

HIV INFECTION/AIDS

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Definition

Human Immunodeficiency Virus Infection is caused by retrovirus, HIV, resulting in a wide range of clinical manifestations. HIV virus is spread through blood-to-blood and sexual contact. In addition, infected pregnant women can pass HIV to their baby during pregnancy or delivery, as well as through breast-feeding. Blood, semen, vaginal fluid, and breast milk have been shown to spread HIV.

AIDS is a disease of cell-mediated immunity characterized by opportunistic infections, malignancies, neurologic dysfunction and other symptoms. Scientists have estimated that about half the people with HIV develop AIDS within 10 years after becoming infected. However, infectivity varies from person to person and can depend on many factors, including a person's health status and their health-related behaviors.

Early detection offers more options for treatment. Advances in medical treatments can slow the rate at which HIV weakens the immune system. These treatments can be toxic and cause other health problems, such as high cholesterol and liver problems. Some of the illnesses associated with AIDS can be treated, though the treatments do not cure AIDS itself.

Role of the School Nurse

As parents are not obligated to inform schools of their child's HIV status, the school may be unaware that a student is HIV infected. If the school nurse does know of a student's diagnosis, it is important that this information be kept confidential (unless the parent requests that other specific school staff be informed). For this reason, it is essential that all school staff use universal precautions when handling blood or other bodily fluids. (See Bloodborne Pathogen Section)

If appropriate, an IHP (and if appropriate, a 504 plan) can be developed for a student with HIV/AIDS with the collaboration of parents and students (as HIV infection can cause health problems affecting school performance). Factors to consider include confidentiality, health care needs, and need for a student accommodation plan.

Current Maine law protects the confidentiality of HIV test results with certain statutory exceptions. Test results may not be disclosed to anyone without written consent of parents/guardians. Records containing information about HIV test results and consent forms relating to test results must be kept separate from other school records. Only those persons given written consent by the student's parents/guardians shall have access.

Students who have had exposure to another's blood or had unprotected sexual intercourse may be referred for HIV antibody testing. The Rapid Testing for HIV can provide results within an hour. Testing sites may be found at the BOH's STD Testing Site Information http://www.maine.gov/dhs/boh/ddc/HIV_STDTesting.htm.

School nurses play an important role in the prevention of HIV through counseling students on abstinence, safe practices, and use of needles (drugs, tattoos, etc.) and universal precautions. Counseling also can be provided on the use of alcohol and other drugs that impair judgment and can lead to unsafe sexual

practices. School nurses can be a resource to Health Education Teachers as they prepare their HIV/AIDS curriculum.

Statutes

TESTING FOR HIV 5 MRSA sec. 19203 <http://janus.state.me.us/legis/statutes/5/title5sec19203.html>

§19203. Confidentiality of Test. No person may disclose the results of an HIV test, except as follows:

1. Subject of test.
2. Designated health care provider. To a health care provider designated by the subject of the test in writing. When a patient has authorized disclosure of HIV test results to a person or organization providing health care, the patient's physician may make these results available only to other health care providers working directly with the patient, and only for the purpose of providing direct patient care. Any physician who discloses HIV test results in good faith pursuant to this subsection shall be immune from any criminal or civil liability for the act of disclosing HIV test results to other care providers.
3. Authorized person. To a person or persons to whom the test subject has authorized disclosure in writing, except that the disclosure may not be used to violate any other provisions of this chapter.
6. Anonymous testing sites. To an anonymous testing site established, section 19203-B.
7. Other agencies. To employees of or other persons designated by, the Department of Corrections, the Department of Human Services and the Department of Mental Health and Mental Retardation, to the extent that those employees or other persons are responsible for the treatment or care of subjects of the test. Those agencies shall promulgate rules, within 90 days of the effective date of this subsection, pursuant to the Maine Administrative Procedure Act, chapter 375, subchapter II, designating the persons or classes of persons to whom the test results may be disclosed.
8. BOH. To the BOH, which may disclose results to other persons only if as provided in Title 22, sections 3, 7 and 42 and chapter 251.
9. Medical records. As part of a medical record when release or disclosure of that record is authorized pursuant to section 19203-D.
10. Court ordered disclosure. To a person authorized by section 19203-C to receive test results following an accidental exposure.

This section does not prohibit limited administrative disclosure in conjunction with a mandatory testing program of a military organization subject to Title 37-B. Nothing in this section may be construed as prohibiting the entry of an HIV test result on the patient's medical record in accordance with this chapter.

Information in this section comes from:

CDC Web Site - <http://www.cdc.gov/hiv/dhap.htm>

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1. Individual tested. Except as provided in this section and section 19203, subsections 4 and 5, no person may perform an HIV test without first obtaining the written informed consent of the person to be tested. Informed consent is not required for repeated HIV testing by health care providers to monitor the course of established infection. Anonymous test sites under section 19203-B are exempt from the requirement that the informed consent be in writing.

2. Insurers. Persons required to take an HIV test by an insurer, nonprofit hospital or medical service organization or nonprofit health care plan must provide their written informed consent on forms approved by the Superintendent of Insurance. The person or organization requesting the test must provide pretest and post-test counseling. The Superintendent of Insurance may promulgate rules to define language requirements of the form.

3. Access to medical care. No health care provider may deny any person medical treatment or care solely for refusal to give consent for an HIV test. No health care provider may request a person's written consent to an HIV test as a precondition to the provision of health care. All written consent to testing shall be in accordance with section 19201, subsection 5-A. Nothing in this section may prohibit a health care provider from recommending an HIV test for diagnostic or treatment purposes. No physician or other health care provider may be civilly liable for failing to have an HIV test performed for diagnostic or treatment purposes if the test was recommended and refused in writing by the patient

4. Occupational exposure. Consent need not be obtained when a bona fide occupational exposure creates a significant risk of infection provided that a court order has been obtained under section 19203-C. The fact that an HIV test was given as a result of an occupational exposure and the results of that test may not appear in any records of the person whose blood or body fluid is the source of the exposure. Pretest and post-test counseling must be offered. The subject of the test may choose not to be informed about the result of the test.

4-A. Occupational exposure in health care setting. When a bona fide occupational exposure occurs in a health care setting, authorization to test the source patient for HIV must be obtained from that patient if the patient is present or can be contacted at the time of exposure and is capable of providing consent. At the time of exposure, if the source patient is not present and can not be contacted or is incapacitated, then any reasonably available member of the following classes of individuals, in descending order of priority, may authorize an HIV test on a blood or tissue sample from the source patient:

- A. The patient's legal guardian;
- B. An individual known to have power of attorney for health care for the patient;
- C. An adult relative, by blood, marriage or adoption.
- D. An adult with whom the patient has a meaningful social and emotional relationship; and
- E. A physician who is familiar with occupational exposures to HIV.

The individual authorizing the HIV test must be informed of the nature, reliability and significance of the HIV test and the confidential nature of the test.

If the person contacted for authorization refuses to authorize the test, the test may not be conducted unless consent is obtained from the source patient or from the court pursuant to section 19203-C.

This subsection does not authorize a person described in paragraphs A to D to receive the test result. Test results must be given to the exposed person, to a personal physician if designated by the exposed person and to either the physician who authorizes the test or the health care provider who manages the occupational exposure.

The patient may choose not to be informed about the result of the HIV test. Without express patient authorization, the results of the HIV test and the fact that an HIV test was done as a result of an occupational exposure in a health care setting may not appear in the patient's health care records. The exposed individual's occupational health care record may include documentation of the occupational exposure and, if the record does not reveal the source patient's identity, the results of the source patient's HIV test.

5. Exposure from sexual crime. Consent need not be obtained when a court order has been issued under section 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test unless the court has ordered that the convicted offender be informed of the result.

19203-D. Records <http://janus.state.me.us/legis/statutes/5/title5sec19203-D.html>

When a medical record entry is made concerning information of a person's HIV infection status, including the results of an HIV test, the following apply to the release of that information as a part of the medical record.

1. Authorized release. The person who is the subject of an HIV test, at or near the time the entry is made in the medical record, shall elect, in writing, whether to authorize the release of that portion of the medical record containing the HIV infection status information when that person's medical record has been requested. A new election may be made when a change in the person's HIV infection status occurs or whenever the person makes a new election. The release form must clearly state whether or not the person has authorized the release of that information. The person must be advised of the potential implications of authorizing the release of that information.

A. When release has been authorized, the custodian of the medical record may release, upon request, the person's medical record, including any HIV infection status information contained in the medical record. Release of HIV infection status information pursuant to this paragraph is not a violation of any of the confidentiality provisions of this chapter.

B. When release has not been authorized, the custodian of the medical record may, upon request, release that portion of the medical record that does not contain the HIV infection status

information. Except as otherwise provided in this section, HIV infection status information may be released only if the person has specifically authorized a separate release of that information. A general release form is insufficient

2. Authorized disclosure. A medical record containing results of an HIV test may not be disclosed, discoverable or compelled to be produced in any civil, criminal, administrative or other proceedings without the consent of the person who is the subject of an HIV test, except in the following cases:

A. Proceedings held pursuant to the communicable disease laws, Title 22, chapter 251;

B. Proceedings held pursuant to the Adult Protective Services Act, Title 22, chapter 958-A;

C. Proceedings held pursuant to the child protection laws, Title 22, chapter 1071;

D. Proceedings held pursuant to the mental health laws, Title 34-B, chapter 3, subchapter IV, article III; and

E. Pursuant to a court order upon a showing of good cause, provided that the court order limits the use and disclosure of records and provides sanctions for misuse of records or sets forth other methods for ensuring confidentiality.

3. Utilization review; research. Nothing in this section may be interpreted to prohibit reviews of medical records for utilization review purposes by duly authorized utilization review committees or peer review organizations. Qualified personnel conducting scientific research, management audits, financial audits or program evaluation with the use of medical records may not identify, directly or indirectly, any individual patient in any report of such research, audit, evaluation or otherwise disclose the identities of persons tested in any manner.

4. Access by health care providers. Nothing in this section may prohibit access to medical records by the designated health care provider of the person who is the subject of an HIV test in accordance with section 19203, subsection 2. [

5. Confidentiality policy. Health care providers and others with access to medical records containing HIV infection status information shall have a written policy providing for confidentiality of all patient information consistent with this chapter. That policy must require, at a minimum, action consistent with disciplinary procedures for violations of the confidentiality policy.

RESOURCES

CDC Web Site: <http://www.cdc.gov/hiv/dhap.htm>

Department of Health and Human Services, STD Program 287-6448

Department of Education, HIV/AIDs Program – 624-6687

HIV Prevention Education

Department of Education

207-624-6692

www.maine.gov/education/hiv