

A Providers Guide to
HIV CONFIDENTIALITY AND DISCLOSURE
in Minnesota



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TESTING

MEDICAL SETTINGS

When is an inquiry about HIV status permitted?

Testing in Minnesota requires informed consent. However, the provider administering the test can and will ask about HIV status even if it is not a person's first test.

Medical providers (hospitals, clinics, labs) are permitted to inquire about any health data necessary for current care and treatment. If a person refuses to disclose, care and treatment options may be affected.

When is someone required to disclose HIV status?

Disclosure is not required, but may affect care and treatment options.

Disclosure for the general public is not required, but may affect care and treatment options.

"A regulated person (dental hygienist, dentist, physician, nurse, podiatrist, physician's assistant) who is diagnosed as infected with HIV . . . shall report that information to the commissioner promptly." Minn. Stat. § 214.19 (2004)

When is someone else permitted to disclose HIV status?

If tested in a physician's office or if a test is reimbursed through insurance, tests results will become part of a person's medical record.

Insurers are prohibited from disclosing medical records to employers. Minn. Stat. § 72A.502

Yet, medical records can be disclosed in limited circumstances. (See columns to the right under disclosure in medical settings/insurance.)

Medical records can be disclosed: in case of medical emergency where the provider is not able to obtain consent; to other providers within related health care entities when necessary for current treatment; to administer federal funds or programs; to surviving family; to communicate condition to family member or appropriate party unless directed otherwise. Minn. Stat. §§ 13.384 Subd.3; 144.335 Subd. 3a

In non-emergencies a patient's written consent is required for disclosure to another provider. Generally, a patient's consent is valid for one year. Minn. Stat. § 144.335 Subd. 3a(a)

The commissioner of health has broad powers to disclose HIV status in the interests of public health, for example, "to identify, establish, implement, and enforce a monitoring plan; to investigate a regulated person; to alert persons who may be threatened by illness as evidenced by epidemiological data; to control or prevent the spread of HIV, HBV or HCV, or to diminish an imminent threat to the public health." Minn. Stat. § 214.25

TESTING

MEDICAL SETTINGS

When is someone else permitted to disclose HIV status? cont.

A patient lacking capacity: A treating physician who makes medical decisions regarding the prescription and administration of medication for treatment of a mental illness has access to the relevant sections of a patient's health records on past administration of medication at any treatment facility, if the patient lacks the capacity to authorize the release of records. Minn. Stat. § 253B.0921

Health care facilities may disclose an individual's test results, without the name, address or other uniquely identifying information, to emergency medical services personnel, if a significant exposure may have occurred. Minn. Stat. § 144.7403

When is someone else required to disclose HIV status?

Physicians, health care facilities and medical labs, are required to report HIV-positive test results to the MDH. Reported (if given) information includes: name, birth date, ethnic or racial origin, residence address, phone number, place of work, school, or childcare.

Minn. R. §§ 4605.7030, .7090

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Minn. R. §§ 4605.7030, .7090

What are the legal options if confidentiality is breached?

If the state or one of the public testing sites intentionally breaches confidentiality an individual may, under the MGDPA, (Minnesota Government Data Practices Act) recover up to \$10,000, for any losses. A court can order compliance with the act and a stop of any practices violating the act. Any person who willfully violates this law may face criminal charges.

Minn. Stat. §§ 13.08-.09.

If a provider is covered by the MGDPA (e.g., government agencies, public hospitals, agencies under contract with the state) an individual may recover up to \$10,000, for any losses. A court can order compliance with the act and a stop of any practices that violate the act. Any person who willfully violates this law may face criminal charges. Minn. Stat. § 13.08-.09.

If a provider is a private entity a person can bring a grievance under the Patient Bill of Rights or a claim for financial losses, plus costs and attorney fees.

Minn. Stat. §§ 144.335 Subd. 3a(e); 144.651

TESTING

MEDICAL SETTINGS

What are the legal options if confidentiality is breached? cont.

If a provider is a private entity a person can bring a grievance under the Patient Bill of Rights or bring a claim for financial losses, plus costs and attorney fees.

Minn. Stat. §§ 144.335 Subd. 3a(e); 144.651

INSURANCE (Disability, Health, Life)

HOUSING

When is an inquiry about HIV status permitted?

Insurers are permitted to collect medical information necessary to make appropriate underwriting decisions. If a person refuses to disclose they may be denied coverage.

Minn. Stat. § 62A.04

Generally, never. This would be discrimination against an individual with a disability under the Minnesota Human Rights Act (MHRA). Landlords who are renting a room in their own home are not covered by MHRA.

Minn. Stat. §§ 363A.02, Subd. 1(2); 363A.21.

If a person is applying for housing designated for individuals with a certain type of disability, the housing authority is allowed to ask for proof of a qualifying disability. They are not allowed to request medical records.

24 C.F.R. § 100.202

When is someone required to disclose HIV status?

Individuals are required to provide requested information necessary for determining insurance eligibility. Providing false information may subject a person to criminal liability for insurance fraud and denial of benefits.

When a person requests a reasonable accommodation, they must provide documentation verifying a qualifying disability. This can often be done without disclosing HIV status. 24 C.F.R. § 100.202

When is someone else permitted to disclose HIV status?

Medical information may be disclosed for prevention of fraud, to health care institutions and professionals, to regulatory authorities, to governmental authorities, as required by law, warrant or subpoena, to conduct actuarial and research studies (non-identifying, affiliate companies, etc.)

Minn. Stat. § 72A.502

Only when there is a direct health threat (this would only arise in rare and extreme circumstances). Under the ADA and the MHRA, a landlord is required to keep medical information confidential unless the tenant gives permission to disclose the information. Minn. Stat. § 363A.095 U.S.C. § 552

INSURANCE
(Disability, Health, Life)

HOUSING

When is someone else required to disclose HIV status?

Insurance companies may disclose information for fraud investigations and as required by law, warrant or subpoena.

Minn. Stat. § 72A.502, Subd. 2

Same as above.

What are the legal options if confidentiality is breached?

Insurance companies are subject to the same remedies provided by the GDP. An individual may recover up to \$10,000, for any losses. A court can order compliance with the act and a stop of any practices that violate the act. Any person who willfully violates this law may face criminal charges. Minn. Stat. §§ 72A.503; 13.08-09

A person can also recover for financial losses and force policy changes.

Minn. Stat. §§ 72A.503; 13.08-09

All public housing providers are subject to federal anti-discrimination laws. Penalties include injunctive relief, money damages and attorney's fees and costs and potential loss of federal funding.

29 U.S.C. § 794.42 U.S.C. §§ 12101 et seq.

All housing providers in Minnesota are subject to the MHRA (with a few exceptions). Penalties under the MHRA include injunctive relief, triple compensation of any actual financial loss, punitive damages up to \$8,500 in cases of actual financial loss, civil penalties to the state, attorney's fees and costs.

Minn. Stat. § 363A.29, .33

EMPLOYMENT

PUBLIC ACCOMMODATION

When is someone else permitted to disclose HIV status?

Once a person requests accommodation a supervisor can be informed of the needed accommodation, but not the underlying medical reason for the accommodation. First aid safety personnel may be notified of conditions that may require emergency treatment. In all other cases, an employee's disability is confidential.

Minn. Stat. § 363A.08.

Same as above.

When is someone else required to disclose HIV status?

Any medical data employers get must be kept separate from a personnel file and can only be disclosed as set out above and for government use to insure compliance with laws and administering benefits. Employers cannot request, coerce or pressure and individual to disclose their status.

29 C.F.R. 1630.14

Same as above.

EMPLOYMENT

PUBLIC ACCOMMODATION

When is an inquiry about HIV status permitted?

Before an employer extends a job offer, they cannot ask potential employees about any existing disability. Some employers may require a medical exam after the extension of a job offer, if they test all employees and the exam is looking for abilities that are essential to job related activities.

Minn. Stat. § 363A.08, Subd. 4.

Public accommodations include just about any type of business that is open to the public, including hotels, restaurants, public parks, airplanes, concert halls, bars, dental offices, doctor offices, hospitals, etc. They are not allowed to discriminate against any individual on the basis of their HIV status under MHRA. This would prohibit asking an individual about their status. Minn. Stat. § 363A.11.

What are the legal options if confidentiality is breached?

Penalties under the MHRA include triple compensation of actual financial loss, compensation for emotional distress, punitive damages up to \$8,500 in cases of actual financial loss, civil penalties to the state, attorney's fees and costs. Minn. Stat. §§ 363A.29, .33.

Similar and additional protections and remedies are available under the ADA.

Penalties under the MHRA include triple compensation of actual financial loss, compensation for emotional distress, punitive damages up to \$8,500 in cases of actual financial loss, civil penalties to the state, attorney's fees and costs. Minn. Stat. §§ 363A.29, .33.

Similar and additional protections and remedies are available under the ADA.

When is someone required to disclose HIV status?

When a person requests a reasonable accommodation, they must provide documentation verifying a qualifying disability. This can often be done without disclosing HIV status.

Minn. Stat. § 36A3.08, Subd. 4.

Only when there is a direct health threat (this would only arise in rare and extreme circumstances). Minn. Stat. § 363A.11.

LAW ENFORCEMENT

PRIVATE ACTIVITIES

When is an inquiry about HIV status permitted?

No inquiry is permitted, unless necessary for medical treatment. HIV status has been determined to not pose a direct threat and therefore is not required information.

Minn. Stat. §§ 13.3805;13.82.

In the case of convicted sex offenders and anyone convicted of a violent crime under Section 609.1095, the victim can request an HIV test be administered. This information will be passed on to the victim (or the victim's parent or guardian, if the victim is a minor) and the commissioner of health. Any medical data or health records maintained under section 13.384 or 144.335 are destroyed, except for those medical records maintained by the department of corrections.

Minn. Stat. § 611A.19

Individuals can inquire about HIV status in situations not protected by laws such as those discussed in preceding settings.

When is someone required to disclose HIV status?

A person is not required to disclose unless there is a valid court order.

Minn. Stat. § 13.384 Subd. 3(c)

Generally a person is not required to disclose their HIV status in private settings. Private disclosure is a matter of personal values and ethics. However, if a person intentionally transmits HIV or subjects someone to high risk of becoming infected, they may be vulnerable to personal injury lawsuits, criminal liability, or action under Minnesota's Health Threat Procedures Act.

Minn. Stat. §§ 609.2241,144.4171-4186

Murder, manslaughter, criminal vehicular homicide and injury, Assault in the first degree, great bodily harm caused by distribution of drugs, use of drugs to injure or facilitate crime, simple robbery, aggravated robbery, manslaughter of an unborn child, kidnapping, false imprisonment, murder of an unborn child, assault of an unborn child in the first degree, injury or death of an unborn child in commission of crime, tampering with a witness in the first degree, arson, burglary in the first degree, felony; drive-by shooting, adulteration, and shooting at or in public transit vehicle or facility. Any of the following crimes if punishable by a felony penalty: committed for benefit of a gang, malicious punishment of a child, persons guilty of neglect or endangerment, harassment, stalking, illegal possession of pistols or semiautomatic military-style assault weapons. (609.165; 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.221; 609.222; 609.223; 609.228; 609.235; 609.24; 609.245; 609.25; 609.255; 609.2661; 609.2662; 609.2663; 609.2664; 609.2665; 609.267; 609.2671; 609.268; 609.342; 609.343; 609.344; 609.345; 609.498, subdivision 1; 609.561; 609.562; 609.582, subdivision 1; 609.66, subdivision 1e; 609.687; 609.855, subdivision 5; any provision of sections 609.229; 609.377; 609.378; 609.749; and 624.713).

LAW ENFORCEMENT

PRIVATE ACTIVITIES

When is someone else permitted to disclose HIV status?

If a person verbally discloses their HIV status or if someone else discloses the person's status to a police officer and it subsequently is part of an arrest report, it becomes part of the public record. However, if the person is the victim of or witness to a crime, identifying information must be suppressed upon request. In some instances it is possible to have the record expunged.

Minn. Stat. §§ 13.82; 609A.01-.03.

When is someone else required to disclose HIV status?

There is no requirement without a court order.

If the victim or her legal representative requests investigative data collected by law enforcement that includes the HIV status of another person, the prosecutor must release the info regarding HIV status.

Minn. Stat. § 13.82 Subd. 13

There is no requirement without a court order.

What are the legal options if confidentiality is breached?

Remedies for violation of the GDP include damages, costs, attorney's fees, up to a \$10,000 fine, and an injunction against the violating activity.

Minn. Stat. § 13.08.

Minnesota established a limited right to privacy in Lake v. Wal-Mart Stores, Inc., 582 NW 2d. 231, which establishes common law remedies. A person needs to establish a concrete harm (lost business, wages, therapy expenses, etc.) in order to recover monetary damages.

GLOSSARY OF TERMS

ADA: American with Disabilities Act

C.F.R.: Code of Federal Regulations

Damages: Compensation for loss or injury to person or property

GDP: Government Data Practices statute

MDH: Minnesota Department of Health

MHRA: Minnesota Human Rights Act

Minn. R.: Minnesota Administrative Rules

Minn. Stat.: Minnesota Statutes

U.S.C.: United States Code

This guide is intended for information only and does not constitute legal advice in regards to any situations involving HIV confidentiality or disclosure. Questions on liability or interpretation of the statutes or cases referenced in this guide should be referred to an attorney.

For more information or legal assistance call the Minnesota AIDS Project Legal Program at 612-373-9176, or call MAP AIDSLine at 612-373-2437 or 800-248-2437.