

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: HIV/AIDS Confidentiality and Testing Code
- 2) Code Citation: 77 Ill. Adm. Code 697
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
697.20	Amendment
697.30	Amendment
697.110	Amendment
697.120	Amendment
697.140	Amendment
- 4) Statutory Authority: Implementing and authorized by the AIDS Confidentiality Act [410 ILCS 305]; the AIDS Registry Act [410 ILCS 310]; the Communicable Disease Prevention Act [410 ILCS 315]; the Perinatal HIV Prevention Act [410 ILCS 335]; and Sections 2310-10, 2310-315, 2310-325, and 2310-580 of the Civil Administrative Code of Illinois [20 ILCS 2310/2310-10, 2310-315, 2310-325 and 2310-580].
- 5) Effective Date of Rules:
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 41 Ill. Reg. 3795; March 31, 2017
- 10) Has JCAR issued a State of Objection to this rulemaking? No
- 11) Difference(s) between proposal and final version: In response to public comment received, in Section 697.110(a), a sentence was deleted regarding to whom the health care professional may delegate the responsibility of providing pre-test information; Section 697.120 (a)(2) was deleted in its entirety; a typo was correct in Section 697.120(a)(4); and in Section 697.140(a)(3), "HIV-related" was inserted, and "medical" was stricken, with regard to the type of information.

In addition, in response to comments and suggestions of JCAR, Section 697.120(a) was deleted in its entirety as well as corresponding form changes were made.

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This rulemaking amends the HIV/AIDS Confidentiality and Testing Code to implement P.A. 099-0054.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

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The full text of the adopted amendments begin on the next page:

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TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER k: COMMUNICABLE DISEASE CONTROL AND IMMUNIZATIONS

PART 697

HIV/AIDS CONFIDENTIALITY AND TESTING CODE

SUBPART A: GENERAL PROVISIONS

Section

697.10 Applicability (Repealed)

697.20 Definitions

697.30 Incorporated and Referenced Materials

697.40 Administrative Hearings

SUBPART B: HIV TESTING

Section

697.100 Approved HIV Tests and Testing Procedures

697.110 HIV Pre-Test Information

697.120 Informed Consent

697.130 Anonymous Testing

697.140 Nondisclosure of the Identity of a Person Tested or Test Results

697.150 Marriage License Testing Requirements (Repealed)

697.155 Delivery of HIV Test Results

697.160 HIV Testing for Insurance Purposes

697.170 Enforcement of the AIDS Confidentiality Act

697.180 HIV Testing for Blood and Human Tissue Donations

SUBPART C: HIV/AIDS REGISTRY SYSTEM

Section

697.200 HIV/AIDS Registry System

697.210 Reporting Requirements

697.220 Release of HIV/AIDS Registry Data

SUBPART D: HIV COUNSELING AND TESTING CENTERS

Section

697.300 HIV Counseling and Testing Centers (Repealed)

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SUBPART E: MISCELLANEOUS PROVISIONS

Section

- 697.400 Notification of School Principals (Repealed)
- 697.410 Guidelines for the Management of Chronic Infectious Diseases in School Children (Repealed)
- 697.420 Testing, Treatment or Counseling of Minors

- 697.APPENDIX A Sample HIV Testing Forms (Repealed)
- 697.ILLUSTRATION A Sample Written Informed Consent for HIV Antibody Testing (Repealed)
- 697.ILLUSTRATION B Sample Marriage License Testing Certificate (Repealed)
- 697.APPENDIX B Statutory and Regulatory References to AIDS (Repealed)
- 697.APPENDIX C Sample Written Informed Consent for Rapid HIV Antibody Testing (Repealed)

AUTHORITY: Implementing and authorized by the AIDS Confidentiality Act [410 ILCS 305]; the AIDS Registry Act [410 ILCS 310]; the Communicable Disease Prevention Act [410 ILCS 315]; the Perinatal HIV Prevention Act [410 ILCS 335]; and Sections 2310-10, 2310-315, 2310-325, and 2310-580 of the Civil Administrative Code of Illinois [20 ILCS 2310/2310-10, 2310-315, 2310-325 and 2310-580].

SOURCE: Emergency rules adopted at 12 Ill. Reg. 1601, effective January 1, 1988, for a maximum of 150 days; adopted at 12 Ill. Reg. 9952, effective May 27, 1988; amended at 13 Ill. Reg. 11544, effective July 1, 1989; amended at 15 Ill. Reg. 11646, effective August 15, 1991; emergency amendment at 17 Ill. Reg. 1204, effective January 7, 1993, for a maximum of 150 days; emergency expired on June 7, 1993; amended at 17 Ill. Reg. 15899, effective September 20, 1993; amended at 19 Ill. Reg. 1117, effective January 20, 1995; amended at 22 Ill. Reg. 21994, effective December 9, 1998; amended at 28 Ill. Reg. 13905, effective October 8, 2004; emergency amendment at 29 Ill. Reg. 14558, effective September 14, 2005, for a maximum of 150 days; amended at 30 Ill. Reg. 2373, effective February 3, 2006; amended at 36 Ill. Reg. 7613, effective May 4, 2012; amended at 38 Ill. Reg. 20811, effective October 15, 2014; amended at 42 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 697.20 Definitions

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"Act" means the AIDS Confidentiality Act.

"AIDS" means acquired immunodeficiency syndrome (Section 3(a) of the Act).

"Blood Bank" means any facility or location at which blood or plasma is procured, furnished, donated, processed, stored or distributed.

"Department" means the Illinois Department of Public Health or its designated agents. (Section 3(f) of the Act)

"Designated Agent" means an organization designated by the Department to conduct public health activities in accordance with a written agreement with the Department.

"Director" means the Director of the Illinois Department of Public Health.

"Health Care Facility" or "Facility" means any institution, building or agency, or portion of any institution, building or agency, whether public or private (for-profit or nonprofit) that is used, operated or designed to provide health services, medical treatment or nursing, rehabilitative or preventive care to any person or persons, as well as a hospital, nursing home, blood bank, blood center, sperm bank, or other health care institution, including any "health facility" as that term is defined in the Illinois Finance Authority Act [20 ILCS 3501] (Section 3(k) of the Act).

"Health Care Professional" means any of the following:

a licensed physician;

a physician assistant to whom the physician assistant's supervising physician has delegated the provision of AIDS and HIV-related health services;

an advanced practice registered nurse who has a written collaborative agreement with a collaborating physician which authorizes the provision of AIDS and HIV-related health services;

an advanced practice nurse or physician assistant who practices in a hospital or ambulatory surgical treatment center and possesses appropriate clinical privileges;

a licensed dentist;

a licensed podiatric physician; or

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an individual certified to provide HIV testing and counseling by a State or local public health department. (Section 3(i) of the Act)

"Health Care Provider" has the meaning ascribed by HIPAA as specified in 45 CFR 160.103. (Section 3(j) of the Act)

"Health Information Exchange" or "HIE" means a health information exchange or health information organization that oversees and governs the electronic exchange of health information that:

is established pursuant to the Illinois Health Information Exchange and Technology Act and any administrative rules adopted under that Act;

has established a data sharing arrangement with the Authority; or

as of August 16, 2013, was designated by the Authority Board as a member of, or was represented on, the Authority Board's Regional Health Information Exchange Workgroup;

provided that designation shall not require the establishment of a data sharing arrangement or other participation with the Illinois Health Information Exchange or the payment of any fee. In certain circumstances, in accordance with HIPAA, an HIE will be a business associate. (Section 3(l) of the Act)

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996. (Section 3(n) of the Act)

"HIV" means the human immunodeficiency virus. (Section 3(o) of the Act)

"HIV Infection" means infected with HIV, as evidenced by a positive or reactive supplemental laboratory test result.

"HIV-related information" means the identity of a person upon whom an HIV test is performed, the results of an HIV test, as well as diagnosis, treatment, and prescription information that reveals a patient is HIV-positive, including information contained in a limited data set. HIV-related information does not include information that has been de-identified in accordance with HIPAA. (Section 3(p) of the Act)

"Informed Consent" means:

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when a health care provider, health care professional, or health facility has implemented opt-in testing, a process by which an individual or his or her legal representative receives pre-test information, has an opportunity to ask questions, and consents verbally or in writing to the test without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion; or

when a health care provider, health care professional, or health care facility has implemented opt-out testing, the individual or his or her legal representative has been notified verbally or in writing that the test is planned, has received pre-test information, has been given the opportunity to ask questions and the opportunity to decline testing, and has not declined testing. (Section 3(q) of the Act)

"Laboratory" means a CLIA approved or licensed facility at which tests are performed to determine the presence of a sexually transmitted infection (STI).

"Legally Authorized Representative" means an individual who is authorized to consent to HIV testing and/or disclosure of HIV test results and HIV-related information for an individual who is:

Under the age of 12;

Deceased;

Declared incompetent by a court of law; or

Otherwise not competent to consent (for reasons other than age, such as the apparent inability to understand or communicate with the health care professional) as determined by the health care professional seeking the consent.

The following individuals shall be authorized to consent, in the stated order of priority:

For a living or deceased child under the age of 18:

Parent, except as limited by Section 9(k) of the Act providing limitations on the ability of a parent or legal guardian to receive the child's test results, and Sections 4 and 5 of the Consent by Minors to Medical Procedures Act regarding release of test results involving a sexually transmitted infection;

Legal guardian or other court-appointed personal representative;

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Adult next-of-kin.

For a living or deceased adult age 18 or over:

Agent authorized by durable power of attorney for health care;

Legal guardian or other court-appointed personal representative;

Spouse;

Person in a civil union;

Adult children;

Parent;

Adult next-of-kin.

"Local Health Authority" means the full-time official health department or board of health recognized by the Department as having jurisdiction over a particular area. (Section 3(2) of the Illinois Sexually Transmissible Disease Control Act)

"Opt-in testing" means an approach in which an HIV test is presented by offering the test and the patient accepts or declines testing. (Section 3(s-1) of the Act)

"Opt-out testing" means an approach in which an HIV test is presented such that a patient is notified that HIV testing may occur unless the patient declines. (Section 3(s-2) of the Act)

"Physician" means a physician licensed to practice medicine under the Medical Practice Act of 1987.

"Pre-test information" means:

a reasonable explanation of the test, including its purpose, potential uses, limitation, and the meaning of its results; and

a reasonable explanation of the procedures to be followed, including the voluntary nature of the test, the availability of a qualified person to answer questions, the right to withdraw

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consent to the testing process at any time, the right to anonymity to the extent provided by law with respect to participation in the test and disclosure of test results, and the right to confidential treatment of information identifying the subject of the test and the results of the test, to the extent provided by law. (Section 3(w-5) of the Act)

"Rapid HIV Test" means any test approved by the U.S. Food and Drug Administration (FDA) or validated under a laboratory's CLIA certification for the detection of HIV that can be collected and processed within 60 minutes.

"Screening Test" means any HIV test approved by the FDA or validated under a laboratory's CLIA certification that must be followed by a supplemental test to confirm a positive result.

"Sexually Transmissible Infection" or "STI" means infection with syphilis, gonorrhea, chlamydia, chancroid or HIV.

"Supplemental Test" means any HIV test approved by the FDA or validated under a laboratory's CLIA certification used to confirm the positive result of a screening test.

"Test" or "HIV Test" means a test to determine the presence of the antibody or antigen to HIV, or of HIV infection approved by the FDA or validated under a laboratory's CLIA certification. (Section 3(aa) of the Act)

"Treatment" means the provision, coordination or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. Treatment includes services for prevention, diagnosis and medical management of STIs, including examination, laboratory testing, medication and immunization.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 697.30 Incorporated and Referenced Materials

- a) The following materials are referenced in this Part:
 - 1) Illinois Statutes
 - A) AIDS Confidentiality Act [410 ILCS 305]

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- B) AIDS Registry Act [410 ILCS 310]
- C) Unified Code of Corrections [730 ILCS 5]
- D) Medical Patient Rights Act [410 ILCS 50]
- E) Perinatal HIV Prevention Act [410 ILCS 335]
- F) Civil Administrative Code of Illinois [20 ILCS 2310/55 to 55.45].
- G) Abused and Neglected Child Reporting Act [325 ILCS 5]
- H) Illinois Insurance Code [215 ILCS 5]
- I) Consent by Minors to Medical Procedures Act [410 ILCS 210]
- J) Illinois Sexually Transmissible Disease Control Act [410 ILCS 325]
- K) Medical Practice Act of 1987 [225 ILCS 60]
- L) Perinatal HIV Prevention Act [410 ILCS 335]
- M) Criminal Code of 2012 [720 ILCS 5]
- N) Code of Civil Procedure [735 ILCS 5]
- O) Illinois Anatomical Gift Act [755 ILCS 50]
- P) Organ Donation Request Act [755 ILCS 60]
- Q) Illinois Finance Authority Act [20 ILCS 3501]
- R) Illinois Health Information Exchange and Technology Act [20 ILCS 3860]
- 2) Illinois Rules
- A) Control of Communicable Disease Code (77 Ill. Adm. Code 690) (see in particular Section 697.140(a)(4) of this Part)

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- B) Control of Sexually Transmissible Infections Code (77 Ill. Adm. Code 693) (see in particular Sections 697.140(a)(4) and 697.210(a) of this Part)
- C) Illinois Clinical Laboratories Code (77 Ill. Adm. Code 450) (see in particular Section 697.180(c) and (e))
- D) Sperm Bank and Tissue Bank Code (77 Ill. Adm. Code 470) (see in particular Section 697.180(c) and (e))
- E) Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100) (see in particular Section 697.40 of this Part)
- F) Hospital Licensing Requirements (77 Ill. Adm. Code 250)
- G) Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300)
- H) Sheltered Care Facilities Code (77 Ill. Adm. Code 330)
- I) Illinois Veterans' Home Code (77 Ill. Adm. Code 340)
- J) Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)
- K) Long-term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390)
- L) Community Living Facilities Code (77 Ill. Adm. Code 370)
- M) Illinois Health and Hazardous Substances Registry (77 Ill. Adm. Code 840)
- 3) Federal Statutes

Clinical Laboratory Improvement Amendments of 1988 (42 USC 263(a))

- b) The following materials are incorporated by reference in this Part:
 - 1) Federal Regulations
 - A) 42 CFR 2a.4(a)-(j), 2a.6(a)-(b), and 2a.7(a)-(b), Protection of Identity – Research Subjects (October 1, 2007)

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- B) 45 CFR 164, Subparts A and E, Privacy Rule (Standards for Privacy of Individually Identifiable Health Information) of the Health Insurance Portability and Accountability Act of 1996 (February 5, 2016)
- C) 45 CFR 160.103, Definitions of the Health Insurance Portability and Accountability Act of 1996 (January 25, 2013)
- 2) Other Guidelines
 - A) Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), September 22, 2006, Vol. 55, No. RR-14
 - B) Recommendations for Use of Antiretroviral Drugs in Pregnant HIV-1-Infected Women for Maternal Health and Interventions to Reduce Perinatal HIV Transmission in the United States, May 24, 2010; US Department of Health and Human Services, Panel on Treatment of HIV-Infected Pregnant Women and Prevention of Perinatal Transmission (A Working Group of the Office of AIDS Research Advisory Committee)
 - c) All incorporations by reference of federal regulations or guidelines refer to the regulations or guidelines on the date specified and do not include any amendments or editions subsequent to the date specified.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

SUBPART B: HIV TESTING

Section 697.110 HIV Pre-Test Information

- a) No health care professional may order an HIV test without making available to the person tested pre-test information. Pre-test information may be provided in writing, verbally, or by video, electronic, or other means and may be provided as designated by the supervising health care professional or health facility. (Section 3(w-5) of the Act) The subject must be offered an opportunity to ask questions about the HIV test, or to decline testing.
- b) Pre-test information may be included along with other medical information generally provided to a subject. The required pre-test information consists of the following information:

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- 1) A reasonable explanation of the test, including its purpose, potential use, limitations, and the meaning of the results;
 - 2) A reasonable explanation of the procedures to be followed, including the voluntary nature of the test;
 - 3) The availability of a qualified person to answer questions;
 - 4) The right to withdraw consent to the test process at any time;
 - 5) The right to anonymity, to the extent provided by law, with respect to participation in the test and disclosure of test results;
 - 6) The right to confidential treatment of information identifying the subject of the test and the results of the test, to the extent provided by law (Section 3(w-5) of the Act); and
 - 7) The availability of referrals for further information or counseling.
- c) For the purposes of this Section, a qualified person to answer questions is a health care professional or, when acting under the supervision of a health care professional, a registered nurse, medical assistant, or other person determined to be sufficiently knowledgeable about HIV testing, its purpose, potential uses, limitations, the meaning of the test results, and the testing procedures in the professional judgment of a supervising health care professional or as designated by a health care facility. (Section 3(w-5) of the Act)
- d) Pre-test information when ordering an HIV test is not required in the situations listed in Section 697.120(b)(1), (2), (5) and (7).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 697.120 Informed Consent

- a) No person may order an HIV test without first providing pre-test information and receiving the documented informed consent of the subject of the test or the subject's legally authorized representative, except as provided in subsection (b). (Section 4 of the Act)
- 1) A health care provider, health care professional, or health care facility undertaking an informed consent process for HIV testing may combine a form used to obtain informed

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consent for HIV testing with forms used to obtain written consent for general medical care or any other medical test or procedure, provided that the forms make it clear that the subject may consent to general medical care, tests, or procedures without being required to consent to HIV testing, and clearly explain how the subject may decline HIV testing. Health facility clerical staff or other staff members may obtain consent for HIV testing through a general consent form. (Section 3(q) of the Act)

- 2) A health care provider, health care professional, or health care facility conducting opt-in testing and obtaining informed consent shall document verbal or written consent in the general consent for medical care, a separate consent form, or elsewhere in the medical record.
- 3) A health care provider, health care professional, or health care facility conducting opt-out testing shall document the subject's or the subject's legally authorized representative's declination of the test in the medical record. Individual documentation of the provision of pre-test information to each test subject is not required. A health care provider, health care professional, or health care facility conducting opt-out testing shall establish and implement a written procedure for conducting opt-out testing and for providing pre-test information. (Section 4 of the Act)
- 4) When the person providing informed consent is a participant in an HIE, informed consent requires a fair explanation that the results of the patient's HIV test will be accessible through an HIE and meaningful disclosure of the patient's opt-out right. (Section 3(q) of the Act)
- b) Informed consent to perform an HIV test is not required in the following situations:
 - 1) When the health care professional or health care facility procures, processes, distributes or uses a human body part donated for a purpose specified under the Illinois Anatomical Gift Act or the Organ Donation Request Act, and the test is necessary to assure the medical acceptability of the gift. (Section 7 of the Act)
 - 2) When the health care professional or health care facility procures, processes, distributes or uses semen provided prior to September 21, 1987, for the purpose of artificial insemination and the test is necessary to assure medical acceptability of the semen. (Section 7 of the Act)
 - 3) When the testing is for the purpose of research and performed in such a way that the identity of the test subject is not known and may not be retrieved by the researcher, and in

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such a way that the test subject is not informed of the results of the testing. (Section 8 of the Act)

- 4) When an HIV test is performed upon a person who is specifically required by state or federal law to be tested, such as blood, plasma, semen and human tissue donors and persons required to be tested pursuant to Section 5-5-3 of the Unified Code of Corrections. (Section 11 of the Act)
- 5) When an insurance company, fraternal benefit society, health services corporation, health maintenance organization, or any other insurer subject to regulation under the Illinois Insurance Code requires any insured patient or applicant for new or continued insurance or coverage to be tested for infection with HIV or any other identified causative agent of AIDS. (Section 3 of the Medical Patient Rights Act) (See Section 697.160.)
- 6) When a health care provider or employee of a health facility, or a firefighter or an EMR, EMT, EMT I, A-EMT, paramedic, or PHRN, is involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his or her medical judgment. Should such test prove to be positive, the patient and the health care provider, health facility employee, firefighter, EMR, EMT, EMT-I, A-EMT, paramedic, or PHRN shall be provided appropriate counseling consistent with the Act. (Section 7 of the Act)
- 7) When in the judgment of the physician, such testing is medically indicated to provide appropriate diagnosis and treatment to the subject of the test, provided that the subject of the test has otherwise provided his or her consent to such physician for medical treatment. (Section 8 of the Act)
- 8) For a health care professional or health care facility to perform a test when a law enforcement officer is involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his or her medical judgment. Should such test prove to be positive, the patient shall be provided appropriate counseling consistent with the Act. For purposes of Section 7(c) of the Act, "law enforcement officer" means any person employed by the State, a county or a municipality as a policeman, peace officer, auxiliary-policeman, correctional officer or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life. (Section 7 of the Act)
- 9) When an individual is charged with a sex crime in accordance with the Criminal Code of 2012.

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(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 697.140 Nondisclosure of the Identity of a Person Tested or Test Results

- a) No person may disclose or be compelled to disclose HIV-related information, except to the following persons. (Section 9 of the Act) The term "disclose" as used in this subsection (a) shall not prohibit internal use by a person, or a person's agents or employees, for the purposes of treatment, payment and health care operations, as those terms are defined in the HIPAA Privacy Rule. Any internal use shall be limited to those agents or employees, and the minimum necessary information, needed to accomplish the intended purposes of treatment, payment or health care operations.
 - 1) The subject of the test or the subject's legally authorized representative. A physician may notify the spouse or civil union partner of the test subject, if the test is positive, and has been confirmed, provided the physician has first sought unsuccessfully to persuade the patient to notify the spouse or civil union partner, or that, a reasonable time after the patient has agreed to make the notification, the physician has reason to believe that the patient has not provided the notification. (Section 9(a) of the Act).
 - 2) Any person designated in a legally effective authorization for release of HIV-related information executed by the subject of the HIV-related information or the subject's legally authorized representative. (Section 9(b) of the Act) A legally effective release means a time-limited written release of HIV-related information signed by the test subject.
 - 3) An authorized agent or employee of a health care facility or health care professional or referring, treating or consulting health care professional of the test subject, if:
 - A) The health care facility or health care professional is authorized to obtain the test results. Health care facility or health care professional, for the purposes of this subsection (a)(3)(A), includes personnel who handle and process medical records for that health care facility or health care professional;
 - B) The agent or employee or referring, treating or consulting health care professional of the test subject provides patient care or handles or processes specimens of body fluids or tissues;
 - C) The agent or employee or the test subject's referring, treating or consulting health care professional has a need to know such information. (Section 9(c) of the Act); or

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- D) The agent or employee when involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of a patient that is of a nature likely to transmit HIV, such as needle stick or percutaneous exposure, as certified by a health care professional.
- 4) The Department or the local health authority, in accordance with rules for reporting and controlling the spread of disease, or as otherwise provided by State law. (See 77 Ill. Adm. Code 690, 693, 250, 300, 330, 340, 350, 370, 390, and 840.) The Department, local health department or designated agent shall not disclose HIV test results and HIV-related information, publicly or in any action of any kind in any court or before any tribunal, board or agency. HIV test results and HIV-related information shall be protected from disclosure in accordance with the provisions of Sections 8-2101 through 8-2105 of the Code of Civil Procedure. (Section 9(d) of the Act)
- 5) A health care facility, health care provider, or health care professional which procures, processes, distributes or uses:
 - A) A human body part from a deceased person with respect to medical information regarding the person; or
 - B) Semen provided prior to September 21, 1987, for the purpose of artificial insemination. (Section 9(e) of the Act)
- 6) Health care facility staff committees for the purpose of conducting program monitoring, program evaluation or service reviews conducted by, but not limited to, the Department, local health authority or designated agent. (Section 9(f) of the Act)
- 7) Any health care provider, health care professional, or employee of a health care facility, and any firefighter or any EMR, EMT, A-EMT, paramedic, PHRN, or EMT-I involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his or her medical judgment. (Section 9(h) of the Act)
- 8) Any law enforcement officer, as defined in Section 7(c) of the Act, involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his or her medical judgment. (Section 9(i) of the Act)

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- 9) A temporary caretaker of a child taken into temporary protective custody by the Department of Children and Family Services pursuant to Section 5 of the Abused and Neglected Child Reporting Act. (Section 9(j) of the Act)
- 10) In the case of a minor under 18 years of age whose test result is positive and has been confirmed, the health care professional who ordered the test shall make a reasonable effort to notify the minor's parent or legal guardian if, in the professional judgment of the health care professional, notification would be in the best interest of the child and the health care professional has first sought unsuccessfully to persuade the minor to notify the parent or legal guardian or, a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care professional has reason to believe that the minor has not made the notification. (Section 9(k) of the Act)
- b) HIV test results may be disclosed to researchers when done in a manner that does not reveal the identity of the subject of the test. The de-identification of test results may be performed by an authorized agent or employee of a health facility or health care professional. Any test results that cannot be revealed without identifying the subject of the test shall be disclosed only in accordance with subsection (a). The Department shall disclose test results and demographic data without identifying information to researchers, in accordance with Section 697.220.
- c) No person may disclose unconfirmed HIV test results in a manner that permits the identification of the subject of the test, except in accordance with Section 697.100(a)(1).
- d) Documentation of informed consent and HIV-related information may be maintained, documented, and transmitted in a confidential manner in an electronic medical record system, medical record or confidential fax that allows disclosure only to persons authorized to receive the information under subsection (a).
- e) Liability and Sanctions
 - 1) Nothing in the Act or this Part shall be construed to impose civil liability or criminal sanction for disclosure of a test result in accordance with any reporting requirement of the Department for a diagnosed case of HIV infection, AIDS or a related condition. (Section 15 of the Act)
 - 2) Nothing in the Act or this Part shall be construed to impose civil or criminal sanction for performing a test without informed consent pursuant to the provisions of Section 7(b) or (c) of the Act. (Section 15 of the Act)

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- 3) The intentional or reckless violation of the Act or this Part shall constitute a Class A misdemeanor. (Section 12 of the Act)
- 4) No civil liability or criminal sanctions shall be imposed for any disclosure or non-disclosure of a test result to a spouse or civil union partner by a physician acting in good faith. For the purposes of any proceedings, civil or criminal, the good faith of any physician shall be presumed. (Section 9(a) of the Act)
- 5) No civil liability or criminal sanctions shall be imposed for any notification or non-notification of a minor's test result to a parent or legal guardian by a health care professional acting in good faith. For the purposes of any proceedings, civil or criminal, the good faith of any health care professional shall be presumed. (Section 9(a) of the Act)
- f) Sections 697.110, 697.120, 697.130 and 697.140 shall not apply to eligibility and coverage requirements established by a health maintenance organization nor to any insurance company, fraternal benefit society, or other insurer regulated under the Illinois Insurance Code. (Section 15.1 of the Act)

(Source: Amended at 42 Ill. Reg. _____, effective _____)