing is necessary for proper diagnosis and treatment, provided that the patient or designated decision maker has given consent for medical or other health care treatment.
- b. When an HIV test is ordered, the physician, health care provider, or his/her designee will inform the patient or patient’s designated decision maker that they have the right to an anonymous test.
- c. If an individual presents him/herself for HIV testing, he/she has the right to request anonymous testing.
- d. A minor patient may consent to HIV testing. The parents or guardian of the minor patient will not be responsible for payments for any testing given to the minor patient that occurs without the consent of the parents or guardian.
- e. If the HIV test results are positive, then the physician, health care provider or his/her designee will provide post-test counseling, which will include, but not be limited to:
 - i. An explanation of the HIV test results. If the positive test is from an HIV screening test, then the steps needed to confirm the test results must be explained.
 - ii. An explanation about the nature of HIV disease.

- iii. A list of resources for medical treatment, social services and when necessary, referral for further counseling to help the patient cope with the emotional consequences of learning of the test result.
 - iv. Information about the importance of following safer sex practices to protect themselves from sexually transmitted diseases, as well as how to protect others from being infected.
 - v. Information about Ohio's HIV disclosure laws.
- f. Sections ii, iii, and iv. above do not apply when the test is performed:
- i. In a medical emergency by a nurse or a physician and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the patient being tested or another individual. Post-test information will be given to the patient, in the event of a positive test result, as soon as possible after the emergency is over.
 - ii. For the purpose of research if the researcher does not know and cannot determine the identity of the individual tested.
 - iii. By a person who procures, processes, distributes, or uses a human body part from a deceased person donated as an anatomical gift if the test is necessary to determine whether the body part is suitable for its intended use.
 - iv. After Infection Control Committee criteria determines that a health care provider, emergency medical service worker or peace officer, while rendering health or emergency care to a patient, has sustained significant exposure to the body fluids that are known to transmit HIV and the patient has refused to give consent for testing.
- g. Consent to be tested is not required, and the option of an anonymous test is not provided, when the test is ordered by a court in connection with a criminal investigation.
- h. Test results will be handled according to laboratory protocol.

2. Disclosure

- a. Unless specified in this protocol or in the protocol addressing disclosure of information to law enforcement and emergency care workers, no person or agency of the state or local government that acquires information as specified below, while providing any health care service or while in the employment of a health care facility or health care provider shall disclose or compel another to disclose any of the following:
 - i. The identity of any individual for whom an HIV test is performed.
 - ii. The results of an HIV test in a form that identifies the individual tested.
 - iii. The identity of any individual diagnosed as having Acquired Immunodeficiency Syndrome (AIDS) or HIV Infection.
- b. The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or HIV infection may be disclosed only to the following:
 - i. The individual who is tested or the individual's legal guardian. Disclosure to spouse or any sexual partner must be done by a physician. A person to whom disclosure is authorized by a written release, executed by the individual tested or by his legal guardian and specifying to whom disclosure of the test results or diagnosis is authorized and the time period during which the release is to be effective.
 - ii. The individual's physician.
 - iii. The Department of Health or a health commissioner to whom reports are made under Section 3701.24 of the Ohio, Revised Code. Reports must be reported no later than five days from date of diagnosis or collection date, whichever is longer.

- iv. A healthcare facility or provider that procures, processes, distributes, or uses a human body part from a deceased individual, donated for purpose specified in Chapter 2108 of the Ohio Revised Code and that needs medical information about the deceased individual to ensure that the body part is medically acceptable for its intended purpose.
 - v.
 - vi. Health care facility staff committees or accreditation or oversight review organizations conducting program monitoring, program evaluation, or service reviews.
 - vii. A health care provider, emergency medical services worker, or peace officer who has significant exposure to the body fluids of another individual, if that individual was tested pursuant to paragraph *6(f) of the Ohio Department of Health Protocols for implementation of Ohio's Omnibus AIDS Law, entitled "Consent and Counseling for HIV Testing," except that the identity of the individual tested shall not be revealed.
 - viii. To law enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, a prosecuting attorney, city director of law or similar chief legal officer of a municipal corporation, or village solicitor in connection with a criminal investigation or prosecution.
- c. The results of an HIV test or diagnosis of AIDS or HIV Infection may be disclosed to a health care provider, or an authorized agent or employee of a health care facility or health care provider, if the provider, agent, or employee has a medical need to know the information and is participating in the diagnosis, care, or treatment of the individual on whom the test was performed or who has been diagnosed as having AIDS or HIV Infection.
- d. Disclosure may not be requested or made solely for the purpose of identifying an individual who has a positive HIV test result or has been diagnosed as having AIDS or HIV Infection in order to refuse to treat the individual. Referral of the individual to another health care provider or facility based on reasonable professional judgment does not constitute refusal to treat the individual.
- e. Access to or authority to disclose the HIV test records of an individual may also be sought by filing an action for the same in a court of common pleas. Legal counsel should be consulted for the filing of such actions.
- f. Persons or government agencies who consider it necessary to disclose test results of an HIV test of a specific individual in an action in which it is a party may seek authority for the disclosure by filing a motion with the court in which the action is being heard.
- g. Except pursuant to an order issued in a criminal prosecution or an order issued pursuant to the proceedings set forth in paragraphs 5 and 6 above, no hospital blood center shall be compelled by any other court to disclose the results of HIV tests performed on the blood of voluntary donors in a way that reveals the identify of any donor.
- h. Any disclosure made pursuant to this protocol shall be in writing and accompanied by a written statement that includes the following or substantially similar language:
- This information has been disclosed to you from confidential records protected from disclosure by state law. You shall make no further disclosure of this information with the specific, written and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the purpose of the release of HIV test results or diagnosis.*
- i. It is required that individuals who are authorized to disclose positive results of an HIV test to the individual tested or to render a diagnosis of AIDS or HIV infection to an individual, should inform

such individual that he/she has the legal obligation to disclose this information to any other person with whom he/she intends to make common use of hypodermic needle or engage in sexual contact.

References

Ohio Department of Health, Infectious Disease Manual.

<https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/infectious-disease-control-manual/infectious-disease-control-manual> , last updated 1/2019

Ohio Revised Code 3701.24 Report as a contagious or infectious diseases-AIDS and HIV. Amended 10/17/2019.

<p>Approved by:</p> <p><u>/s/</u> Richard Swain, Chief Executive Officer - UTMC</p> <p><u>07/09/2020</u> Date</p> <p><u>/s/</u> Amanda Lenhard, M.D. Chief of Staff</p> <p><u>07/09/2020</u> Date</p> <p><u>/s/</u> Monecca Smith Chief Nursing Officer</p> <p><u>07/09/2020</u> Date</p> <p><i>Review/Revision Completed By:</i> HAS Office of Legal Affairs – HSC Infection Control Committee Chief of Staff</p>	<p>Review/Revision Date: 1/7/88 10/20/88 9/12/90 10/13/93 7/13/94 9/11/96 5/12/99 7/10/02 6/8/05 10/1/2008 10/1/2010 11/1/2013 7/1/2017 7/9/2020</p>
<p>Policies Superseded by This Policy: 7-10-09 - Consent for Human Immunodeficiency Virus (HIV) Testing</p>	<p>Next Review Date: 7/1/2023</p>