Summary The Information Bulletin sets out the new rules for management of HIV information in NSW following 2017 amendments to the Public Health Act 2010. It provides NSW Health Services with the necessary resources to appropriately manage HIV information in accordance with NSW legislation.

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NSW HEALTH GUIDE TO MANAGING HIV INFORMATION

PURPOSE
Since September 2017, the Public Health Act 2010 allows for patient HIV information to be available to clinical staff treating a patient with HIV. This Information Bulletin provides NSW Health Services with the necessary resources to appropriately manage HIV information in accordance with NSW Legislation.

It also provides a Privacy Leaflet for HIV Patients informing them on how they can expect their HIV information to be managed within NSW Health. It should be provided to patients with HIV together with the existing NSW Health Privacy Leaflet for Patients.

KEY INFORMATION
Amendments to the Public Health Act 2010 which commenced in September 2017, allow HIV information to be accessed by clinical staff treating a patient with HIV. Previously, HIV information has only been available to staff directly involved in care and treatment of the patient’s HIV infection and HIV-related counselling.

Confidentiality of HIV information remains protected by both privacy legislation and the Public Health Act 2010. As with all patient health information, strict measures to safeguard the privacy of HIV information are essential. Clinical staff must only access a patient’s HIV test results contained in the eMR when it is directly relevant to their treatment and care for that patient.

ATTACHMENTS
1. NSW Health Guide to Managing HIV Information
NSW Health

Guide to Managing HIV Information

Developed by Legal & Regulatory Services, Health Protection NSW and the Centre for Population Health, NSW Ministry of Health

January 2019
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NSW Health Guide to Managing HIV Information

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January 2019
1 Executive Summary

Since September 2017, the Public Health Act 2010 allows for patient HIV information to be available to clinical staff treating a patient with HIV. The information should only be accessed if needed to provide care, treatment or counselling to the patient.

Previously, HIV information was only available to staff directly involved in the care and treatment of the patient’s HIV infection and HIV-related counselling.

Allowing treating clinical staff access to HIV information is a change from the previous restrictions on the sharing of HIV information. This change has been made to better manage the care of people living with HIV. HIV is now managed as a chronic condition and there is often a genuine clinical need for care providers to be aware of a patient’s HIV status when managing conditions that may not appear to be directly related to HIV. It is important that patients with HIV are informed of this change in their care.

The Guide to Managing HIV Information sets out the changes that Local Health Districts and Networks (LHD/Ns) will need to implement. New business rules are required to adequately inform staff and patients about the new arrangements.

The Guide provides a Privacy Leaflet for HIV Patients which informs patients how they can expect their HIV information to be managed within NSW Health. It should be provided to HIV patients together with the existing NSW Health Privacy Leaflet for Patients.

It is important to recognise that the confidentiality of HIV information remains protected by both the Public Health Act 2010 and privacy legislation. As with all patient health information, strict measures to safeguard the privacy of HIV information are essential. Further, staff should be aware that while access to HIV information for patient care is facilitated, stricter controls on HIV information remain under the Public Health Act. There are offences for unauthorised disclosure of a person’s HIV information.

The Guide provides NSW health services with the necessary resources to appropriately manage HIV information in accordance with NSW legislation.

The Guide to Managing HIV Information has been developed in the Ministry of Health by Legal & Regulatory Services, Health Protection NSW and the Centre for Population Health. The Ministry has also consulted with HIV community-based organisations and Local Health District privacy and records management staff in developing this Guide.

Questions or feedback on this Guide can be directed to local Privacy Contact Officers. Details are available at: https://www.health.nsw.gov.au/patients/privacy/Pages/privacy-contact.aspx.
2 Public Health Act amendments

Section 56 of the Public Health Act 2010 protects the privacy of patient HIV information (see Appendix 1).

Prior to 2017, Section 56 of the Public Health Act prevented disclosure of HIV test results to persons who were not involved in provision of care directly related to the patient’s HIV infection. This restriction was introduced in the 1990s in response to the high level of stigma associated with HIV, including discrimination experienced in health care settings.

This section was amended in September 2017 to permit HIV test results and other HIV information to be disclosed to any person involved in the provision of treatment, care or counselling to the person concerned, even if it is not related to the person’s HIV status. The amended Public Health Act, section 56, is provided in Appendix 1.

The amendment recognises that HIV is now managed as a chronic life-long condition and that to fully exercise their professional duty of care, clinicians and other care providers may need to be aware of a person’s HIV status when managing conditions that may not appear to be directly related to HIV. This is for a variety of reasons, which may include drug and vaccine contraindications, implications of a compromised immune system for surgery or other procedures, and assessment of psychological care and support needs.

To ensure health service practices align with patient expectations, it is important that patients be made aware of how their HIV information is securely managed in the eMR and other electronic systems. This is particularly important because of the historic restriction of this information. This means that patients will need to be informed about the change.

LHD/Ns should observe the Guide to Managing HIV Information to ensure compliance with the requirements of the Public Health Act.
3 HIV in the eMR, HealtheNet and My Health Record

Patient HIV information held by NSW Health services may include a range of information types, including a patient’s HIV-related pathology results. These pathology results may include positive and negative results for HIV diagnostic tests and HIV viral load monitoring results. In addition to pathology results, HIV patient information may include details of medications for the treatment of HIV; and symptoms and diagnoses consistent with HIV infection.

Business rules should support appropriate access to HIV information in local eMR systems, NSW HealtheNet and the My Health Record. These must take account of the following issues.

3.1 Local Electronic Medical Record (eMR)

Under the Public Health Act patient HIV information may be accessed by NSW Health staff in order to provide care to the patient, including for care not specific to the patient’s HIV infection. There remain strict non-disclosure provisions in respect of disclosure for non-clinical purposes.

In practice this means that HIV test results need to be included in local eMR systems to enable staff to access all relevant patient information when treating a patient.

As part of their governance arrangements, LHD/Ns must review their business rules to ensure that staff are aware of their privacy obligations and security and audit processes are in place to protect HIV-related information contained in eMR systems.

As with any other health information, collection and use of a person's HIV information are limited by the Health Privacy Principles of the Health Records and Information Privacy Act. Staff must only view, access, or use health information contained in the eMR when it is directly relevant to their duties.

Misuse of the eMR and any health record management system also constitutes a breach of the Health Records and Information Privacy Act.

Business rules must be communicated to staff to ensure that staff only access information relating to a person’s HIV status when it is clinically relevant. Ultimately, staff will need to exercise their professional judgement regarding whether access to a patient’s HIV information is relevant to the patient's care needs.

Staff must be made aware that their eMR access to patient information is auditable at any time. Staff access to the eMR must be subject to random auditing and may also be audited in the event of a complaint arising from a patient or involving a staff member.

Further guidance regarding the security and audit processes for electronic health record management systems is included in Section 16 of the Privacy Manual for Health Information.

Privacy education resources for staff are provided in Section 7 Resources.
3.2 NSW HealtheNet Clinical Portal

The NSW HealtheNet Clinical Portal, or ‘HealtheNet’, allows NSW Health clinicians to view summary patient records from other Local Health Districts in NSW. The HealtheNet Clinical Portal is accessible only from the patient’s local eMR.

Any patient HIV pathology information available in HealtheNet is protected by a privacy and security seal. This requires clinicians seeking to access patient HIV information to select a reason for their access before breaking the seal.

Similar to the eMR systems, HealtheNet has strict access controls and audit capabilities to monitor all access to the system.

HealtheNet also sends certain NSW Health information to the national My Health Record.

For further information about HealtheNet go to: www.ehealth.nsw.gov.au/programs/clinical/healthenet/healthenet_clinical_portal

3.3 My Health Record

My Health Record is available to patients and clinicians nationally. My Health Record enables patients to access summaries of their health information. Health care providers can also access the patient's My Health Record, unless the patient has chosen to restrict access, or to opt out of having a My Health Record.

HIV patients should be advised that certain HIV information may be available in their My Health Record. They should be informed of the privacy and security measures in place to protect this information, and their privacy setting options within their My Health Record.

All HIV-related pathology test results (including HIV antibody and viral load test results) held in HealtheNet are marked sensitive and are not shared with My Health Record.

HealtheNet also includes information about medication dispensed on discharge for a patient. However, HIV-related medication dispensed on discharge is marked sensitive and is not included in HealtheNet or My Health Record.

However, while pathology results and discharge dispense medication information are controlled, information about a patient’s HIV status may be uploaded to the HealtheNet portal and shared with the My Health Record in other ways. This may occur if information is included in a discharge summary or other clinical records referring to HIV care or treatment. For example, HIV-related care and treatment may be recorded as a reason for a hospital encounter in HealtheNet.

Patients have the right to request that information for a particular hospital encounter not be sent to their My Health Record. NSW Health is obliged to follow this request from the patient.

It is important to note that a patient’s My Health Record will include information from a number of sources. For example, Medicare shares medication information from the Pharmaceutical Benefit Scheme (PBS), which may refer to HIV medications claims. Medicare will automatically send this information to the My Health Record unless the patient has changed their My Health Record consent settings.
In addition, free text notes referring to the patient’s HIV information made by either the patient or their health care provider may appear in the My Health Record.

If the patient has restricted access to their My Health Record or documents within their record, health care providers can be granted access to the restricted information with consent or in emergency circumstances. Emergency access can be granted to treating clinicians where they believe there is a serious threat to an individual’s life, health or safety and it is unreasonable or impracticable to obtain the patient’s consent (e.g. due to being unconscious) and certain notification requirements are met or if the access is necessary to lessen or prevent a serious threat to public health or public safety.

Patients should be informed that HIV information may be available to their treating health providers in their My Health Record. This information will provide the patient with the opportunity to control access to, or opt out of their My Health Record, if they choose. The Privacy leaflet for HIV patients is provided in Appendix 2.
4. **Use of HIV information for secondary purposes**

Section 56 of the *Public Health Act* imposes limitations on the disclosure of HIV information. Under s56, if a person acquires information that another person has been, or is to be, tested for HIV or has HIV, the person must take all reasonable steps to prevent the information from being disclosed to another person unless:

- the person consents to the disclosure
- the disclosure is made to a person who is involved in provision of care, treatment or counselling to the person
- the disclosure is made to the Health Secretary if there are reasonable grounds to suspect that a failure to disclose the information would be likely to be a risk to public health
- the disclosure is made in connection with the *Public Health Act*, including legal proceedings
- the disclosure is made in accordance with a requirement under the *Ombudsman Act 1974*
- If there is another legal requirement to disclose e.g. subpoena (noting that pursuant to section 130A of the *Public Health Act*, the Secretary and any person who, on behalf of the Secretary, holds information cannot be compelled to produce certain information in proceedings).

HIV information should not be used or disclosed for training and management purposes, unless either:

(i) written consent is obtained from the patient or their authorised representative, or
(ii) reasonable steps are taken to de-identify the information

HIV information should not be used or disclosed for research purposes, unless either

(i) written consent is obtained from the patient or their authorised representative, or
(ii) reasonable steps are taken to de-identify the information.

*For further advice on using HIV information for other secondary purposes (including research), assistance may be sought from a Privacy Contact Officer.*
5. **Informing patients**

The *Health Records and Information Privacy (HRIP) Act 2002* requires a health service which collects health information about an individual to inform the individual which information is collected about them, and how this information may be used and disclosed (Health Privacy Principle 4).

Further, Health Privacy Principles 10 and 11 limit the use and disclosure of health information for clinical care purposes to uses and disclosures that a patient would reasonably expect. What is considered reasonable for a patient to expect will in part be based on the information provided to them by the health service.

5.1 **Practical steps**

Patients who have an HIV test or who attend a health service for HIV-related care should be provided with information about the management of HIV information by NSW Health.

These patients should be informed that their HIV test results form part of their medical records which are available to their treating health care providers, including for non-HIV related care.

It should be made clear that their HIV information may be provided to their GP and clinical staff in other health services which the patient attends (including services external to NSW Health) for the purpose of the patient’s ongoing care. Patients should also be informed that certain HIV-related information may also be available in their national My Health Record unless they advise the health service not to include the records in the My Health Record.

Privacy information for patients should explain that strict privacy laws and the NSW Health Code of Conduct protect their health information, including HIV test results, from misuse or inappropriate access. This means that staff may only access patient information, including HIV information, on a ‘need to know’ basis. Penalties apply where staff inappropriately access HIV test results or other health information.

LHD/Ns need to consider a range of ways of alerting patients to the way their HIV information is managed. This should include a verbal explanation to patients in consultations, notices and leaflets in waiting rooms and/or online information.

The NSW Health Privacy Leaflet for Patients must be made available to all patients. In addition, patients undergoing HIV tests or treatment should be provided with additional information as to how HIV information is managed in NSW.

See: Section 7 Resources; and Appendix 2 Privacy Leaflet for HIV patients.

5.2 **Patients tested for HIV prior to September 2017**

Patients who accessed NSW Health services for HIV testing and treatment prior to the 2017 amendment may have been informed that the privacy of their HIV information would be treated differently from other health information and would not form part of their general medical record held by the LHD/N.

These patients need to be alerted to changes in managing HIV information. Immunologists and clinicians who currently treat patients for their HIV should take particular care to fully inform patients about the way in which their HIV information is now managed.
The Ministry of Health will continue to consult HIV community-based organisations about dissemination of information to the HIV community and update the NSW Health Guide to Managing HIV Information as required.

5.3. **NSW Health staff who are living with HIV**

Staff who have been diagnosed with HIV or treated for HIV in a NSW Health service may have particular concerns regarding the impact of disclosure of their health status to co-workers who have access to the eMR. If such cases arise, an option that could be explored is use of an alias in the eMR. A request for use of an alias can be made confidentially with the LHD/N Privacy Contact Officer.

Further details are provided in Section 8.3 of the NSW Health Privacy Manual for Health Information. See also Section 7 Resources.
6. **Staff education**

6.1 **Communicating with patients**

Health services must provide information to clinical staff on this change and how HIV information is protected in legislation. This includes guidance on how to provide appropriate verbal explanation to patients about how their HIV information is now shared with the broader clinical team.

See also: Section 5. Informing patients; and Appendix 2. Privacy leaflet for HIV patients.

6.2 **Understanding legal responsibilities**

NSW Health staff training should emphasise staff legal responsibilities and potential sanctions as summarised below.

(i) **Public Health Act 2010**

Unauthorised disclosure of HIV information in breach of the *Public Health Act* is a very serious matter. Disclosure of HIV information is prohibited unless it is to a person who is providing care, treatment or counselling to the person concerned or other permitted purpose under the *Public Health Act*. Under the *Public Health Act* a disclosure includes sharing the information within the same LHD/N.

(ii) **Health Records and Information Privacy Act 2002**

As with any other health information, collection and use of a person's HIV information are limited by the Health Privacy Principles of the *Health Records and Information Privacy Act*. Staff must only view, access, or use health information contained in the eMR when it is directly relevant to their duties.

All clinical staff should be familiar with the eMR audit system and the consequences if a privacy breach is identified by an audit.

Misuse of the eMR and any health record management system constitutes a breach of the *Health Records and Information Privacy Act*.

**Sanctions:** Staff may be held personally responsible for a breach of the *Health Records and Information Privacy Act* and/or the *Public Health Act*.

Depending on the circumstances, a breach of either Act may result in a requirement to attend training, a formal warning, disciplinary action including dismissal, prosecution including a fine or prison sentence, and referral to ICAC and the Police.
7. Resources

7.1 Privacy leaflets for patients

NSW Health Privacy Leaflet for HIV Patients
See Appendix 2 or click here to download

NSW Health Privacy Leaflet for Patients

7.2 Privacy resources for staff

NSW Health Privacy Information Leaflet for Staff

NSW Health Privacy Manual for Health Information

HETI Online Mandatory training: Privacy Training Module 1. ‘Know your boundaries’

7.3 Further information

Privacy Contact Officer for your NSW Health organisation:
Appendix 1   Public Health Act 2010, Section 56

Public Health Act 2010 Section 56 (as amended in 2017) provides:

(3) A person who, in the course of providing a service, including the conduct of a pathology test under section 55, acquires information that another person:
   (a) has been, is to be or is required to be tested for a Category 5 condition, or
   (b) has, or has had, a Category 5 condition,
   must take all reasonable steps to prevent that information from being disclosed to any other person.

(4) Subsection (3) does not apply to the disclosure of such information:
   (a) with the consent of the person concerned, or
   (b) to a person who is involved in the provision of care, treatment or counselling to the person concerned, or
   (c) to the Secretary, if a person has reasonable grounds to suspect that failure to disclose the information would be likely to be a risk to public health, or
   (d) in connection with the administration of this Act or the regulations, or
   (e) for the purposes of any legal proceedings arising out of this Act or the regulations, or
   (f) of any report of any such proceedings, or
   (g) in accordance with a requirement imposed under the Ombudsman Act 1974, or
   (h) in the circumstances prescribed by the regulations.

(5) A registered medical practitioner or other person must not, without reasonable excuse, fail to comply with the requirements of this section.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
Appendix 2  NSW Health Privacy Leaflet for HIV Patients

There’s been a change to how we manage your HIV information
An amendment to the Public Health Act 2010 in September 2017 means that, consistent with the rest of your health information, HIV information is now available to health care workers involved in providing care, treatment or counselling to you, even if the care, treatment or counselling does not relate directly to your HIV.

This means:
If you attend a NSW public health service for an HIV test or for HIV-related treatment your test result and other HIV information will be available to clinicians, nurses and other NSW Health staff involved in providing care to you for any condition.

What happened in the past?
If you accessed NSW Health services prior to the recent changes, you may have been told that your HIV information would be treated differently from other health information and would be kept separate from your general medical record.

Why has this changed?
This change has been made to better manage the care of people living with HIV. HIV is now managed as a chronic condition and there is often a genuine clinical need for care providers to be aware of your HIV status when managing conditions that may not appear to be directly related to HIV infection.

Your privacy and confidentiality is still protected
The confidentiality of HIV information remains protected by the Public Health Act and the Health Records and Information Privacy Act 2002 which sets limits on how your health information, including HIV information, can be used and disclosed.

Under these laws, your HIV status may be disclosed to a person involved in your care. This may include staff at any NSW public hospital or health facility, your GP, and private health services.

Serious penalties apply to staff who inappropriately access your information, including disciplinary action and potential criminal charges.

Is there anything else I should be aware of?
My Health Record is Australia’s national digital health record system. The Commonwealth has given all Australians a My Health Record, unless the person specifically opted not to have one (or later cancelled their Record).

My Health Record provides you with an online summary of your health information. It also allows you to easily share your health information between your GP, various doctors and healthcare providers, if you wish to.

Unlike health records held by your health providers, you can control what goes into your My Health Record, and who may view this information.

If you have a My Health Record, but do not wish for your records from a particular doctor’s appointment or hospital visit to be included in your My Health Record, you must inform
health provider at the beginning of your encounter. There are other ways of managing your privacy settings for My Health Record, if you choose to. You may also choose to cancel your My Health Record.

For further information, go to: www.myhealthrecord.gov.au or telephone 1800 723 471.

**Do you have any other questions?**
If you have any other concerns about your HIV information please talk to one of your treating clinicians.

If you have privacy concerns please contact the Privacy Contact Officer in your Local Health District. See: https://www.health.nsw.gov.au/patients/privacy/Pages/privacy-contact.aspx.

This leaflet should be read in conjunction with the NSW Health Privacy Leaflet for Patients: https://www.health.nsw.gov.au/patients/privacy/Pages/privacy-leaflet-for-patients.aspx.

To download this leaflet separately, please visit: https://www.health.nsw.gov.au/endinghiv/Pages/privacy-leaflet-for-hiv-patients.aspx