



POLICY TITLE: 313.00 HIV Tests – Using and Disclosing HIV Test Results for Treatment, Payment, and Healthcare Operations

Responsible Department: Corporate Privacy Office

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SUMMARY & PURPOSE:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a Baptist Health or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared.

POLICY:

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and establishing certain individual privacy rights. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner. This policy defines the guidelines for consent for HIV testing and subsequent disclosure of HIV test results.

SCOPE/APPLICABILITY:

This policy applies to Baptist Health and their employees, volunteers, workforce members, licensed health care professionals and medical staff members who order HIV testing on Baptist Health patients or who use or disclose any laboratory report of HIV test result, any report or notate in a medical record of a laboratory result of an HIV test (or the identity of the patient upon whom an HIV test was performed) for treatment, payment, or health care operations.

PROCEDURES TO ENSURE COMPLIANCE:

Baptist Health may use and disclose health information for treatment, payment, and health care operations purposes. These uses and disclosures are necessary to make sure that all of our patients receive quality care, while ensuring that all operational and management needs are efficiently handled. For example, we may use health

information to review the treatment and services we provide to ensure that the care our patients receive is of the highest quality, or we may thank-you notes or pictures that patients send us in employee areas.

1. Privacy and confidentiality at Baptist Health is one of our service excellence standards. As Individuals involved in the delivery of health care, anyone covered by this policy must:
 - a. Safeguard protected health information as part of their job at Baptist Health.
 - b. Be responsible for maintaining PHI confidential, and only using it for treatment, payment and health care operations as set forth in the Privacy Rule.
2. Patient Rights with regard to HIV Test Results.
 - a. Individuals who received an HIV test at a BHSF facility are informed that BHSF will use and disclose the results of HIV tests that identify them only:
 - i. To provide healthcare services (for example, we may tell a specialist about an individuals HIV status so the specialist can treat the patient);
 - ii. When compiling or reviewing medical records as part of routine billing;
 - iii. If necessary, to enable us to protect the quality of our services (for example, we may disclose HIV test results to our committees to monitor and evaluate our programs);
 - iv. To child-placing or child-care agencies, family foster homes, residential facilities or community-based care programs that are directly involved in placement, care, control or custody and that have a need to know such information;
 - v. To a sex- or needle sharing partner in accordance with the law;
 - vi. In accordance with a court order that specifically requires us to release HIV test results; and
 - vii. In connection with organ donation.
3. Standard Informed Consent for HIV Testing
 - a. Anyone covered by this policy who orders an HIV test shall obtain the patient's informed consent for the test with the exception listed below:
 - i. HIV testing of pregnant women pursuant to Florida Statute 384.31 - Testing of pregnant women; duty of the attendant.
 - 1) The woman shall be informed of the tests that will be conducted and of her right to refuse testing.
 - 2) If a woman objects to testing, a written statement of objection, signed by the woman, shall be placed in the woman's medical record and no testing shall occur.
 - b. The signed informed consent must be placed in the patient's chart.
 - c. A copy of the signed consent must accompany the specimen or be faxed to the laboratory before the test will be initiated by the laboratory.
 - d. The laboratory may not initiate the HIV test without a signed consent present in the laboratory.
 - e. The original signed consent must remain in the medical record.
 - f. No record may be marked, coded, or distinguished on the outside so as to identify HIV test results or that an HIV test was or was not performed.
4. Use and Disclosure of Results or Identity:
 - a. Anyone covered by this policy may use or disclose the HIV test results or the identity of the patient upon whom an HIV test is performed for the purpose of treatment, payment, or administrative activities ONLY as set forth below, by the HIPAA privacy policies and as otherwise authorized by law.
 - b. Anyone covered by this procedure shall not indicate that records may not be disclosed because they contain HIV test results.
5. Use and Disclosure of Results or Identity for Treatment.
 - a. Use for Treatment. Anyone covered by this policy may use the HIV test results or the identity of the patient upon whom an HIV test was performed ONLY if they need such information for treatment of the patient.
 - i. Exception: If the situation involves treatment of medical personnel who experience a significant exposure during the course of employment or in the performance of professional duties, or non-medical personnel who experience a significant exposure while providing emergency assistance, Risk Management should be advised of the use of HIV test results or identifying any patient upon whom a test is performed.
 - b. Disclosure for Treatment. Anyone covered by this policy may disclose the HIV test result or the identity of the patient upon whom an HIV test was performed ONLY:

All references to Policies must go to the BHSF Master Copy on the BHSF Intranet; do not rely on other versions / copies of the Policy.

- i. To another health care provider or health care facility to determine diagnosis and treatment of the HIV-positive patient, if the individual making the disclosure is a health care provider;
 - ii. To a health care provider involved in the delivery of a child of an HIV-positive mother for the purpose of noting the mother's HIV test results in the child's medical record;
 - iii. To a health facility or health care provider, which procures, processes, distributes, or uses semen, provided prior to July 6, 1988, for the purpose of artificial insemination;
 - iv. To those employees of the department or of child-placing or child-caring agencies or of family foster homes, who have a need to know and are directly involved in care of the patient;
 - v. To those employees of residential facilities or of community-based care programs that care for developmentally disabled persons, who are directly involved in the care of such patient and who have a need to know such information;
 - vi. To the patient's sex or needle-sharing partner in accord with the "Partner Notification Protocol for Practitioners"(456.061, F.S.), if the Baptist Health employee, independent contractor or medical staff member is a practitioner regulated through the Division of Medical Quality Assurance within the Department of Health;
 - vii. With the written authorization of the patient using the standard authorization form; or
 - viii. Organ donation disclosures for treatment.
- c. Use and Disclosure of Results or Identity for Payment Purposes:
- i. Use for Payment Purposes. Anyone covered by this policy may use the HIV test results or the identity of the patient upon whom an HIV test was performed ONLY if:
 - 1) Necessary to participate in or administer the business operations of a Baptist Health facility, including the compiling or reviewing of patient records as part of routine billing; or
 - 2) The written authorization of the patient using the standard authorization form is obtained. The warning statement, discussed below, must accompany these uses.
 - ii. Disclosure for Payment Purposes. Anyone covered by this policy shall obtain the written authorization of the patient using the standard authorization form, which must be accompanied by the warning statement as discussed below, for ALL disclosures of HIV test results or the identity of the patient upon whom an HIV test was performed for payment purposes. The warning statement, discussed below, must accompany these disclosures.
- d. Use and Disclosure of Results or Identity for Health Care Operations.
- i. Use for Health Care Operations. Individuals covered by this policy may use the HIV test results or the identity of the patient upon whom an HIV test was performed ONLY if necessary to:
 - 1) Discharge properly his or her duties in the ordinary course of participating in or administering the business operations of a Baptist Health facility;
 - 2) Handle or process specimens of body fluids or tissues; or
 - 3) Learn or teach in an approved educational program in a medical teaching facility.
 - ii. Disclosures for Health Care Operations. Anyone covered by this procedure may disclose HIV test results or the identity of the patient upon whom an HIV test was performed ONLY:
 - 1) To health facility staff committees for the purposes of conducting program monitoring, program evaluation or service reviews, including medical review committees; or
 - 2) With the written authorization of the patient using the standard authorization form.
- e. Warning Statement. The following statement must accompany all disclosures of HIV test results or the identity of the patient upon whom the test is performed.
- i. An oral disclosure must be accompanied by an oral notice and followed by a written notice within 10 days.
 - ii. "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose."
6. Deceased individuals
- a. Baptist Health must comply with the requirements of this policy with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

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SUPPORTING/REFERENCE DOCUMENTATION:

- Health Insurance Portability and Accountability Act of 1996 as amended from time to time and including any regulations promulgated thereunder (collectively, "HIPAA")
- Applicable Florida State Laws
- Florida Statute 384.31
- Florida Statute 456.061

RELATED POLICIES, PROCEDURES AND ASSOCIATED FORMS:

- Corporate HIPAA Privacy Policies
- 10000-74220-001.00 Unified Corporate Privacy Policy on HIPAA Compliance
- Lab Compliance 870.17 Disposition of Laboratory Records Containing Identifiable Patient Information
- HIM 400 Use or Disclosure of Medical Record Information
- Employee Health Services 680.24 Blood/Body Substance Post-Exposure Evaluation and Follow-Up
- Attachment - 1821 Consent For HIV Antibody Testing (English)
- Attachment - 1821 Consent for HIV Antibody Testing (Spanish)
- Attachment - 1821A HIV Test – Resource Information Sheet (English)
- Form - SMH 3850 Acknowledgement of HIV Antibody Testing for Pregnant Women
- Form - SMH 3850S Acknowledgement of HIV Antibody Testing for Pregnant Pts - Spanish

ENFORCEMENT & SANCTIONS:

1. Reference: Corporate HIPAA Privacy Policy 10000-74220-605.20 Sanctions for Privacy Violations
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level. Reference: HR policies 5250 Employee Conduct and 5300 Corrective Action.
3. Violations of this policy may lead to disciplinary action up to and including termination.
4. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.