Disclosures of HIV Test Results

1. SCOPE

1.1. System-wide
1.2. Facilities and departments included in the scope are further defined in the Scope Definition Resource Guide if not specifically outlined above.

2. DEFINITIONS & EXPLANATIONS OF TERMS

2.1. Abbreviations:
- HIPAA: Health Insurance Portability and Accountability Act
- HIV: Human Immunodeficiency Virus
- MCHS: Marshfield Clinic Health System
- PHI: Protected Health Information

2.2. Definitions:
- Patient: All references to the “patient” in this policy mean the patient or her/his Personal Representative as defined in the Personal Representatives of Patients policy.
- Protected Health Information (PHI): The Privacy Rule protects all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information Protected Health Information.
  - Individually identifiable health information: information, including demographic data, that relates to:
    - the individual’s past, present, or future physical or mental health or condition; or
    - the provision of health care to the individual; or
    - the past, present, or future payment for the provision of health care to the individual; and
    - that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual (e.g., name, address, birth date, Social Security Number).
3. POLICY BODY

It is the purpose of this policy to establish guidelines for the disclosures of human immunodeficiency virus (HIV) test results. It is the policy of Marshfield Clinic Health System (MCHS) to maintain confidentiality of PHI in accordance with the Privacy Rule and other applicable federal and state laws. Wisconsin law requires written authorization for disclosure of HIV test results to ensure that patient privacy is maintained. Wisconsin law defines the circumstances where HIV test results may be disclosed without patient authorization. It is the policy of MCHS to obtain the patient’s specific written authorization prior to disclosing HIV test results unless otherwise permitted by federal or state law.

3.1. MCHS will obtain a valid authorization prior to disclosing HIV test results unless otherwise permitted by applicable state law. The patient who is the subject of an HIV test or their authorized representative may authorize disclosure of HIV test results.

3.2. Elements of a Valid Authorization for the Disclosure of HIV Test Results
   a. The name of the subject of the HIV test.
   b. Specification of the information that may be disclosed.
   c. The name of the person authorized to make the disclosure.
   d. The name of the person to whom the disclosure is authorized.
   e. The signature of the subject of the HIV test or the signature of the subject's authorized representative.
   f. The date the authorization is signed.
   g. The time period during which the authorization for disclosure is effective.
   h. If the subject of an HIV test is a minor who is 14 years of age or older, only the minor or his or her authorized representative may exercise the test subject's authority to disclose HIV test results or to authorize disclosure of HIV test results.

3.3. Circumstances Where HIV Test Results Can Be Disclosed Without Patient Authorization
   a. To the subject of the HIV test and the subject's authorized representative.
   b. To a health care provider who provides care to the subject of the HIV test, including those instances in which a health care provider provides emergency care to the subject.
   c. To an agent or employee of a health care provider who prepares or stores patient health care records, for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.
   d. To a blood bank, blood center, or plasma center that subjected the test subject to an HIV test for any of the following purposes:
      □ Determining the medical acceptability of blood or plasma secured from the subject of the HIV test.
      □ Notifying the subject of the HIV test of the test results.
□ Investigating HIV infections in blood or plasma.

e. To a health care provider who procures, processes, distributes, or uses a human body part that is the subject of an anatomical gift, for the purpose of assuring medical acceptability of the gift for the purpose intended.

f. To the state epidemiologist or his or her designee, or to a local health officer or his or her designees, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

g. To a funeral director or to other persons who prepare the body of the subject of the HIV test for burial or other disposition or to a person who performs an autopsy, or assists in performing an autopsy, on the subject of the HIV test.

h. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

i. Under a lawful order of a court of record.

j. Except for HIV test results obtained after a significant exposure to a patient’s body fluid, to a person who conducts research, for the purpose of research, if the researcher:
   □ Is affiliated with a health care provider.
   □ Has obtained permission to perform the research from an institutional review board.
   □ Provides written assurance to the person disclosing the HIV test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

k. To a coroner, medical examiner, or an appointed assistant to a coroner or medical examiner, if one or more of the following applies:
   □ The coroner, medical examiner, or an appointed assistant is investigating the cause of death of the subject of the HIV test and possible HIV-infected status is relevant to the cause of death.
   □ The coroner, medical examiner, or appointed assistant is investigating the cause of death of the subject of the HIV test and has contact with the body fluid of the subject of the HIV test that constitutes a significant exposure, if a physician, physician assistant, or advanced practice nurse prescriber, based on information provided to the physician, physician assistant, or advanced practice nurse prescriber, determines and certifies in writing that the coroner, medical examiner, or appointed assistant has had a contact that constitutes a significant exposure and if the certification accompanies the request for disclosure.

l. To a sheriff, jailer or keeper of a prison, jail, or house of correction or a person designated with custodial authority by the sheriff, jailer, or keeper, for whom
disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive HIV test result.

m. If the subject of the HIV test has a positive HIV test result and is deceased, by the subject’s attending physician, physician assistant, or advanced practice nurse prescriber, to persons, if known to the physician, physician assistant, or advanced practice nurse prescriber, with whom the subject had sexual contact or shared intravenous drug use paraphernalia.

n. Other exceptions may apply. Contact Legal Services or the Privacy Officer for questions relative to disclosure of HIV test results.

3.4. Access to HIV Test Results After Significant Exposure to Body Fluid

A person who has contact with body fluid of an individual that constitutes a significant exposure may cause the individual to be subjected to HIV testing and receive the results of the HIV test if all of the following apply:

a. The contact occurred under one of the following circumstances:

□ The person is an emergency medical technician; first responder; fire fighter; peace officer; correctional officer; person who is employed at a juvenile correctional facility, or a secured residential care center for children and youth; state patrol officer; jailer, keeper of a jail, or person designated with custodial authority by the jailer or keeper and the contact occurred during the course of the person providing care or services to the individual.

□ The person is a peace officer, correctional officer, state patrol officer, jailer, or keeper of a jail, or person designated with custodial authority by the jailer or keeper and the contact occurred while the person was searching or arresting the individual or while controlling or transferring the individual in custody.

□ The person is a health care provider or an employee of a health care provider and the contact occurred during the course of the person providing care or treatment to the individual or handling or processing specimens of body fluids or tissues of the individual.

□ The person is a staff member of a state crime laboratory and the contact occurred during the course of the person handling or processing specimens of body fluids or tissues of the individual.

□ The person is a social worker or an employee of a school district, cooperative educational service agency, charter school, private school, tribal school, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired and the contact occurred while the person was performing employment duties involving the individual.

□ While the person rendered emergency care at the scene of an emergency or accident, if the person is immune from civil liability for rendering the care under Wisconsin Statutes section 895.48 or 895.4802 (2).

b. If the exposure occurred in one of the situations defined in section a. above and the entity that employs or contracts with the person to provide the
services described in these circumstances requires, as a general policy, that standard precautions against significant exposure be taken during provision of the services, except in those emergency circumstances in which the time necessary for use of the standard precautions would endanger the life of the individual.

c. A physician, physician assistant, or advanced practice nurse prescriber, based on information provided to the physician, physician assistant, or advanced practice nurse prescriber, determines and certifies in writing that the person has had contact that constitutes a significant exposure. The certification shall accompany the request for HIV testing and disclosure. If the person is a physician, physician assistant, or advanced practice nurse prescriber, he or she may not make this determination or certification. The information that is provided to a physician, physician assistant, or advanced practice nurse prescriber to document the occurrence of the contact that constitutes a significant exposure and the physician’s, physician assistant’s, or advanced practice nurse prescriber’s certification that the person has had contact that constitutes a significant exposure, shall be provided on a report form that is developed by the department of commerce or on a report form that the department of commerce determines is substantially equivalent to the report form that it has developed.

d. The person submits to an HIV test as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

e. Except when the HIV testing has been court ordered, the HIV test is performed on blood of the individual that is drawn for a purpose other than HIV testing.

f. The individual has been given an opportunity to be subjected to an HIV test in accordance with the conditions under Wisconsin Statute section 252.15 sub. (2m) (a) and has declined.

g. The individual has been informed of all of the following:

- That an HIV test may be performed on his or her blood.
- That the HIV test results may be disclosed to the person and the person’s physician, physician assistant, or nurse.
- That, except for disclosure to the person’s and the person’s physician, physician assistant, or nurse, the HIV test may not be disclosed to any person.
- That, if the person knows the identity of the individual, the person may not disclose the identity to any other person except for the purpose of having the HIV test performed.
- That a record may be kept of the HIV test results only if the record does not reveal the individual’s identity.
4. ADDITIONAL RESOURCES

4.1. References:
   - Wisconsin Statutes Section 252.15
## 5. DOCUMENT HISTORY

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<tr>
<th>Version No.</th>
<th>Revision Description</th>
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<tbody>
<tr>
<td>1.0</td>
<td>Policy #4451 converted to the new Document Control System</td>
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<tr>
<td>2.0</td>
<td>Annual review. Updated Scope, Logo, MC to MCHS, and Definitions.</td>
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<td>3.0</td>
<td>Annual review. Updated Scope and removed logo.</td>
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<td>4.0</td>
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6. DOCUMENT PROPERTIES

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