



Illinois Office of Health Information Technology



HIV/AIDS Workgroup

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Legal Task Force

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AIDS Confidentiality Act

410 ILCS 305

- Act Amended in 2008
- Regulations amended in May, 2012

410 ILCS 305/9: No person may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

(b) Any person designated in a legally effective release of the test results authorized in a written authorization executed by the subject of the test information subject to this Act or the subject's legally authorized representative.

Consent requirement

- ▶ The identity of persons having an HIV test and the results of such testing may not be disclosed to third parties without such person's affirmative consent, with certain exceptions.
- ▶ → Opt-in consent required unless an exception is met.

Issues

- ▶ 1. **Definition of test results**: results of a lab test or any record that is indicative of positive test results? (A few IL cases infer broad treatment)
- ▶ 2. **Designated recipient**: “Any person designated...” Can an HIE or HIE participants generally be designated.
- ▶ 3. **Time-limited**: Amended rules eliminate specificity requirement but add durational requirement.

Issues cont'd

- ▶ 4. Ambiguity of treatment exception: the Act permits disclosure to persons engaged in the patient's treatment –
- ▶ 9(c) An authorized agent or employee of a health facility or health care provider if [1] the health facility or health care provider *itself is authorized* to obtain the test results, [2] the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and [3] the agent or employee has a need to know such information. (emphasis and enumeration added).
- ▶ –What is an authorized health facility or health care provider?
- ▶ –Harmonize with treatment exception under HIPAA?

Issues cont'd

- ▶ 5. **No express authorization for transmittal /disclosure to an HIE**: Revised regulations allow for HIV test results to be “transmitted in a confidential manner in an electronic medical record system, medical record or confidential fax.”
 - ▶ –Amend Act to also allow transmittal to an HIE?
- ▶ 6. **No re-disclosure without consent or meeting an exception**
 - ▶ –Amend Act to allow disclosure from an HIE to HIE participants?
- ▶ 7. **No medical emergency treatment exception**

Other states

- Approximately 20 states have statutes that allow disclosure of HIV/AIDS data for purposes of treatment without consent.
- Approximately 25 states have a medical emergency exception.