# WEST VIRGINIA CODE: §16-3C-3

**§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.**

(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related 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:

(1) The subject of the test;

(2) The victim of the crimes of sexual abuse, sexual assault, incest or sexual molestation at the request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor where disclosure of the HIV-related test results of the convicted sex offender are requested;

(3) Any person who secures a specific release of test results executed by the subject of the test;

(4) A funeral director or an authorized agent or employee of a health facility or health care provider if the funeral establishment, health facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know that information: Provided, That the funeral director, agent or employee shall maintain the confidentiality of this information;

(5) Licensed health care providers or appropriate health facility personnel providing care to the subject of the test: Provided, That such personnel shall maintain the confidentiality of the test results and may redisclose the results only for a permitted purpose or as permitted by law. The entry on a patient's chart of an HIV-related illness by the attending or other treating physician or other health care provider shall not constitute a breach of confidentiality requirements imposed by this article;

(6) The Bureau or the Centers for Disease Control and Prevention of the United States Public Health Service in accordance with reporting requirements for HIV and a diagnosed case of AIDS, or a related condition;

(7) A health facility or health care provider which procures, processes, distributes or uses: (A) A human body part from a deceased person with respect to medical information regarding that person; (B) semen provided prior to the effective date of this article for the purpose of artificial insemination; (C) blood or blood products for transfusion or injection; or (D) human body parts for transplant with respect to medical information regarding the donor or recipient;

(8) Health facility staff committees or accreditation or oversight review organizations which

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are conducting program monitoring, program evaluation or service reviews so long as any identity remains anonymous;

(9) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer or any other payer of health care claims, where the disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection is confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment;

(10) Persons, health care providers or health facilities engaging in or providing for the exchange of protected health information among the same in order to provide health care services to the patient, including, but not limited to, disclosure through a health information exchange, disclosure and exchange within health care facilities, and disclosure for a permitted purpose, including disclosure to a legally authorized public health authority; and

(11) A person allowed access to the record by a court order that is issued in compliance with the following provisions:

(i) No court of this state may issue the order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest;

(ii) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the test subject of the test. The disclosure to the parties of the test subject's true name shall be communicated confidentially in documents not filed with the court;

(iii) Before granting any such order, the court shall, if possible, provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;

(iv) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that the public hearing is necessary to the public interest and the proper administration of justice; and

(v) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the person who may have access to the information, the purposes for which the information may be used and appropriate prohibitions on future disclosure.

(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section may disclose the test results to another person except as

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authorized by said subsection.

(c) Notwithstanding the provisions set forth in subsections (a) through (c) of this section, the use of HIV test results to inform individuals named or identified as spouses, sex partners or contacts, or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids, is permitted: Provided, That the Bureau shall make a good faith effort to inform spouses, sex partners, contacts or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids: Provided, however, That the Bureau has no notification obligations when the Bureau determines that there has been no likely exposure of these persons to HIV from the infected test subject within the ten-year period immediately prior to the diagnosis of the infection. The name or identity of the person whose HIV test result was positive is to remain confidential. Spouses, contacts, or sex partners or persons who have shared needles may be tested anonymously at the State Bureau for public Health's designated test sites, or at their own expense by a health care provider or an approved laboratory of their choice confidentially should the test be positive. A cause of action may not arise against the Bureau, a physician or other health care provider from any such notification.

(d) There is no duty on the part of the physician or health care provider to notify the spouse or other sexual partner of, or persons who have shared needles with, an infected individual of their HIV infection and a cause of action may not arise from any failure to make such notification. However, if contact is not made, the Bureau will be so notified.

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