**Section 431.110 Disclosure of Physical Health Information**

a) Health Information Portability and Accountability Act (HIPAA)

1) HIPAA regulations (45 CFR 164.512(b)(1)(ii)) specifically permit use or disclosure of protected health information with a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. DCFS is a government authority authorized by law to receive reports of child abuse or neglect.

2) In addition, HIPAA allows the release of personal health information to an individual's personal representative. Included in the definition of personal representative is a guardian or person acting in loco parentis with legal authority to make health care decisions on behalf of a minor child. When conflicts arise between HIPAA and other confidentiality rules, the stricter requirements apply.

3) The Medical Patient Rights Act establishes the right of each patient to privacy and confidentiality in health care. Physical health information may be disclosed when relevant to a child protection investigation. The Children and Family Services Act permits any individual dealing with or providing services to a minor ward to share information with another individual dealing with or providing services to the minor for the purpose of coordination efforts on behalf of the minor. However, the Department shall not release information concerning any medical care to which the minor has the right of consent. (See the Consent by Minors to Medical Procedures Act [410 ILCS 210] for specifics on when a minor has the right to consent to his or her own medical care.)

4) If Department, POS or HealthWorks (see subsection (a)(3)) staff experience difficulty in obtaining information to which the Department has a right from healthcare providers who are citing HIPAA as the reason to deny information, staff shall consult with their supervisor. The supervisor will consult with the Office of the DCFS Guardian if the problem persists.

b) Disclosure of Information Regarding Acquired Immunodeficiency Syndrome (AIDS)

1) The Department shall be informed of the results of Human Immunodeficiency Virus (HIV) tests performed on and of all diagnoses of Acquired Immunodeficiency Syndrome (AIDS), as defined in the Department of Public Health's rules at 77 Ill. Adm. Code 697 (AIDS Confidentiality and Testing Code), for children for whom the Department is legally responsible.

2) The Department shall release information on children for whom it is legally responsible regarding HIV test results and diagnoses of AIDS to the child's legal parents and to persons who have the need to know this information. The categories of persons who have a need to know this information about a child may include, but are not limited to, the following:

A) those persons who supervise or provide direct care to the child, such as:

i) foster parents;

ii) relative caretakers;

iii) directors or operators of child care facilities, such as group homes, child care institutions, child welfare agencies, State operated facilities, day care homes, day care centers and the personnel of these facilities who provide direct care for a child by feeding, diapering or handling blood or bodily fluids or who provide direct care to a child who bites, spits, has a bleeding problem such as nose bleeds or hemophilia or who cannot control normal bodily functions;

B) physicians, nurses, dentists and other medical providers who will be providing direct care to the child;

C) other persons who provide direct care for a child for whom the information is necessary in order to provide Department approved services for the child, i.e., advocates and counselors;

D) prospective adoptive parents who have been licensed under 89 Ill. Adm. Code 402, who are willing to adopt a child with a terminal illness, and who have demonstrated an interest in a specific child who has tested positive for HIV infection or who has been diagnosed with ARC or AIDS;

E) Guardian ad litem.

3) Persons to whom the Department has released information regarding HIV test results and diagnoses of AIDS shall keep this information confidential in accordance with the provisions of the AIDS Confidentiality Act and the AIDS Confidentiality and Testing Code. The information shall not be disclosed to other persons except as authorized by the Department in accordance with subsection (b). The authorization shall be signed by the Department's Guardianship Administrator or designee as defined by 89 Ill. Adm. Code 327.2 and shall contain the names and respective positions of those individuals to whom the information will be disclosed. Education must accompany disclosure so that those persons receiving the information understand the HIV/AIDS diagnosis, treatment and precautions. This information may be provided by the DCFS AIDS Project or a Department Regional Nurse.

d) HealthWorks

HealthWorks is not a covered function as defined in HIPAA regulations (45 CFR 164.103). HealthWorks functions to fulfill a legally mandated role to arrange for health care services for clients who are in protective custody or are wards of the Department. HealthWorks lead agencies and their medical case management agencies are authorized to receive medical information on children in protective custody or for children who are DCFS wards. HealthWorks staff may use consents signed by the Guardianship Administrator or an authorized agent to obtain information from health providers.

e) Disclosing Information for Regulatory Review Purposes

Under HIPAA, covered entities may disclose protected health information for health oversight activities required by law. The Department's health oversight activities include State-run compliance reviews such as Medicaid Part 132 reviews, Agency Performance Team reviews, Independent Utilization Reviews, and Licensing reviews. Health oversight activities include a broad range of civil, administrative and criminal investigations or proceedings.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)