

SUNY DOWNSTATE MEDICAL CENTER
UNIVERSITY HOSPITAL OF BROOKLYN
POLICY AND PROCEDURE

No. HIPAA-12

Subject: HIV RELATED INFORMATION

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I. PURPOSE

To ensure that SUNY Downstate complies with both New York State laws and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations in regard to protecting HIV-related information.

II. POLICY

III. DEFINITIONS

None

IV. RESPONSIBILITIES

It is the responsibility of all medical staff members and hospital staff members to comply with this policy. Medical staff members include physicians as well as allied health professionals. Hospital staff members include all employees, medical or other students, trainees, residents, interns, volunteers, consultants, contractors and subcontractors at the hospital.

V. PROCEDURE/GUIDELINES

A. Disclosures of Confidential HIV- Related Information

1. SUNY Downstate must obtain the patient's HIV release and HIPAA authorization simultaneously by using the HIPAA Patient Authorization form which complies with NYS and HIPAA required elements.
 - a. Treatment cannot be conditioned upon the patient's signing of the form.
 - b. Authorization for release of psychotherapy notes must be obtained on a separate authorization from the one releasing confidential HIV-related information.
2. Disclosures to SUNY Downstate employees or agents who need the information in order to provide direct care to patients or to process case records for billing or reimbursement are permitted without a HIPAA Patient Authorization provided that minimum necessary standards are met. However, a business associate agreement is required from any agent who is not:
 - a. A member of SUNY Downstate's organized healthcare arrangement or workforce; or
 - b. Receiving the confidential HIV-related information for treatment purposes.
3. Disclosures to healthcare facilities or providers collecting human body parts are permitted only with the following documentation:
 - a. Disclosure for transplantation (and therapy, to the extent included in transplantation) is permitted without the HIPAA Patient Authorization.
 - b. Disclosure for Research
 - i. Obtain HIPAA Patient Authorization; or
 - ii. Disclose only a limited data set, pursuant to the policy on Use of Limited Data Sets; or
 - iii. Meet the other requirements for research without a HIPAA Patient Authorization. See policy on Uses & Disclosures for Research.
 - c. Disclosure for Medical Education Purposes of Another Facility or Provider
 - i. Obtain HIPAA Patient Authorization; or
 - ii. Disclose only a limited data set, pursuant to the policy on Use of Limited Data Sets; or
 - iii. Verify that the recipient is another covered entity under HIPAA and that the information relates to a relationship that the patient has or has had with the recipient.
4. Disclosures to Accreditation or Oversight Organizations
 - a. Disclosure to a government agency for health oversight purposes or to an internal committee for oversight and accreditation purposes is permitted without a HIPAA Patient Authorization.

- b. Disclosure to an external private organization performing accreditation activities would require a Business Associate Agreement.
- 5. Disclosures to Adoption and Foster Care Agencies
 - a. A HIPAA Patient Authorization must be obtained from the appropriate legal representative of the child before disclosing the child's confidential HIV-related information to an adoption or foster care agency that does not have the authority under applicable law to make healthcare decisions on behalf of the child.
 - b. When disclosing confidential HIV-related information about the child's parent to the adoption or foster care agency in connection with the adoption or placement, a HIPAA Patient Authorization must be obtained from the parent unless the disclosure is required by law.
- 6. Disclosure to Law Guardians- A HIPAA Patient Authorization must be obtained from the minor or appropriate legal representative of the minor if the:
 - a. Law guardian does not have the authority under applicable law to make healthcare decisions on behalf of the minor; or
 - b. Disclosure is not required by the legal appointment of the law guardian.
- 7. Disclosure to insurance institutions for non-payment purposes would require a HIPAA Patient Authorization.
- 8. Disclosure to probation and parole officers would require a HIPAA Patient Authorization, unless the disclosure is:
 - a. Required by law; or
 - b. Necessary to avert a serious and imminent threat to the health or safety of a person.
- 9. Disclosure to a medical director of a correctional facility would require a HIPAA Patient Authorization, unless the disclosure is:
 - a. Required by law- Consult with legal counsel to ensure that the disclosure is required by law;
 - b. Necessary to avert a serious threat to the health or safety of a patient or others- Obtain certification from the medical director of the correctional facility that the disclosure will be to a person in a position to help prevent or lessen the threat.
 - c. Necessary to protect the health and safety of inmates and others- Obtain certification from the medical director of the correctional facility that the disclosure is necessary to protect the health and safety of the inmate who is the subject of the information, other inmates or other individuals at the correctional facility.
- 10. Disclosure for Child and Adult Protective Services- Disclosures to comply with reporting requirements are permitted to child protective services when authorized or required by law and to adult protective services when required by law.
 - a. When a disclosure to adult protective services is not required under NYS law, a HIPAA Patient Authorization must be obtained, unless the:
 - i. Patient's verbal permission is obtained; or
 - ii. Disclosure is authorized by law and is necessary to prevent serious harm to the patient or other potential victims; or

- iii. Disclosure is authorized by law, the patient is unable to agree to the disclosure because of incapacity and a law enforcement officer has represented that the information will not be used against the patient and an immediate law enforcement activity would be materially and adversely affected by waiting until the patient is able to agree to the disclosure.
 - b. The patient or personal representative must be informed of any reports made to adult protective services without a HIPAA Patient Authorization, unless:
 - i. Informing the patient would place the patient at risk of serious harm; or
 - ii. Informing a personal representative would not be in the best interests of the patient because it is believed that the personal representative is responsible for the suspected abuse or neglect.
11. Documentation of Disclosures- All disclosures of confidential HIV-related information must be recorded, in accordance with the policy on Accounting of Disclosures, except disclosures to:
- a. Authorized employees of SUNY Downstate;
 - b. Authorized agents of SUNY Downstate who are designated as workforce members;
 - c. Authorized agents of SUNY Downstate's organized healthcare arrangement if the disclosure is for treatment, payment or healthcare operations;
 - d. Individuals engaged in quality assurance, program monitoring or evaluation; and
 - e. Governmental payment agents acting pursuant to contract or law.
12. Obtaining Assurances from Contractors- If a Business Associate Agreement is required, the following must be included in the agreement. If a Business Associate Agreement is not required, SUNY Downstate must still ensure that the following requirements are met in regard to contractors performing any activity relating to SUNY Downstate's rendering of health services:
- a. Contractors only receive confidential HIV-related information when appropriate under NYS HIV laws;
 - b. Contractors have access to confidential HIV-related information while performing authorized functions only if they have received, or can document receiving, initial and annual education concerning NYS HIV laws' prohibition against unauthorized disclosures of confidential HIV-related information; and
 - c. Contractors will not discriminate against any patients having or suspected of having HIV infection, in accordance with SUNY Downstate's protocols.

B. Patient Rights

- 1. Notice of Confidentiality and Privacy Practices
 - a. All patients must receive a general Notice of Privacy Practices.
 - b. Patients with confidential HIV-related information should also be provided with a separate notice regarding SUNY Downstate's confidentiality practices. See attached Notice of Privacy- Confidentiality of HIV-Related Information.
 - c. Informed consent forms for HIV-related testing must be modified to ensure that patients are informed of the confidentiality protections under both HIPAA and NYS laws.
- 2. Right to Request Access of Confidential HIV-Related Information

- a. Access to confidential HIV-related information contained in the patient's medical record should follow the guidelines delineated in the policy on Patient Requests for Access.
 - b. Access to confidential HIV-related information contained in the patient's mental health clinic record should follow the guidelines delineated in the policy on Mental Health Information.
 - c. Access to confidential HIV-related information contained in the patient's substance abuse case record should follow the guidelines delineated in the policy on Alcohol & Substance Abuse Information.
3. Right to Request Amendment of Records Containing HIV-Related Information- The guidelines delineated in the policy on Patient Requests for Amendment should be followed.
4. Right to Request an Accounting of Disclosures of HIV-Related Information- The guidelines delineated in the policy on Accounting of Disclosures should be followed with modifications to reflect the additional requirements for HIV-related information outlined in Section III.A.11.
5. Right to Request Additional Privacy Protections- The guidelines delineated in the policy on Patient Requests for Additional Privacy Protections should be followed.

C. General Administrative Requirements

1. Training- SUNY Downstate must provide training and orientation to all employees authorized to access HIV-related information regarding NYS HIV laws and HIPAA laws on an initial and annual basis and maintain documentation of the training.
2. Subpoenas- Confidential HIV-related information may only be disclosed pursuant to a court order issued per NY Public Health Law 2785.

D. Provisions Relevant to Mental Health Programs & Facilities

1. Facilities Licensed by the Office of Mental Health
 - a. Upon discharge, a physician may disclose a patient's HIV status to an appropriate person at the certified facility assuming responsibility of the patient if the physician conducted an evaluation of the patient and ascertained the:
 - i. Risk of HIV transmission;
 - ii. Patient's wishes regarding disclosure; and
 - iii. Risks of discrimination against the patient. The evaluation should be discussed with the patient and both the evaluation and discussion documented.
 - b. When the disclosure is not necessary for treatment purposes or contact notification, a HIPAA Patient Authorization must be obtained.
2. Facilities Licensed by the Office of Mental Retardation and Developmental Disabilities- Identifying markers whose sole purpose is to identify a patient as having HIV or AIDS is prohibited.

- E. NYS HIV Laws Not Affected by HIPAA-** The following NYS HIV laws should continue to be followed without modification by HIPAA:

1. NY HIV law requiring that any disclosure of confidential HIV-related information about patients be accompanied by a statement prohibiting the recipient from re-disclosing the information, except as permitted under NY HIV law.
2. New York HIV laws requiring post-HIV-test counseling. [NY Public Health Law 2781(5); 10 NYCRR 63.3(d); 14 NYCRR 505.6(c)]
3. New York HIV laws requiring the reporting of all initial determinations or diagnoses of HIV infection, HIV-related illness and AIDS to the Commissioner of Health. [NY Public Health Law 2130; 10 NYCRR 63.4]
4. New York HIV laws providing that confidential HIV-related information may be disclosed to the individual who is the subject of the information, or such individual's legally authorized representative. [NY Public Health Law 2782(1)(a); 10 NYCRR 63.6(a)(1); 14 NYCRR 505.7(b)(1)]
5. New York HIV law permitting disclosure of confidential HIV-related information to a health care provider or health facility without a patient's HIV-release when knowledge of the confidential HIV-related information is necessary to provide appropriate care or treatment to the protected individual, a child of the individual, or a contact of the protected individual. [NY Public Health Law 2782(1)(d); 10 NYCRR 63.6(4); 14 NYCRR 505.7(4)]
6. New York HIV law permitting disclosure of confidential HIV-related information to third-party payers for payment purposes, provided that, where necessary, an "otherwise appropriate authorization for such disclosure has been secured by the provider." [NY Public Health Law 2782(1)(i); 10 NYCRR 63.6(a)(9); 14 NYCRR 505.7(b)(9)]
7. New York HIV laws permitting disclosure of confidential HIV-related information when required by law or a court order, so long as the court order meets the requirements of New York Public Health Law 2785. [NY Public Health Law 2782(1)(g), 2782(1)(k), 2785; 10 NYCRR 63.6(a)(12); 14 NYCRR 505.7(b)(11)]
8. New York HIV laws permitting disclosure of confidential HIV-related information for contact notification. [NY Public Health Law 2782(4)(a), (b), (c); 10 NYCRR 63.8; 14 NYCRR 505.9]
9. New York HIV laws permitting disclosure of confidential HIV-related information about a minor to state, county or local health officer for the purpose of determining the child's fitness to attend school. [NY Public Health Law 2782(4)(d); 10 NYCRR 63.6(d)]
10. New York HIV laws permitting disclosure of confidential HIV-related information to a government agency when necessary for supervision, monitoring, administration or provision of services. [NY Public Health Law 2782(6); 10 NYCRR 63.6(e)]
11. New York HIV laws prohibiting disclosure of confidential HIV-related information to providers for the sole purpose of infection control but permitting access to HIV-related information by a facility's inspection control personnel for purposes of fulfilling their designated responsibilities. [10 NYCRR 63.6(j)]

12. New York HIV laws permitting physicians to disclose confidential HIV-related information to a person who is authorized to consent to health care on behalf of the protected patient (who would be a personal representative under HIPAA) when the physician believes that disclosure is medically necessary and, after appropriate counseling, the protected patient refuses to inform the personal representative of the confidential HIV-related information. [NY Public Health Law 2782(4)(e); 10 NYCRR 63.6(g)]
13. New York HIV laws permitting disclosures of confidential HIV-related information to a funeral director upon taking charge of the remains of a deceased person when such funeral director has access in the ordinary course of business to HIV-related information on the death certificate of the deceased individual. [10 NYCRR 63.6(a)(11)]
14. New York HIV laws requiring that confidential HIV-related information be disclosed upon the request of a "health care worker HIV/HBC advisory panel" to the panel or its designee when reasonably necessary for the evaluation of a health care worker with HIV or HBV who has voluntarily sought the panel's review of the risk of HIV/HBV transmission to others through his or her workplace practice. [NY Public Health Law 2782(9); 10 NYCRR 63.3(1)]

VI. ATTACHMENTS

Notice of Privacy Practices- Confidentiality of HIV- Related Information

VII. REFERENCES

Standards for Privacy of Individually Identifiable Health Information, 45 CFR; NY Public Health Law, Article 27-F; 10 NYCRR 63; 14 NYCRR 505; 14 NYCRR 633.19

	Revision	Required	Responsible Staff Name and Title
	Yes	No	Adeola O. Dabiri, Director of Regulatory Affairs
	Yes	No	
	Yes	No	
	Yes	No	