

Tulane University

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APPROVED: April 1, 2004	REVISED:
EFFECTIVE DATE: April 1, 2004	POLICY NUMBER: GC-023

Tulane University – Sensitive Information

SCOPE OF POLICY

This policy applies to Tulane University Medical Group, its participating physicians and clinicians, and all University employees and business units who provide management, administrative, financial, legal, and operational support to or on behalf of Tulane University Medical Group and have been designated as part of the Tulane University HIPAA Health Care Component. This policy pertains to protected health information covered by Tulane University Medical Group's Notice of Privacy Practices.

STATEMENT OF POLICY

While HIPAA generally protects most individually identifiable health information maintained by Tulane University Medical Group, Louisiana law provides for heightened protections for HIV and genetic test results. Such information is governed primarily by this policy, and by other Tulane University Medical Group HIPAA policies only when not in conflict with this policy.

IMPLEMENTATION OF POLICY

Notwithstanding anything else in any Tulane University Medical Group HIPAA policy to the contrary, Tulane University Medical Group may only release HIV or genetic test results, whether separately or as part of a medical record, as provided in this policy.

1. Genetic Information

With the exception of genetic tests specifically mandated to be reported by law, the results of any prenatal or postnatal genetic tests are confidential and are excluded from reporting requirements. The results of such genetic tests are not to be released without the patient's express written consent. Such consent may be in either of two forms: (1) the patient fills out the Authorization for Release of Protected Health Information form, in accordance with the *Authorization for Release of Protected Health Information and Revoke Authorization* policy (GC-010), and initials the "alcohol, drug abuse, psychiatric, and/or genetic test results" item on the form, or (2) the patient fills out a request for access to such information, which references genetic information, in accordance with the policy on *Patient Access to Protected Health Information*, GC-008.

2. HIV Test Results

General Rule. Tulane University Medical Group does not disclose HIV test results unless: (1) the patient fills out the Authorization for Release of Protected Health Information form, in accordance with the *Authorization for Release of Protected Health Information and Revoke Authorization* policy (GC-010), and initials the HIV test results item on the form, (2) the patient fills out a request for access to such information (or for the entire record, if the HIV test results are contained in the medical record), in accordance with the policy on *Patient Access to Protected Health Information*, GC-008, or (3) one of the exceptions below applies.

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Exceptions. Notwithstanding the above, HIV test results may be released to the following, to the extent consistent with other Tulane University Medical Group HIPAA policies:

- Any person to whom disclosure of medical information is specifically authorized by law without the consent of the patient.
- Any agent or employee of a health facility or health care provider if:
 - The agent or employee is permitted access to medical records;
 - The health facility or health care provider is authorized to obtain the HIV test results; and
 - The agent or employee provides health care to the patient or maintains or processes medical records for billing or reimbursement purposes.
- A health care provider or health facility, when knowledge of the HIV test results is necessary to provide appropriate care or treatment to the patient and afford the health care provider and the personnel of the health facility an opportunity to protect themselves from transmission of the virus.
- A health facility or health care provider, in relation to the procurement, processing, distributing, or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or transplantation, if the following requirements are met (as applicable):
 - The recipient is a "covered entity" under HIPAA (if the disclosure is for medical education);
 - The disclosure is consistent with the *Uses and Disclosures of PHI for Research* policy (GC-012);
 - The recipient needs the information to treat a patient; or
 - The recipient is engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue donation and transplantation.
- Any health facility staff committees or accreditation or oversight review organizations authorized to access medical records.

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- A federal, state, parish, or local health officer when the disclosure is mandated by federal or state law.
- An agency or individual in connection with the foster care programs of the Department of Social Services or an agency or individual in connection with the adoption of a child.
- Any person to whom disclosure is ordered by a court of competent jurisdiction, provided that release is authorized by the General Counsel's office.
- An employee or agent of the Board of Parole of the Department of Public Safety and Corrections to the extent that the employee or agent is authorized to access records containing HIV test results in order to implement the functions, powers, and duties with respect to the individual patient of the Board or Parole, Department of Public Safety and Corrections, and if the employee or agent represents that the information is necessary for:
 - The provision of health care to the patient;
 - The health and safety of the officers or employees of or others at the correctional institution;
 - The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
 - Law enforcement on the premises of a correctional institution; or
 - The administration and maintenance of the safety, security, and good order of the correctional institution.
- An employee or agent of the office of probation and parole of the Department of Public Safety and Corrections, division of correction services, to the extent the employee or agent is authorized to access records containing HIV test results in order to carry out the functions, powers, and duties, with respect to a patient of the office, if the employee or agent represents that the information is necessary for one of the purposes described above with respect to disclosures to the Board of Parole.
- A medical director of a local correctional facility, to the extent the medical director is authorized to access records containing HIV test results in order to carry out the functions, powers, and duties with respect to the patient, if the employee or agent represents that the information is necessary for one of the purposes described above with respect to disclosures to the Board of Parole.
- An employee or agent of the Department of Public Safety and Corrections, to the extent the employee or agent is authorized to access records containing HIV test results in order to carry out the Department of Public Safety and Corrections functions, powers, and duties with respect to the

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patient, if the employee or agent represents that the information is necessary for one of the purposes described above with respect to disclosures to the Board of Parole.

- An employee or agent who is authorized by the Department of Social Services, office of rehabilitative services to access records containing HIV test results in order to carry out the Department of Social Services, office of rehabilitative services functions, powers, and duties with respect to the protected patient, if the disclosure is otherwise specifically permitted by Tulane University Medical Group's HIPAA policies.
- An insurer, insurance administrator, self-insured employer, self-insurance trust, or other person or entity responsible for paying or determining payment for medical services to the extent necessary to secure payment for those services.
- A state, parish, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school, with the consent of a parent or guardian.

Notification of Contacts. A Tulane University Medical Group physician may disclose confidential HIV test results if all of the following conditions are met:

- Disclosure is made to a contact, or to a public health officer for the purpose of making the disclosure to said contact.
- The physician reasonably believes disclosure is medically appropriate, and there is a significant risk of infection to the contact.
- The physician has counseled the patient regarding the need to notify the contact, and the physician reasonably believes the patient will not inform the contact.
- The physician has informed the patient of his or her intent to make such disclosure to a contact and has given the patient the opportunity to express a preference as to whether disclosure should be made by the physician directly or to a public health officer for the purpose of said disclosure. If the patient expresses a preference for disclosure by a public health officer or by the physician the physician shall honor such preference.

When making such disclosures to the contact, the physician or public health officer shall provide or make referrals for the provision of the appropriate medical advice and counseling for coping with the emotional consequences of the knowledge of the information and for alteration of behavior to prevent transmission or contraction of HIV infection. The physician may not disclose the identity of the patient or the identity of any other contact. A physician or public health officer making such notification shall make such disclosure in person, except where circumstances reasonably prevent doing so. Neither Tulane University Medical Group nor any of its clinicians has any obligation to identify or locate any contact.

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Personal Representatives. A Tulane University Medical Group physician may also disclose a patient's HIV test results to a personal representative of the patient when the physician reasonably believes that disclosure is medically necessary in order to provide timely care and treatment for the patient and, after appropriate counseling as to the need for such disclosure, the patient has not and will not inform the person authorized by law to consent to health care. The physician shall not make such disclosure if, in the judgment of the physician, the disclosure would not be in the best interest of the patient or of the personal representative. Any decision or action by a physician pursuant to this paragraph and the basis thereof shall be recorded in the patient's medical record.

Disclosures Contraindicated. A physician may choose, notwithstanding any other provision of law to the contrary, not to disclose the results of a confidential HIV test to a person upon whom such a test has been performed when in the medical opinion of the physician the disclosure of such results would be medically contraindicated.

VIOLATIONS

The Privacy Official has general responsibility for implementation of this policy. Employees who violate this policy will be subject to disciplinary action up to and including termination of employment. Anyone who knows or has reason to believe that another person has violated this policy should report the matter promptly to his or her supervisor or the Privacy Official. All reported matters will be investigated, and, where appropriate, steps will be taken to remedy the situation. Where possible, every effort will be made to handle the reported matter confidentially. Any attempt to retaliate against a person for reporting a violation of this policy will itself be considered a violation of this policy that may result in disciplinary action up to and including termination of employment.