

**O.C.G.A. § 24-9-47**  
**Georgia State Law**

**§ 24-9-47. Disclosure of AIDS Confidential Information**

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) Except as otherwise provided in this Code section:

(1) No person or legal entity which receives AIDS confidential information pursuant to this Code section or which is responsible for recording, reporting, or maintaining AIDS confidential information shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity; and

(2) No person or legal entity which receives AIDS confidential information which that person or legal entity knows was disclosed in violation of paragraph (1) of this subsection shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity.

(c) AIDS confidential information may be disclosed to the person identified by that information or, if that person is a minor or incompetent person, to that person's parent or legal guardian.

(d) AIDS confidential information may be disclosed to any person or legal entity designated to receive that information when that designation is made in writing by the person identified by that information or, if that person is a minor or incompetent person, by that person's parent or legal guardian.

(e) AIDS confidential information may be disclosed to any agency or department of the federal government, this state, or any political subdivision of this state if that information is authorized or required by law to be reported to that agency or department.

(f) The results of an HIV test may be disclosed to the person, or that person's designated representative, who ordered such tests of the body fluids or tissue of another person.

(g) When the patient of a physician has been determined to be infected with HIV and that patient's physician reasonably believes that the spouse or sexual partner or any child of the patient, spouse, or sexual partner is a person at risk of being infected with HIV by that patient, the physician may disclose to that spouse, sexual partner, or child that the patient has been determined to be infected with HIV, after first attempting to notify the patient that such disclosure is going to be made.

(h)(1) An administrator of an institution licensed as a hospital by the Department of Human Resources or a physician having a patient who has been determined to be infected with HIV may disclose to the Department of Human Resources:

(A) The name and address of that patient;

(B) That such patient has been determined to be infected with HIV; and  
(C) The name and address of any other person whom the disclosing physician or administrator reasonably believes to be a person at risk of being infected with HIV by that patient.

(2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to the Department of Human Resources is determined by that department to be reasonably necessary, that department shall establish by regulation a date on and after which such reporting shall be required. On and after the date so established, each health care provider, health care facility, or any other person or legal entity which orders an HIV test for another person shall report to the Department of Human Resources the name and address of any person thereby determined to be infected with HIV. No such report shall be made regarding any confirmed positive HIV test provided at any anonymous HIV test site operated by or on behalf of the Department of Human Resources.

(3) The Department of Human Resources may disclose that a person has been reported, under paragraph (1) or (2) of this subsection, to have been determined to be infected with HIV to the board of health of the county in which that person resides or is located if reasonably necessary to protect the health and safety of that person or other persons who may have come in contact with the body fluids of the HIV infected person. The Department of Human Resources or county board of health to which information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this subsection:

(A) May contact any person named in such disclosure as having been determined to be an HIV infected person for the purpose of counseling that person and requesting therefrom the name of any other person who may be a person at risk of being infected with HIV by that HIV infected person;

(B) May contact any other person reasonably believed to be a person at risk of being infected with HIV by that HIV infected person for the purposes of disclosing that such infected person has been determined to be infected with HIV and counseling such person to submit to an HIV test; and

(C) Shall contact and provide counseling to the spouse of any HIV infected person whose name is thus disclosed if both persons are reasonably likely to have engaged in sexual intercourse or any other act determined by the department likely to have resulted in the transmission of HIV between such persons within the preceding seven years and if that spouse may be located and contacted without undue difficulty.

(i) Any health care provider authorized to order an HIV test may disclose AIDS confidential information regarding a patient thereof if that disclosure is made to a health care provider or health care facility which has provided, is providing, or will provide any health care service to that patient and as a result of such provision of service that health care provider or facility:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(j) A health care provider or any other person or legal entity authorized but not required to disclose AIDS confidential information pursuant to this Code section shall have no duty to make such disclosure and shall not be liable to the patient or any other person or legal entity for failing to make such disclosure. A health care provider or any other person or legal entity which discloses information as authorized or required by this Code section or as authorized or required by law or rules or regulations made pursuant thereto shall have no civil or criminal liability therefor.

(k) When any person or legal entity is authorized or required by this Code section or any other law to disclose AIDS confidential information to a person at risk of being infected with HIV and that person at risk is a minor or incompetent person, such disclosure may be made to any parent or legal guardian of the minor or incompetent person, to the minor or incompetent person, or to both the minor or incompetent person and any parent or legal guardian thereof.

(l) When an institutional care facility is the site at which a person is at risk of being infected with HIV and as a result of that risk a disclosure of AIDS confidential information to any person at risk at that site is authorized or required under this Code section or any other law, such disclosure may be made to the person at risk or to that institutional care facility's chief administrative or executive officer, or such officer's designee, in which case that officer or designee is authorized to make such disclosure to the person at risk.

(m) When a disclosure of AIDS confidential information is authorized or required by this Code section to be made to a physician, health care provider, or legal entity, that disclosure may be made to employees of that physician, health care provider, or legal entity who have been designated thereby to receive such information on behalf thereof. Those designated employees may thereafter disclose to and provide for the disclosure of that information among such other employees of that physician, health care provider, or legal entity, but such disclosures among those employees are only authorized when reasonably necessary in the ordinary course of business to carry out the purposes for which that disclosure is authorized or required to be made to that physician, health care provider, or legal entity.

(n) Any disclosure of AIDS confidential information authorized or required by this Code section or any other law and any unauthorized disclosure of such information shall in no way destroy the confidential nature of that information except for the purpose for which the authorized or required disclosure is made.

(o) Any person or legal entity which violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(p) Nothing in this Code section or any other law shall be construed to authorize the disclosure of AIDS confidential information if that disclosure is prohibited by federal law, or regulations promulgated thereunder, nor shall anything in this Code section or any other law be construed to prohibit the disclosure of information which would be AIDS confidential information except that such information does not permit the identification of any person.

(q) A public safety agency or district attorney may obtain the results from an HIV test to which the person named in the request has submitted under Code Section 15-11-66.1, 17-10-15, 42-5-52.1, or 42-9-42.1, notwithstanding that the results may be contained in a sealed record.

(r) Any person or legal entity required by an order of a court to disclose AIDS confidential information in the custody or control of such person or legal entity shall disclose that information as required by that order.

(s) AIDS confidential information may be disclosed as medical information pursuant to Code Section 24-9-40, relating to the release of medical information, or pursuant to any other law which authorizes or requires the disclosure of medical information if:

(1) The person identified by that information:

(A) Has consented in writing to that disclosure; or

(B) Has been notified of the request for disclosure of that information at least ten days prior to the time the disclosure is to be made and does not object to such disclosure prior to the time specified for that disclosure in that notice; or

(2) A superior court in an in camera hearing finds by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this paragraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal.

(t)(1) A superior court of this state may order a person or legal entity to disclose AIDS confidential information in its custody or control to:

(A) A prosecutor in connection with a prosecution for the alleged commission of reckless conduct under subsection (c) of Code Section 16-5-60;

(B) Any party in a civil cause of action; or

(C) A public safety agency or the Department of Human Resources if that agency or department has an employee thereof who has, in the course of that employment, come in contact with the body fluids of the person identified by the AIDS confidential information sought in such a manner reasonably likely to cause that employee to become an HIV infected person and provided the disclosure is necessary for the health and safety of that employee, and for purposes of this subsection the term 'petitioner for disclosure' means any person or legal entity specified in subparagraph (A), (B), or (C) of this paragraph.

(2) An order may be issued against a person or legal entity responsible for recording, reporting, or maintaining AIDS confidential information to compel the disclosure of that information if the petitioner for disclosure demonstrates by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests.

(3) A petition seeking disclosure of AIDS confidential information under this subsection shall substitute a pseudonym for the true name of the person concerning whom the information is sought. The disclosure to the parties of that person's true name shall be communicated confidentially, in documents not filed with the court.

(4) Before granting any order under this subsection, the court shall provide the person concerning whom the information is sought with notice and a reasonable opportunity to participate in the proceedings if that person is not already a party.

(5) Court proceedings as to disclosure of AIDS confidential information under this subsection shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court.

(6) Upon the issuance of an order that a person or legal entity be required to disclose AIDS confidential information regarding a person named in that order, that person or entity so ordered shall disclose to the ordering court any such information which is in the control or custody of that person or entity and which relates to the person named in the order for the court to make an in camera inspection thereof. If the court determines from that inspection that the person named in the order is an HIV infected person, the court shall disclose to the petitioner for disclosure that determination and shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(7) The record of the proceedings under this subsection shall be sealed by the court.

(8) An order may not be issued under this subsection against the Department of Human Resources, any county board of health, or any anonymous HIV test site operated by or on behalf of that department.

(u) A health care provider, health care facility, or other person or legal entity who, in violation of this Code section, unintentionally discloses AIDS confidential information, notwithstanding the maintenance of procedures thereby which are reasonably adopted to avoid risk of such disclosure, shall not be civilly or criminally liable, unless such disclosure was due to gross negligence or wanton and willful misconduct.

(v) AIDS confidential information may be disclosed when that disclosure is otherwise authorized or required by Code Section 42-1-6, if AIDS or HIV infection is the communicable disease at issue, or when that disclosure is otherwise authorized or required by any law which specifically refers to 'AIDS confidential information,' 'HIV test results,' or any similar language indicating a legislative intent to disclose information specifically relating to AIDS or HIV.

(w) A health care provider who has received AIDS confidential information regarding a patient from the patient's health care provider directly or indirectly under the provisions of subsection (i) of this Code section may disclose that information to a health care provider which has provided, is providing, or will provide any health care service to that patient and as a result of that provision of service that health care provider:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(x) Neither the Department of Human Resources nor any county board of health shall disclose AIDS confidential information contained in its records unless such disclosure is authorized or required by this Code section or any other law, except that such information in those records shall not be a public record and shall not be subject to disclosure through subpoena, court order, or other judicial process.

(y) The protection against disclosure provided by Code Section 24-9-40.1 shall be waived and AIDS confidential information may be disclosed to the extent that the person identified by such information, his heirs, successors, assigns, or a beneficiary of such person, including but not limited to an executor, administrator, or personal representative of such person's estate:

(1) Files a claim or claims other entitlements under any insurance policy or benefit plan or is involved in any civil proceeding regarding such claim;

- (2) Places such person's care and treatment, the nature and extent of his injuries, the extent of his damages, his medical condition, or the reasons for his death at issue in any civil or criminal proceeding; or
- (3) Is involved in a dispute regarding coverage under any insurance policy or benefit plan.

(z) AIDS confidential information may be collected, used, and disclosed by an insurer in accordance with the provisions of Chapter 39 of Title 33, relating to the collection, use, and disclosure of information gathered by insurance institutions.

(aa) In connection with any civil or criminal action in which AIDS confidential information is disclosed as authorized or required by this Code section, the party to whom that information is thereby disclosed may subpoena any person to authenticate such AIDS confidential information, establish a chain of custody relating thereto, or otherwise testify regarding that information, including but not limited to testifying regarding any notifications to the patient regarding results of an HIV test. The provisions of this subsection shall apply as to records, personnel, or both of the Department of Human Resources or a county board of health notwithstanding Code Section 50-18-72, but only as to test results obtained by a prosecutor under subsection (q) of this Code section and to be used thereby in a prosecution for reckless conduct under subsection (c) of Code Section 16-5-60.

(bb) AIDS confidential information may be disclosed as a part of any proceeding or procedure authorized or required pursuant to Chapter 3, 4, or 7 of Title 37, regarding a person who is alleged to be or who is mentally ill, mentally retarded, or alcoholic or drug dependent, or as a part of any proceeding or procedure authorized or required pursuant to Title 29, regarding the guardianship of a person or that person's estate, as follows:

(1) Any person who files or transmits a petition or other document which discloses AIDS confidential information in connection with any such proceeding or procedure shall provide a cover page which contains only the type of proceeding or procedure, the court in which the proceeding or procedure is or will be pending, and the words 'CONFIDENTIAL INFORMATION' without in any way otherwise disclosing thereon the name of any individual or that such petition or other document specifically contains AIDS confidential information;

(2) AIDS confidential information shall only be disclosed pursuant to this subsection after disclosure to and with the written consent of the person identified by that information, or that person's parent or guardian if that person is a minor or has previously been adjudicated as being incompetent, or by order of court obtained in accordance with subparagraph (C) of paragraph (3) of this subsection;

(3) If any person files or transmits a petition or other document in connection with any such proceeding or procedure which discloses AIDS confidential information without obtaining consent as provided in paragraph (2) of this subsection, the court receiving such information shall either obtain written consent as set forth in that paragraph (2) for any further use or disclosure of such information or:

(A) Return such petition or other document to the person who filed or transmitted same, with directions against further filing or transmittal of such information in connection with such proceeding or procedure except in compliance with this subsection;

(B) Delete or expunge all references to such AIDS confidential information from the particular petition or other document; or

(C)(i) If the court determines there is a compelling need for such information in connection with the particular proceeding or procedure, petition a superior court of competent jurisdiction for permission to obtain or disclose that information. If the person identified by the information is not yet represented by an attorney in the proceeding or procedure in connection with which the information is sought, the petitioning court shall appoint an attorney for such person. The petitioning court shall have both that person and that person's attorney personally served with notice of the petition and time and place of the superior court hearing thereon. Such hearing shall not be held sooner than 72 hours after service, unless the information is to be used in connection with an emergency guardianship proceeding under Chapter 5 of Title 29, in which event the hearing shall not be held sooner than 48 hours after service.

(ii) The superior court in which a petition is filed pursuant to division (i) of this subparagraph shall hold an in camera hearing on such petition. The purpose of the hearing shall be to determine whether there is clear and convincing evidence of a compelling need for the AIDS confidential information sought in connection with the particular proceeding or procedure which cannot be accommodated by other means. In assessing compelling need, the superior court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this subparagraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal; and

(4) The court having jurisdiction over such proceeding or procedure, when it becomes apparent that AIDS confidential information will likely be or has been disclosed in connection with such proceeding or procedure, shall take such measures as the court determines appropriate to preserve the confidentiality of the disclosed information to the maximum extent possible. Such measures shall include, without being limited to, closing the proceeding or procedure to the public and sealing all or any part of the records of the proceeding or procedure containing AIDS confidential information. The records of any appeals taken from any such proceeding or procedure shall also be sealed. Furthermore, the court may consult with and obtain the advice of medical experts or other counsel or advisers as to the relevance and materiality of such information in such proceedings or procedures, so long as the identity of the person identified by such information is not thereby revealed.