

4.6 Rules on the Disclosure of HIV Status Information

SUMMARY:

These rules identify who may be given information about the results of an HIV test of a child in the legal custody of the Department of Human Services.

DEFINITIONS:

Child in the legal custody of the Department of Human Services: A minor for whom there is a court order of custody to the Department of Human Services pursuant to 22 MRSA Chapter 1071, 15 MRSA §3312 or §3314, or 19 MRSA §952, or for whom there is a surrender and release to the Department pursuant to 19 MRSA §532-A.

Custody: Having legal custody and power over the person of a child.

Department employee: A person holding a position within the Department of Human Services subject to appointment by an appointing authority. (Title 5 MRSA §7032)

HIV test: A test for the presence of an antibody to HIV or a test for an HIV antigen.

I. DISCLOSURE OF HIV TEST RESULTS TO EMPLOYEES OF THE DEPARTMENT OF HUMAN SERVICES:

A. The results of an HIV test of a child in the legal custody of the Department of Human Services may be disclosed to a Department employee who has any one or a combination of the following responsibilities for the child who was the subject of the test, provided that the HIV test results are relevant and necessary to the employee's decisions and actions relative to the care or treatment of that child. These responsibilities include:

1. Assessment of the child's needs, short and long-term planning regarding the child, decision-making regarding the care, treatment, supervision, placement, and/or safety of the child, or any other activities necessary to discharge the Department's parental rights and responsibilities for the child, or
2. Formulation and/or presentation of an appropriate plan for the child and the bases of this plan to a court, or
3. Monitoring or review of the appropriateness of the Department's plans and actions relative to the child, or
4. Submission of applications for third party benefits for the child.

B. A Department employee who receives HIV status information may not disclose the results further except as permitted in Title 5 MRSA Section 19203.

II. DISCLOSURE OF HIV TEST RESULTS TO OTHER PERSONS:

- A. The results of an HIV test of a child in the legal custody of the Department may be disclosed by a designate Department employee to any of the following designated persons provided that information is relevant and necessary in order for the child to receive appropriate care or treatment.
1. A person responsible for regular day-to-day 24 hour care and supervision of the child.
 2. A parent of the child who was the subject of the test provided his parental rights to the child have not been terminated by a court.
 3. A person responsible for developing a plan for the child based on the child's needs and/or presenting such a plan as part of a court proceeding. These include but are not limited to Assistant Attorneys General assigned to the case, guardians ad litem, Court Appointment Special Advocates (CASAs), and persons with responsibilities under the Interstate Compact on the Placement of Children.
 4. A person temporarily providing care and supervision to the child as a supplement to care provided by 1. This includes, but is not limited to, day care providers, respite care providers.
 5. A person who is willing and able to provide regular 24-hour, residential care to a child with special medical considerations, but needs to know specific health status information in order to decide whether to accept the child for care, provided the identity of the child is protected or that the information is disclosed solely as a required part of a formal placement or evaluation process, or
 6. A person who is assigned to, contracted to, or responsible to deliver a specific service or services to or for the child, provided the knowledge of HIV status is relevant and necessary to the service to be delivered.
- B. The results of an HIV test of a child in the Department's legal custody will be disclosed by a designated Department employee to a person who holds a current provisional or full license to operate a family foster home in accordance with 22 MRSA, Chapter 1669, and the rules pertaining thereto when such a child is residing in his home.
- C. In a medical emergency, HIV test results may be disclosed:
1. By a licensed foster parent or staff person of a licensed children's home who is consenting to emergency treatment in accordance with 22 MRSA §3-B, or

2. By a person designated in II.A. if failure to provide or delay in providing this information to the medical care providers would place the child at risk.
- D. No person designated in II.A. or B. may disclose the results of any HIV test except under the conditions described in II.C. or otherwise permitted under 5 MRSA §19203.
 - E. Upon receipt of any HIV status information, any person designated in II.A. or B. shall confirm in writing that he has been informed of the results of an HIV test and of the confidentiality of this HIV status information.

III. DISCLOSURE BY OR WITHOUT APPROVAL OF THE SUBJECT OF THE TEST:

- A. The child who is the subject of an HIV test may disclose the results to whomever he chooses. However, the child is to be informed to the degree possible of the potential consequences or impact of disclosure.
- B. A child capable of understanding has the right to know the names of the individuals to whom the Department has disclosed his HIV status and the basis for the disclosure. If a child objects to the Department's disclosure to a particular person, these objections are to be documented in the case record.
- C. The Department's custodial rights and responsibilities in loco parentis have precedence over the desire for confidentiality by a child who was the subject of an HIV test and who is in the legal custody of the Department. Therefore, the desire by the child for HIV test results not to be disclosed to any one or more of the persons designated in Sections I and II of these rules does not prevent disclosure as set forth in these rules.