

MARYLAND

All citations are to “Md. Code Ann.” unless otherwise noted.

DEFINITIONS

- (1) “Applicant” and “family” are defined at Health-Gen. § 15-201.
- (2) “Body fluids,” “contagious disease,” and “contact exposure,” as they relate to the control of infectious and contagious diseases, are defined at Health-Gen. §§ 18-213.1, 18-213.2.
- (3) “First responder” is defined at Health-Gen. § 18-213.2.
- (4) “Health care provider” is defined at Health-Gen. §§ 18-336, 18-338, and 18-338.1.
- (5) “HIV” is defined at Health-Gen. §§ 18-334, 18-336, and 18-338.1, and § 765, and 24-901.
- (6) “Institution” is defined at Health-Gen. § 18-334.
- (7) “Off-label use” is defined at § 490AA.
- (8) “Residue,” pertaining to the Needle Exchange Program, is defined at Health-Gen. § 24-801.

CRIMINAL LAW

(1) An individual who has HIV (see Definitions (5)) and knowingly transfers or attempts to transfer HIV to another individual is guilty of a misdemeanor. Health-Gen. § 18-601.1.44

(2) Except as to court ordered testing of a criminal defendant (see Testing & Reporting (7)), any person who receives notification or disclosure of the results of an HIV test relating to a criminal offender or a victim of an offense and knowingly discloses the results of that test is guilty of a misdemeanor and upon conviction is subject to imprisonment, fine, or both. § 765.

Education (1)

Social & Medical Services (1), (5), (8), (9), (10)

Testing & Reporting (5), (6), (7)

EDUCATION

(1) Persons who plead guilty or nolo contendere to or who are found guilty of crimes relating to prostitution or any provision of the

44. North v. North, 648 A.2d 1025, 1038 (Md. Ct. Spec. App. 1994) (Cathell, J., dissenting).

Maryland Controlled Dangerous Substances Act shall participate in an educational program on AIDS. Health-Gen. § 18-339; §§ 15A, 303.

(2) The Secretary of Health and Mental Hygiene shall establish and promote a statewide public information program on AIDS which shall attempt to reach individuals at high risk for contracting AIDS and encourage those individuals to take the necessary precautions to prevent transmission of HIV (see Definitions (5)). The Secretary shall establish a program to train physicians, physicians' assistants, nurses, and other health professionals in diagnosing and treating AIDS and in methods of prevention of the transmission of HIV. Health-Gen. § 18-333.

Social & Medical Services (1), (4), (5), (6)

EMPLOYMENT

Insurance (1)

Social & Medical Services (1), (11)

Testing & Reporting (5), (6)

HOUSING

(1) It is not a material fact relating to property offered for sale or lease that an owner or occupant of the property is, was, or is suspected to be infected with HIV (see Definitions (5)) or diagnosed with AIDS. It is not grounds for a disciplinary action against a real estate licensee that such licensee did not disclose such information to a purchaser or lessee, and a licensee may not be held personally liable for failure to disclose such information. Bus. Occ. & Prof. § 17-322.1, Real Prop. § 2-120.

INSURANCE

(1) The Department of Health and Mental Hygiene (Department) shall administer a Maryland AIDS Insurance Program (Program) for HIV positive individuals. There shall be no more than 300 recipients enrolled in the Program at any one time. An individual is eligible for the Program if: cash assets owned by the individual's family (see Definitions (1)), including savings accounts, checking accounts, and stocks and bonds, do not exceed \$10,000; the individual's family income, earned and unearned, does not exceed 300 percent of the federal poverty level; the individual is eligible for and has applied for continuation of or is receiving health benefits; the individual is not eligible for health insurance through another family member; a physician certifies that the individual is

HIV positive and due to such illness, the individual is either too ill to continue working or there is a substantial likelihood that within three months the individual will be unable to work; the individual is a resident of the state; and the Department determines that it is cost effective to enroll the individual in the Program. Cash assets owned by the individual's family that exceed \$10,000 are to be paid to the Department to be used for the payment of health insurance on behalf of the individual. Health-Gen. § 15-202.

(2) The Department shall adopt regulations for the payment of health insurance premiums to insurers under the Program. The Department shall adopt regulations that authorize the denial, restriction, or termination of benefits for recipients who commit acts of abuse or fraud against the Program. The Department shall provide the Governor and the General Assembly with an annual report summarizing the Program expenditures, numbers of recipients, Program effectiveness, the estimated savings to the Medical Assistance Program, additional costs incurred by private insurance companies, and the loss of federal funding. The Department may periodically survey recipients to gather information for the annual report. Health-Gen. §§ 15-203, 15-204, 15-205.

(3) The Secretary of Health and Mental Hygiene shall appoint a panel of medical experts to review off-label uses (see Definitions (7)) of drugs not included in any of the standard reference compendia or in the medical literature and to advise the Secretary of Health and Mental Hygiene whether a particular off-label use is medically appropriate. The panel shall include two specialists in the management of AIDS patients, chosen by the State AIDS Medical Provider Organization. § 490AA.

(4) Insurance coverage for the treatment of the AIDS Clinical Trials Group and the Community Research in AIDS may be provided on a case-by-case basis. § 15-827.

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) While treating or transporting an ill or injured patient to a medical care facility or while acting in the performance of duty, if a paid or volunteer fire fighter, member of the State Fire Marshal's office, emergency medical technician, first responder (see Definitions (3)), or rescue squad member comes into contact with a patient who is subsequently diagnosed as having a contagious disease (see Definitions

[MARYLAND]

(1) or virus, such emergency worker shall be notified of possible exposure to the contagious disease or virus. If, while treating or transporting an ill or injured patient to a medical care facility or while acting in the performance of duty, a law enforcement officer comes into contact with a patient who is subsequently diagnosed as having a contagious disease or virus, such law enforcement officer shall be notified of possible exposure to the disease or virus. If while treating or transporting an ill or injured inmate to a medical care facility or while acting in the performance of duty, a correctional officer comes into contact with an inmate who is subsequently diagnosed as having a contagious disease or virus, such correctional officer shall be notified of possible exposure to the disease or virus. The notification required under this section shall: be made within forty-eight hours of confirmation of the patient's diagnosis; include subsequent written confirmation of possible exposure to the contagious disease or virus; be conducted in a manner that will protect the confidentiality of the patient; and to the extent possible, be conducted in a manner that will protect the confidentiality of the fire fighter, emergency medical technician, rescue squad member, law enforcement officer, or correctional officer. Each medical care facility shall develop written procedures for the implementation of this section, and, upon request, make copies available to the local fire authority, the local law enforcement authority, or the correctional officer having jurisdiction. A fire fighter, emergency medical technician, rescue squad member, law enforcement officer, or correctional officer shall receive, as part of their training, education on the routes of transmission of HIV (see Definitions (5)) and the routes by which such emergency workers or officers may be exposed to HIV as well as the current Centers for Disease Control (CDC) guidelines for preventing prehospital exposure to HIV while rendering emergency medical care. Emergency workers and law and corrections officers shall receive from their employers, associations, or local governmental bodies equipment recommended by the CDC to protect against possible exposure to HIV while rendering emergency medical care. Health-Gen. §§ 18-213, 18-213.1, and 18-213.2.

(2) If an individual who is informed of such individual's HIV positive status refuses to notify sexual and needle-sharing partners, the individual's physician may inform the local health officer or the individual's sexual or needle-sharing partners of the individual's identity and the circumstances giving rise to the notification. A local health officer shall refer the infected individual and any known sexual or needle-sharing partners of the individual to appropriate services for the care,

support, and treatment for HIV-infected persons. A physician or hospital acting in good faith to provide notification in accordance with this section may not be held liable in any cause of action related to a breach of patient confidentiality or for choosing not to disclose information related to a positive HIV test result to an individual's sexual or needle-sharing partners. Health-Gen. § 18-337.

(3) There is an AIDS Prevention Sterile Needle and Syringe Exchange Pilot Program (Program) in the Baltimore City Health Department. The Program shall provide for the one-for-one exchange by participants of used hypodermic needles and syringes for sterile hypodermic needles and syringes and operate in accordance with procedures approved by the Commissioner of Health. Health-Gen. § 24-802. An AIDS Prevention Sterile Needle and Syringe Exchange Program as described above, may be established in Prince George's County Health Department. § 24-902.

(4) The Programs shall: be designed and maintained to provide maximum security of exchange locations and equipment, including security measures required to control the use and dispersal of hypodermic needles and syringes and in the circulation and number of needles and syringes in storage; be operated to allow participants to exchange used needles and syringes at any exchange location; include appropriate levels of staff expertise in working with injecting drug users and adequate staff training in providing community referrals, counseling, and preventative education; provide for the dissemination of other preventative means for curtailing the spread of HIV infection; provide a linkage for referrals to drug counseling and treatment services, and follow-up on those referrals to assure that participants receive the treatment they desire; educate IV drug users on the dangers of contracting HIV through needle-sharing practices and unsafe sexual behaviors; include policies and procedures for the screening of applicants to the Program in order to preclude non-IV drug users from participating in the Program; establish procedures for identifying Program participants that protect the confidentiality of participants; and establish a method of identification and authorization for Program staff members who have access to hypodermic needles, syringes, or Program records. Health-Gen. § 24-803 and 24-903.

(5) The Mayor of Baltimore City shall appoint an oversight committee for the Program. The oversight committee shall consist of two representatives from academia who specialize in public health issues; one representative from law enforcement, nominated by the Secretary of the

Department of Public Safety and Correctional Services; one representative of the Baltimore City Police Department; two representatives from the Department of Health and Mental Hygiene, the Department of Juvenile Justice, or the Department of Education, nominated by the Secretary of Health and Mental Hygiene; one representative of a Baltimore City community group; one representative of an AIDS advocacy group; one drug abuse treatment counselor; one recovering IV drug user; and up to three other individuals whom the Mayor of Baltimore City determines to be appropriate for appointment to the oversight committee. Health-Gen. § 24-804.

(6) The advisory committee, appointed by the County Executive of Prince George's County, shall consist of: two representatives from academia; one representative of law enforcement; one representative from the Prince George's County Police Department; one representative from the Department of Health and Mental Hygiene; one representative of Prince George's County community group; one representative of an AIDS advocacy group; one drug abuse treatment counselor; one recovering injecting drug user; and up to three other individuals to be determined later. The advisor committee shall: provide advice to local health officers on program operating procedures, community outreach, referring program participants and on how to evaluate the program. §24-904.

(7) The Commissioner of Health shall appoint a Director for the Program who shall develop: operating procedures for the furnishing and one-for-one exchange of hypodermic needles and syringes for IV drug users; a community outreach and education program; and a protocol for providing a linkage for Program participants to substance abuse treatment and rehabilitation. Health-Gen. § 24-805. The local officer for Prince George's County shall appoint a director for the program who shall develop the above mentioned elements. § 24-905.

(8) The Health Department shall collect data on the number of participants served by the Program, the length of time a participant is served by the Program, demographic profiles of participants served by the Program, the number of hypodermic needles and syringes exchanged, the number of participants entering drug counseling and treatment, and the number of referrals made by the Program for drug counseling and treatment. With the advice and approval of the oversight committee, the Health Department shall develop and implement a plan for Program evaluation that shall include the following issues: the prevalence of HIV among Program participants; changes in the level of drug use among

Program participants; changes in the level of needle-sharing among Program participants; changes in the use of condoms among Program participants; the status of treatment and recovery for Program participants who entered drug treatment programs; the impact of the Program on risk behaviors for the transmission of HIV; the cost-effectiveness of the Program versus the direct and indirect costs of HIV infection in terms of medical treatment and other services normally required by HIV-infected individuals; the strengths and weaknesses of the Program; and the advisability of continuing the Program. Health-Gen. § 24-806 and § 24-906.

(9) Each participant of the Program shall be issued an identification card with an identification number. The identification number shall be cross-indexed to a confidential record containing pertinent data on the participant. Any information obtained by the Program that would identify Program participants, including Program records, is confidential. Upon the written consent of a Program participant, information obtained by the Program that identifies the Program participant may be released or disclosed to a person or agency participating in the Program. If a Program participant raises the issue of participation in the Program either as a subject matter or legal defense in an administrative, civil, or criminal proceeding, the Program participant waives the right to confidentiality of identity. Health-Gen. § 24-807. The above mentioned information also applies to the Prince George's County Program. § 24-907.

(10) No staff member or participant in the Program may be found guilty of violating provisions prohibiting possessing or distributing controlled paraphernalia or drug paraphernalia whenever the possession or distribution of such paraphernalia is a direct result of the employee's or participant's activities in connection with the work of the Program. A Program staff member or participant is not immune from criminal prosecution for the redistribution of hypodermic needles or syringes in any form, any activities not authorized or approved by the Program, or the possession or distribution of controlled paraphernalia or any other unlawful activity outside of the Baltimore City limits. Health-Gen. § 24-808. The above provision also applies to the Prince George's County Program. In the last sentence replace "Baltimore City" with "Prince George's County." § 24-908.

(11) With the exception of violations of law that could arise from residue (see Definitions (8)) attached to or contained within hypodermic needles or syringes being returned or already returned to the

Program, staff members and participants are not immune from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses. Health-Gen. § 24-809. The above mentioned provisions also apply to the Prince George's County Program. § 24-909.

(12) Professional licensing boards for acupuncturists, chiropractors, dentists, nutritionists, electrologists, morticians, nurses, nursing home administrators, occupational therapists, optometrists, pharmacists and pharmacies, physical therapists, physicians, physician assistants, podiatrists, professional counselors, psychologists, and social workers may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive. Health Occ. §§ 1A-309, 3-313, 4-315, 5-311, 6-312, 7-316, 8-316, 9-314, 10-315, 11-313, 12-313, 13-316, 14-404, 15-314, 16-312, 17-313, 18-313, 19-311.

Education (2)

Insurance (1), (2), (3)

Testing & Reporting (1), (2), (3), (4), (5), (6), (7)

TESTING & REPORTING

(1) A physician or administrative head of an institution (see Definitions (6)), with reason to suspect that a patient under the physician's care or an individual on the premises of the institution has an infectious or contagious disease (see Definitions (2)) that endangers public health, shall immediately submit a report to the appropriate local health officer. The report shall be on a form provided by the Secretary of Mental Health and Hygiene and signed by the physician, and it shall identify the disease or suspected disease and state the name, age, race, sex, and address of the patient. For cases of asymptomatic HIV (see Definitions (5)), the physician's report shall state only the age, race, and zip code of residence of the patient and a unique patient identifying number that does not disclose the identity of the patient. All physician's reports required under this section are confidential, except in cases of a disclosure by the Secretary of Mental Health and Hygiene to another governmental agency performing its lawful duties as authorized by an act

[MARYLAND]

of the Maryland General Assembly or the United States Congress where the disclosure is necessary to protect the public health and the agency to whom the information is disclosed will maintain the confidentiality of the disclosure. Health-Gen. §§ 18-201, 18-202.

(2) Within forty-eight hours after an examination of a specimen from a human body shows evidence of HIV infection, the director of a medical laboratory (see Definitions (6)) shall submit a report to the health officer for the county where the laboratory is located. The report shall be in the form prescribed by the Health Department, stating the date, type, and result of the test showing evidence of HIV infection and the unique patient identifying number, age, sex, and zip code of residence of the patient. All laboratory reports required under this section are confidential. A director of a medical laboratory, the Secretary of Mental Health and Hygiene, or a health officer may not compile or distribute a reproducible list of the names of patients in reports relating to HIV infection. The director of a medical laboratory in which serum samples are tested for HIV may not disclose the identity of any individual tested for HIV in any report submitted to the Health Department or a local health officer. Health-Gen. §§ 18-205, 18-207.

(3) An institution that obtains or processes semen, blood, or tissue shall send a blood sample from each potential donor to a laboratory to be tested for HIV. Before obtaining such blood sample, the institution shall inform the potential donor that a blood sample of the donor will be tested for HIV antibodies and that, if the blood sample tests positive, the result will be reported to the Health Department. The institution shall also obtain from the potential donor written consent to the testing and to disclosure of a positive test result to the Health Department. An institution that obtains a positive HIV test result shall notify the potential donor of the positive test result, inform the individual of available counseling, and report the result to the Health Department. A test reported by an institution may not contain any information that identifies the subject of the test. An institution may not use a semen, blood, or tissue specimen from a donor who tests positive for HIV. Health-Gen. § 18-334.

(4) Before obtaining a fluid (see Definitions (2)) or tissue sample from the body of an individual for the purpose of testing the fluid or tissue for HIV, a health care provider (see Definitions (4)) shall obtain written informed consent from the individual and provide the individual with pretest counseling. Refusal to consent to an HIV test or a positive test result may not be used as the sole basis by an institution or laboratory

to deny services or treatment. If an individual is unable to give informed consent, substitute consent may be given. A physician who obtains a positive HIV test result shall: notify the individual from whom the sample was obtained of the test result; provide the individual with a copy of the Health Department's publication describing available counseling services; counsel the individual to inform all sexual and needle-sharing partners of the individual's positive HIV test results; and offer to assist in notifying the individual's sexual and needle-sharing partners. A patient identifying number obtained from an anonymous and confidential test site may be evidence of a patient's informed consent in lieu of a patient's signature. Health-Gen. § 18-336.

(5) An inmate shall furnish to the correctional institution a blood sample to be tested for HIV when: there has been an exposure involving the inmate and a correctional employee; the exposure occurred in connection with the inmate's violation of institutional regulations and the inmate has been found guilty of such violation; the correctional employee involved in the exposure has given written notice of the exposure to the managing official of the correctional institution; and the exposure is confirmed by a health care provider. The correctional institution shall collect the blood sample from the inmate and shall have the sample tested for HIV by a test approved by the Department of Health and Mental Hygiene. The correctional employee shall be notified of the HIV test results within forty-eight hours of the confirmation of the inmate's diagnosis and such notification shall be made in a manner that will protect the confidentiality of the correctional employee and the inmate. If the results of the HIV test are positive, the correctional employee and the inmate shall be provided appropriate counseling. A health care provider acting in good faith to provide notification in accordance with this section may not be held liable for any of the following: in any cause of action related to a breach of patient confidentiality; for a failure to give the required notice, if the correctional employee fails to properly initiate notification procedures developed by the correctional institution; or for the failure of the managing official of the correctional employee to subsequently notify the correctional employee of the possible exposure to HIV. A health care provider may not be held liable in any cause of action related to obtaining a blood sample or performing and interpreting an approved HIV test without the inmate's written consent. Health-Gen. § 18-338.

(6) A physician, nurse, or designee of a health care facility shall, at the request of an exposed health care provider, seek the informed

consent of a patient to test a blood sample of the patient for HIV when: there has been an exposure between the patient and the health care provider; the health care provider involved in the exposure has given written notice of the exposure to the chief executive officer of the health care facility where the exposure occurred; the occurrence of an exposure is confirmed by a physician other than the health care provider involved in the exposure; and the health care provider involved in the exposure has given informed consent and has submitted a blood sample to be tested for HIV. Substitute consent may be given by a person authorized to consent to medical care for the patient who is the potential source of the exposure. If the patient's informed consent or substitute consent has been obtained, a health care provider shall collect a blood sample from the patient and health care provider involved in the exposure and have the blood samples tested for HIV. When a physician obtains the results of an HIV test, the physician shall directly notify the health care provider and the patient of the results of the patient's HIV test within forty-eight hours of the confirmation of the patient's test results in manner that will protect the confidentiality of the health care provider and the patient. If an HIV test conducted in accordance with this section is positive, a physician shall provide appropriate counseling to the health care provider and the patient. The records, including any physician's order for an HIV test or the results of an HIV test performed in accordance with this section, may not be documented in the medical record of the patient or the health care provider. The health care facility shall maintain a separate confidential record or incident report for all HIV tests performed in accordance with this section. If the identity of the patient or any other information that could be readily associated with the identity of the patient is not disclosed, the results of an HIV test performed on a patient or health care provider in accordance with the provisions of this section may be introduced into evidence in any criminal, civil, or administrative action involving the adjudication of a worker's compensation claim. The costs incurred in the performance of an HIV test pursuant to this section shall be paid by the health care facility. A health care provider or health care facility acting in good faith to provide notification or maintain the confidentiality of the results of an HIV test pursuant to this section may not be held liable in any cause of action related to a breach of patient or health care provider confidentiality. Health-Gen. § 18-338.1.

(7) Upon the request of a victim to the office of the State's Attorney in the jurisdiction where an offense occurred, the court shall order an individual convicted of committing an offense or being granted

[MARYLAND]

probation before judgment to furnish a blood sample to be tested for HIV. If the individual is charged within one year after the offense occurred, upon the written request of the victim, the court may order an individual charged with the offense to be tested for HIV, if there is a finding of probable cause to believe that an exposure occurred. Prior to issuing any order for testing, the court shall conduct a hearing at which both the victim and the person charged have the right to be present. If an order for testing of an offender is granted, both the victim and the offender shall be provided pretest and post-test counseling. After receiving the test results, the local health officer shall promptly notify the victim and the accused or convicted individual of the test results and provide counseling. A victim who receives notification of HIV test results pursuant to this section may disclose the results of the test to any other individual to protect the health and safety of the victim, the victim's sexual partner, and the victim's family. § 765 and § 855.

(8) As part of a health care provider's patient acceptance procedures or protocol, a health care provider shall provide a pregnant woman with counseling concerning being tested for the presence of HIV as part of the woman's prenatal care program. The counseling shall include: information that the pregnant woman does not have to consent to an HIV test; and that the pregnant woman will not be denied prenatal care for refusing to have the test. The counseling shall also include education on: the effect of a positive HIV test result on the pregnant woman and the fetus concerning the risk of transmission of HIV to the fetus; and recognized methods of reducing that risk. Except as otherwise provided, the record of the HIV test in this section is confidential. Provided that the identity of the woman is not disclosed, results of this test may be introduced in any criminal, civil, or administrative action. A health care provider, acting in good faith, may not be held liable in any cause of action relating to the woman's decision to consent or not consent. § 18-338.2.

Criminal Law (2)

Insurance (2)

Social & Medical Services (2)

MISCELLANEOUS

(1) The Secretary of Health and Mental Hygiene shall adopt regulations to properly ensure the quality and effectiveness of condoms sold by means of a vending machine or other automatic devices. Health-Gen. § 18-335.

[MARYLAND]

(2) In certification of massage therapists, nursing assistants, and respiratory care practitioners the Board may deny a certificate to any applicant, reprimand any certificate holder, place any certificate holder on probation, or suspend or revoke the certificate, if the applicant or certificate holder refuses, withholds from, denies or discriminates against an individual with regard to the provision of professional services for which the certificate holder is qualified to render because the individual is HIV positive. § 3-5A-08, § 8-6A-10 and § 14-5A-17.

MASSACHUSETTS

All citations are to "Mass. Gen. L. ch." unless otherwise noted.

DEFINITIONS

- (1) "AIDS advisory board" and "sero-positive" are defined at 111, § 2D.
- (2) "Consumer report," "individual," and "medical record information," as they pertain to insurance, are defined at 175 I, § 2.
- (3) "HTLV-III test" and "written informed consent" are defined at 111, § 70 F.
- (4) "Off-label" is defined at 175, § 47O.

CRIMINAL LAW

- Social & Medical Services (7), (8)
- Testing & Reporting (4)

EDUCATION

- (1) The academic standards for grades kindergarten through twelve may include provisions for AIDS education. Academic standards shall be designed to avoid perpetuating ethnic, cultural, gender, or racial stereotypes. 69, § 1D.
- (2) The Board of Education shall establish a comprehensive interdisciplinary health education and human services discretionary grant program. Funds for this program may be appropriated from the Health Protection Program. Comprehensive interdisciplinary health education and human service programs shall include coverage of AIDS and suicide. 69, § 1L.
- (3) Instruction in health education shall include but not be limited to AIDS and HIV prevention education in accordance with policies or regulations of the Board of Education. The program shall be directed in grades kindergarten through twelve. Programs and services provided by this program are intended to supplement, not supplant, other programs. 69, § 1L.
- (4) The AIDS Advisory Board (see Definitions (1)) and the Commissioner of Public Health shall determine on what projects the Massachusetts AIDS Fund shall be spent. The AIDS Fund shall be used solely for research, treatment, experimental treatment, and education related to AIDS. Expenditures from the AIDS Fund shall complement

[MASSACHUSETTS]

and not replace existing local, state, and federal AIDS-related funding. 111, § 2E.

EMPLOYMENT

(1) No employer shall require HTLV-III antibody or antigen tests (see Definitions (3)) as a condition for employment. Whoever violates this provision shall be deemed to have engaged in a method of unfair competition. 111, § 70 F.

Miscellaneous (5)

HOUSING

(1) The fact or suspicion that real property may be or is psychologically impacted shall not be deemed to be a material fact required to be disclosed in a real estate transaction, except as provided in this section. "Psychologically impacted" shall mean an impact being the result of facts or suspicions that an occupant of real property is now or has been suspected to be infected with the HIV virus or AIDS. No cause of action shall arise or be maintained against a seller or lessor of real property or a real estate broker or salesman, by statute or at common law, for failure to disclose to a buyer or tenant that the real property is or was psychologically impacted. Notwithstanding the foregoing, the provisions of this section shall not authorize a seller, lessor or real estate broker or salesman to make any misrepresentation of fact or false statement. 93, § 108.

INSURANCE

(1) No individual or group blanket policy of accident or sickness insurance which provides coverage for prescription drugs shall exclude coverage of any such drug for HIV or AIDS treatment on the grounds that the off-label (see Definitions (4)) use of the drug has not been approved by the federal Food and Drug Administration (FDA) for that indication, if such drug is recognized for treatment of such indication in one of the standard reference compendia, in the medical literature, or by the advisory panel of the Commissioner of Public Health. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug. These requirements also apply with respect to coverage by health maintenance organizations. 175, §§ 47 O to P; 176A, § 80; 176B, § 4P; 176G, § 4G.

(2) In the context of insurance information and privacy protection, it is unlawful for a consumer report (see Definitions (2)) or for medical record information (see Definitions (2)) to contain information relating to counseling for AIDS or AIDS-related complex (ARC). Counseling for the purposes of this section does not include diagnosis of or treatment for AIDS or ARC. 175 I §§ 2, 7.

(3) No insurance institution or insurance representative may base an adverse underwriting decision in whole or in part on the basis of sexual orientation; provided, however, that neither the national origin, marital status, lifestyle or living arrangements, occupation, gender, medical history, beneficiary designation, nor zip code nor other territorial classification of the applicant may be used to establish, or aid in establishing, the applicant's sexual orientation. 175I, § 12.

Social & Medical Services (3), (4)

RESEARCH

(1) Under the Massachusetts AIDS Fund, it shall be a priority to research those drug and non-drug therapies that are not made generally available through federal and other state programs. The AIDS Fund shall give priority to those therapies that show the most promise of combating HIV infection or associated illnesses. 111, § 2E.

Education (4)

SOCIAL & MEDICAL SERVICES

(1) The Department of Public Health shall establish and maintain clinics in parts of the commonwealth that it deems most advantageous to the public health. The clinics shall provide treatment for persons suffering from venereal diseases. Cities, towns, or municipal hospitals may establish and maintain such clinics. 111, § 117.

(2) The Secretary of Human Services is authorized to take actions necessary to revise the schedule of medical benefits available to recipients of medical assistance and to revise medical assistance eligibility standards. In making such determinations, the Secretary may consider the impact on the quality and availability of health care services for persons with AIDS. 1991 Mass. ALS 138.

(3) The Department of Public Health shall establish a program of managed care for the screening and early treatment of persons with symptoms of HIV, AIDS, or AIDS-related complex. The program shall provide regular immune system evaluations, primary and preventative care, and counseling to discourage behavior which spreads

[MASSACHUSETTS]

HIV. To be eligible for services under this section, a person shall have no health insurance and shall not be eligible for assistance under section 117 pertaining to treatment of venereal disease. The Department of Public Health may, by regulation, permit those who have insurance to participate in the program provided there is no effect on the services provided to uninsured persons. Insured persons shall be charged a fee for program services using a sliding scale based on the person's income. 1990 Mass. ALS 150.

(4) The Massachusetts Rehabilitation Commission shall make it a priority to assist Title XIX recipients with AIDS who are seeking Medicare coverage. 1990 Mass. ALS 150.

(5) The Department of Public Health shall have the power to define what diseases shall be deemed to be included in the term venereal diseases in the provisions of law related to public health. 111, § 6.

(6) There shall be a Division of Communicable and Venereal Diseases within the Department of Public Health which shall be responsible for the prevention and control of communicable and venereal diseases and the provision of diagnostic and treatment care for those having or suspected of having venereal diseases. 17, § 4.

(7) In a general hospital supported by taxation, no person shall discriminate in providing treatment to persons with venereal diseases, when special hospitals, other than hospitals connected with penal institutions, do not exist for the treatment of such diseases. A hospital may, however, set up a separate ward for the treatment of venereal diseases. 111, § 118.

(8) Superintendents of correctional institutions, jails, and houses of correction shall assure that each inmate committed to their respective institutions for a term of thirty days or more receives a thorough physical examination including examination for the presence of venereal diseases. Ch. 127, § 16.

(9) There shall be established and set up a separate fund, to be administered by the commissioner of public health, to be known as the Massachusetts AIDS Fund. The fund shall consist of certain revenues received by the commonwealth, from public and private sources as appropriations, gifts, grants, donations, and from the federal government as reimbursements, grants-in-aid or other receipts. All revenues credited to the fund shall remain in the fund not subject to appropriation, for application to said purposes. The state treasurer must deposit the revenues in the Massachusetts AIDS Fund and no other and deposited in a manner that will secure the highest interest rate available consistent with

the safety of the fund and with the requirement that all amounts on deposit be available for immediate withdrawal at any time. The fund shall be expended only for its stated purpose and any unexpended balances shall be redeposited for further use consistent with this section. ch. 10, § 35R.

Education (2), (3), (4)

Insurance (1), (2)

Research (1)

Testing & Reporting (1), (2), (3), (4)

Miscellaneous (1), (2), (3), (4), (5)

TESTING & REPORTING

(1) No health care facility, physician, or health care provider shall test any person for the presence of the HTLV-III antibody or antigen without first obtaining the person's written informed consent (see Definitions (3)). Prior written informed consent shall also be required in order to reveal the identity of the test subject to any person or to disclose test results to any person other than the test subject. 111, § 70 F.⁴⁵

(2) Physicians or medical officers shall report every person having a venereal disease to the local boards of public health. 111, § 111.

(3) Hospital, dispensary, laboratory, and morbidity reports and records pertaining to venereal diseases shall not be public records. The contents of such records shall not be disclosed by any person having charge of or access to them, except upon proper judicial order. A person whose official duties require access to the information contained therein may receive access to the records and reports. 111, § 119.

(4) An inmate of a public charitable institution or a prisoner in a penal institution who suffers from a venereal disease shall be placed under medical treatment and, if necessary, isolated until danger of contagion has passed. If, at the expiration of the prisoner's sentence, the venereal disease persists in its contagious or infectious stages, or if the attending physician or the institution believes that the release of the prisoner would be dangerous to the public health, the infected individual shall remain under medical treatment either in the institution or in a hospital until release of the individual will no longer endanger the public health. 111, § 121.

Employment (1)

45. *Attorney General v. Bodimetric Profiles*, 533 N.E.2d 1364 (Mass. 1989) (a civil investigative demand may be used to determine if this statute has been violated).

MISCELLANEOUS

(1) The Commissioner of Public Health shall appoint the members of the AIDS Advisory Board (see Definitions (1)). The AIDS Advisory Board shall make recommendations to the Commissioner of Public Health concerning the administration and allocation of the Massachusetts AIDS Fund. 111, § 2 F.

(2) One representative of any organization concerned with AIDS shall sit on the non-reusable syringe regulation advisory committee. 111, § 53 C.

(3) Every individual who files a separate tax return and every husband and wife filing a return jointly may voluntarily contribute all or part of any refund, or may voluntarily add an amount onto any amount due, to be credited to the Massachusetts AIDS Fund. 62, § 6 G.

(4) Any registered physician or surgeon who knows or has reason to believe that any person is infected with a venereal disease may disclose the information to a fiancée of the infected person. Such information, when disclosed in good faith, shall not constitute slander or libel. 112, § 12.

(5) On commencement of employment and every twelve months thereafter, persons engaging in the practices of hairdressing, aesthetics, manicuring, or demonstrating such practices, shall obtain from a physician a certificate stating that such person is not afflicted with a venereal disease. 112, § 87 CC.

(6) Any contract between the subscriber and the corporation under an individual or group hospital service plan shall be delivered, issued or renewed in the commonwealth which provides coverage for prescription drugs shall provide as benefits to all individual subscribers and members within the commonwealth and to all group members having a coverage for off-label uses of prescription drugs used in the treatment of HIV/AIDS as set forth in other sections. ch. 176A, § 8Q.

MICHIGAN

All citations are to "Mich. Stat. Ann." unless otherwise noted.

DEFINITIONS

(1) "AIDS," "HIV," and "risk reduction" are defined at § 14.15(5901).

(2) "Anonymous basis," as it pertains to sperm donation for artificial insemination, is defined at § 14.15(16273).

(3) "Athletic services provider," "educational athletic facility," and "recreational athletic facility" are defined at § 14.15(26301).

(4) "Certified nurse midwife," "certified nurse practitioner," and "physician's assistant," as they pertain to HIV counseling of marriage license applicants, are defined at § 14.15(2701).

(5) "Infectious agent" and "life support agency," as they pertain to potential exposure of an emergency transporter or emergency service provider, are defined at § 14.15(20191).

(6) "Positive test result" is defined at §§ 14.15(9123) and 28.2327.

(7) "Self-replicating body fluids" is defined at § 14.15(9123).

(8) "Serious communicable disease or infection" includes AIDS, AIDS-related complex, and HIV. §§ 14.15(5101) and 14.15(20191).

(9) "Sexual contact" is defined at § 14.15(5129).

(10) "Sexual penetration" is defined at §§ 14.15(5210) and 14.15(5129).

CRIMINAL LAW

(1) Persons who know they are infected with HIV and who engage in sexual penetration (see Definitions (10)) of another without first informing the other person of the infection are guilty of a felony. § 14.15(5210).

(2) Persons who violate the confidentiality requirements pertaining to notification of infectious diseases in a death certificate (see Social & Medical Services (1)) are guilty of a misdemeanor. § 14.15(2843b).

(3) It is a misdemeanor for: a county clerk to issue a marriage license to an individual who fails to present a certificate of proof that the applicant has received HIV counseling or a written objection (see Education (1)); a person who knows that the applicant for a marriage license has taken an HIV test to disclose the fact that the applicant has

[MICHIGAN]

taken the test or the results of the test; and a physician to knowingly and willfully make a false statement on a certificate for a marriage license applicant. § 14.15(5121).

(4) A person or the employer of a person who violates the rules pertaining to disclosure of information pertaining to HIV infection (see Testing & Reporting (6)) shall be guilty of a misdemeanor. § 14.15(5131).

Education (6)

Testing & Reporting (2), (5), (13), (14), (15), (16)

EDUCATION

(1) An individual applying for a marriage license shall be counseled by a physician, certified nurse midwife, certified nurse practitioner, physician's assistant (see Definitions (4)), or a local health officer regarding the transmission and prevention of HIV infection. The counselor shall offer or refer the couple to testing for HIV infection. At the time the application is filed, the county clerk shall distribute HIV educational materials to the applicant. The information shall include a list of locations where HIV counseling and testing are available. A county clerk shall not issue a marriage license without proof that the applicant has received counseling regarding the transmission and prevention of HIV or a written objection stating that the counseling requirements violate the religious beliefs of the applicant. § 14.15(5119).

(2) The Department of Public Health (Department) shall use the Michigan Health Initiative Fund (Fund) in cooperation with the Board of Education to develop and distribute a risk reduction and AIDS education module appropriate for elementary and secondary schools. The Department of Public Health shall make the module available in each school district in the state. The Department of Public Health and Board of Education may also approve risk reduction and AIDS education modules developed by individual school districts. § 14.15(5917).

(3) The Department shall use the Fund to develop risk reduction and AIDS information packages in cooperation with institutes of higher education. § 14.15(5919).

(4) Every public school shall teach the principal modes by which dangerous communicable diseases, including AIDS and HIV, are spread and the best methods for restriction and prevention of these diseases. Public schools shall teach that abstinence from sex is a responsible method for restricting and preventing these diseases. Every person who teaches students in grades kindergarten through twelve about

HIV and AIDS, who is not a licensed health care professional, shall have training in HIV and AIDS education. The Board of Education and the Department of Public Health shall provide teacher trainers. § 15.41169.

(5) Sex education in public schools may include the study of methods of prevention and treatment of sexually transmitted disease (STD). The instruction shall include the teaching of abstinence as a responsible method of prevention. The Board of Education shall establish guidelines and may review and recommend materials to teach the prevention and treatment of STDs. §§ 15.41507-41508.

(6) The Department of Corrections and the Department shall develop and implement a comprehensive AIDS education program designed specifically for correctional environments. § 28.2327.

Testing & Reporting (6), (7), (8), (13)

Miscellaneous (2)

EMPLOYMENT

Criminal Law (4)

Testing & Reporting (1), (2), (7), (13), (14)

HOUSING

Social & Medical Services (6), (7)

Testing & Reporting (1), (13)

INSURANCE

RESEARCH

Social & Medical Services (5)

Testing & Reporting (6), (7)

SOCIAL & MEDICAL SERVICES

(1) A physician who is required to complete a medical certification of death and who has actual knowledge of the presence of AIDS or another infectious agent in the deceased individual shall, before release of the body, notify the funeral director of the appropriate infection control precautions to be taken. A funeral director notified of such infection shall not refuse to render services as a result of the notification. The information contained in the notification shall be confidential. § 14.15(2843b).

(2) The consent to medical or surgical care or treatment executed by a minor who is or professes to be infected with a venereal disease or HIV is valid and binding as if the minor had achieved the age of majority. § 14.15(5127).

(3) The duties of the Risk Reduction and AIDS Policy Commission in the Department of Health (Department) include: advising the Governor and the Legislature on policies regarding AIDS risk reduction; annually report to the Governor and the Legislature; make recommendations regarding the allocation of funds; review and comment on topics appropriate for the media campaign; and appoint advisory committees. §§ 14.15(5903), 14.15(5909).

(4) The department establishes the Michigan Health Initiative Information Clearinghouse (Clearinghouse) which shall be accessible to the public statewide. The Clearinghouse shall at a minimum provide information on: major risk factors and preventable diseases and conditions including but not limited to AIDS; and risk reduction services providers and AIDS treatment programs throughout the state. § 14.15(5913).

(5) The Department shall develop annually a model AIDS information package which shall include but not be limited to: information regarding the status of AIDS in the state; state supported testing and counseling programs; research findings; and access to the Clearinghouse. A local health department or a consortium of local health departments may apply to the Department of Public Health for funding to develop a local AIDS information package which may be used as an alternative to the state model. The Department shall approve any state funded local information package before it is used. The state model information package may be distributed to each residence in the state, except to those residences where an alternative local information package has been distributed. § 14.15(5921).

(6) The Department shall provide grants for local community demonstrations and pilot projects that provide a network of care to AIDS patients in a nonacute care setting. The Department shall give special consideration to applicants with projects designed to provide care on a regional basis. § 14.15(5929).

(7) The Risk Reduction and AIDS Policy Commission shall set aside additional beds for long-term care in a statewide pool that shall be used for proposed projects that meet the religious or health needs for specialized services of persons with AIDS. § 14.15(22217).

(8) A local health department that knows that an

individual who has a serious communicable disease or infection including, but not limited to HIV or AIDS, regardless of the individual's domicile, is in the local health department's jurisdiction and requires care, immediately shall furnish the necessary care. The local health department shall issue an order authorizing the care, and shall promptly report the action taken to the county department of health and social services of the individual's probable place of domicile. § 333(5117).

(9) Upon a determination by a Department of Health representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. Such warning may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier. Such notice shall be in writing, except under urgent circumstances, the warning may be an oral statement, followed by a written statement within three days. The warning notice shall be individual and specific and shall not be issued to a class of persons. The warning shall include a statement that unless the individual takes the action requested in the warning, the department representative or local health officer shall seek an order from the probate court. The warning shall also state that, except in the case of an emergency, the individual to whom the warning notice is issued has the right to notice and a hearing and other rights before the probate court issues an order. § 14.15(5203).

Criminal Law (3)

Education (2), (3), (4), (6)

Testing & Reporting (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16)

Miscellaneous (1)

TESTING & REPORTING

(1) A person or governmental entity, other than a licensed clinical laboratory, that obtains from a test subject an HIV positive test result shall report the result to the Department of Public Health (Department) on the form provided by the Department within seven days after obtaining the test result. The report shall contain the following information: the name and address of the person or governmental entity submitting the report; the age, race, sex, and county of residence of the

test subject; the date of performance of the test; the test result; whether the test subject tested positive for HIV on a previous occasion, if known; the probable method of transmission; the purpose of the test; and any other medical or epidemiological information considered necessary for surveillance, control, or prevention of HIV infections. A similar report must also be made to the local health department but that report must also include the name, address, and telephone number of the test subject. An individual who is tested for HIV in a physician's private office or by a physician in a health maintenance organization office may request that the report made by the physician not include the name, address, and telephone number of the test subject. If such a request is made, the physician shall comply with the request. A local health department shall not maintain a roster of names obtained under this section but shall maintain individual case files that are encoded to protect the identities of the individual test subjects. Licensed employees, professionals, health facilities, or agencies who obtain positive HIV test results from test subjects shall report the results in compliance with reporting requirements. §§ 14.15(5114), 14.15(16267), 14.15(20169).

(2) A person or governmental entity that administers an HIV test shall refer the test subject to the appropriate local health department for assistance with partner notification if the test results are positive and it is determined that the test subject needs assistance with partner notification. The local health department shall inform the test subject of the legal obligation to inform sexual partners of the test subject's HIV infection before engaging in sexual relations with such sexual partners and that the failure to so inform a partner may lead to criminal sanctions (see Criminal Law (1)). For both needle-sharing partners and sexual partners of the test subject, the local health department may also engage in confidential partner notification in the form of a direct one-on-one conversation between the health department employee and the partner of the test subject. If the local health department receives a report of a positive HIV test result, it shall be a priority to: attempt to interview the individual and offer to contact the individual's sexual partners and needle-sharing partners; attempt to interview the parent or legal guardian of any individual determined to have been infected in utero; contact sexual partners, needle-sharing partners, and drug sharing partners of the individual regarding their possible exposure without identifying the HIV positive test subject unless authorized by the test subject or unless such disclosure is necessary to protect others from exposure; and provide all contacts with information concerning methods to avoid HIV transmission

and available medical tests for HIV. The data collected by the local health department for partner notification shall be kept for a maximum of ninety days or for a period established by rule of the Department. Information acquired by the Department or a local health department pertaining to HIV positive test results is exempt from disclosure under the Freedom of Information Act. § 14.15(5114a).

(3) If one of the marriage applicants tests positive for HIV, the physician, certified nurse midwife, certified nurse practitioner, physician's assistant (see Definitions (4)), or local health officer shall inform both applicants of the test results and shall counsel the applicants regarding the modes of HIV transmission, the potential of HIV transmission to a fetus, and protective measures. § 14.15(5119).

(4) A physician or other individual treating a pregnant woman shall require an HIV test at the time of the woman's initial examination unless such tests are medically inadvisable or the woman does not consent to the testing. The physician or other person treating the pregnant woman shall keep a record of the testing or of why the testing was not performed. The test results and records are not public records but shall be available to the local health department and to a physician who provides medical treatment to the woman. If a woman presents herself at a health care facility to deliver an infant or in the immediate postpartum period having recently delivered an infant outside a health care facility and no record of test results is readily available, then the physician or individual providing care shall perform an HIV test. § 14.15(5123).

(5) At the discretion of the local health department, an individual may be examined or tested for HIV or AIDS if the individual has been arrested and charged with: soliciting and accosting; admitting to a place for the purpose of prostitution; engaging or offering to engage the services of a female; keeping a house of ill-fame; pandering; or violating a local ordinance prohibiting prostitution or engaging the services of a prostitute. Examination and test results that indicate the presence of HIV or AIDS shall be reported to the defendant, the local health department for the purposes of partner notification, and the Department of Health. The judge or magistrate responsible for setting an individual's conditions for release pending trial shall distribute to the individual information on HIV transmission and shall recommend that the individual obtain additional counseling and information at a local health department testing and counseling center. If an individual, juvenile or adult, is arrested and charged with one of the above crimes or for: violating a law by intravenously using a controlled substance; a local ordinance prohibiting

gross indecency; intravenous use of a controlled substance; criminal sexual conduct in the first, second, third, or fourth degree; or assault with intent to commit conduct involving sexual penetration (see Definitions (10)). Such counseling is voluntary on the part of the individual. If there is reason to believe the violation involved sexual penetration or exposure to bodily fluids of the defendant or juvenile, the court shall order the defendant or juvenile to be examined or tested for HIV and to receive counseling regarding HIV infection and AIDS. The examinations and tests shall be confidentially administered. If the victim or person with whom the defendant or juvenile was of a sexual penetration (see Definitions (10)) or sexual contact (see Definitions (9)) consents, the court shall provide the test administrator with the name, address, and telephone number of the victim for the purpose of providing the victim with the defendant's or juvenile's test results and referring the victim to appropriate counseling. The defendant's or juvenile's test results and other medical information shall be confidential. The information shall be transmitted by the test administrator to the court and, after the defendant or juvenile is sentenced, made part of the court record. The local health department, the Department of Health, and persons given authorization by the defendant or juvenile or by the law, are authorized to receive the test results as well. If the defendant is placed in the custody of the Department of Corrections, the court shall transmit a copy of the defendant's test results and other medical information to the Department of Corrections. For juveniles, test results must be transmitted by the probate court to the person or institution with custody of the child. If an individual receives counseling or is examined or tested under this provision, and is found to be HIV infected, the individual shall be referred by the agency providing the counseling or testing for appropriate medical care. The Department of Public Health, local health department, or other agency providing the service shall not be financially responsible services received as a result of the referral. § 14.15(5129).

(6) All reports, records, data, and information pertaining to testing, care, treatment, reporting, research, and partner notification associated with HIV, AIDS, and AIDS-related complex are confidential. HIV test results and the fact that an HIV test was ordered are subject to the provisions pertaining to waiver of the physician-patient privilege. Disclosure of information pertaining to HIV infection, AIDS, or AIDS-related complex in response to a court order is limited to situations where: other ways of obtaining the information are not available or would not be effective; and the public interest and the need for disclosure outweigh the

potential for injury to the patient. Information regarding HIV or AIDS infection may be released to a legislative body as long as it does not disclose the information of specific individuals tested or being treated for HIV infection or AIDS. Information pertaining to an individual who is HIV-infected may be disclosed to the Department, a local health department, or other health care provider for the purposes of: protecting the individual's health; preventing further HIV transmission; or diagnosing and caring for the patient. There is an affirmative duty on a physician or a local health officer to disclose information pertaining to the HIV infection of an individual if the physician or local health officer knows of the HIV infection and determines that disclosure of such information is necessary to prevent a foreseeable risk or further transmission of HIV to others. The physician or local health officer may discharge this duty by referring the HIV positive individual to the appropriate local health department for assistance with partner notification. An authorized representative of the Department or a local health department may disclose information pertaining to an HIV-positive individual to an employee of a local school district if disclosure is necessary to prevent a reasonably foreseeable risk of HIV transmission to pupils in the school. An individual may expressly authorize disclosure of information pertaining to the individual's HIV infection in writing. The writing must specify whether the authorization pertains to disclosure of information pertaining to either HIV infection or AIDS. Information pertaining to HIV infection may be disclosed as part of a report required under child protection laws or as required in order to care for a minor. Release of information pertaining to HIV infection of an individual shall not include the individual's name, unless identifying information is necessary in order to prevent a foreseeable risk of transmission of HIV. § 14.15(5131).

(7) A physician or health facility which orders HIV testing shall provide counseling appropriate to the test subject both before and after testing. A person administering an HIV test shall provide the test subject with a Department pamphlet on HIV testing and a Department form containing information regarding the test, including: the purpose and nature of the test; the consequences of both taking and not taking the test; the meaning of the test results; other information considered relevant by the Department of Health; and a model consent form. Prior written consent of the test subject is necessary and shall consist of: a signed writing executed by the test subject or a legally authorized representative; an explanation of the test; a designation of the person authorized to

receive the test results; and an explanation of the rights of the test subject. The rights of the test subject include: the right to anonymous testing, the right to confidential disclosure of test results, and the right to withdraw consent at any time prior to testing. When the test subject receives a copy of the consent form and pamphlet, the test subject shall sign an additional form indicating such receipt, which will be placed in the test subject's medical record. The pamphlet shall be written in clear, nontechnical English and Spanish and shall be made available to physicians or other persons or governmental entities free of charge. Prior written informed consent is not necessary for research HIV tests performed in such a manner that the test subject's identity is not revealed to the researcher and the test results are not disclosed to the test subject. Prior written informed consent for HIV testing is not required when a health facility: informs the patient in writing upon admission that an HIV test may be performed without written consent; and a health professional, police officer, firefighter, first responder, emergency medical technician, or paramedic experiences a significant exposure to the blood or body fluids of the patient. If the test subject cannot understand or is unable to receive the disclosure form and no legally authorized guardian is readily available, prior written informed consent is not required. § 14.15(5133).

(8) The Department shall provide free HIV testing to all residents of the state and to all nonresident students enrolled in and attending a private or public college, university, or other postsecondary educational institutions in the state. The test subject shall undergo HIV counseling both before and after HIV testing. If the local health department provides the counseling, either the local health department or the Department shall also pay for it. A person who provides HIV testing or counseling that the Department requires to be free to the test subject shall not bill the test subject or a third party payor for the service but shall be reimbursed by the local health department or the Department. § 14.15(5923).

(9) A person who collects blood, human tissues, organs, or other specimens for purposes of transplantation, transfusion, introduction, or injection into a human body shall test or provide for the HIV testing of each potential donor or each sample or specimen of blood or tissue, or each organ or other human specimen. If an HIV test cannot be performed in the time during which the human specimen is viable for the intended purpose due to an emergency or exigent circumstances, then HIV testing is not required. The procedure may be performed if both the patient or legally authorized substitute and the person performing the procedure

consent in writing prior to undertaking the procedure. If the results of an HIV test are positive, the human specimen shall not be used for transplantation, transfusion, introduction, or injection into a human body. Personal use of one's own HIV positive blood for transfusion is possible if the person receiving the transfusion and the person performing the transfusion both give prior written consent. A person who procures or collects self-replicating body fluids (see Definitions (7)) for purposes of introduction into a human body shall test each potential donor for HIV. If the donor donates on a regular basis, HIV testing shall occur not less than every three months. If at any time the test results are positive, the self-replicating fluids shall not be introduced into the human body. Donors shall be informed of positive test results (see Definitions (6)). § 14.15(9123).

(10) An individual shall not sell his or her blood products to a blood bank if the individual knows that he or she has tested positive for HIV. A blood bank which receives HIV-infected blood products donated or sold by a person who knows he or she is HIV positive shall immediately notify the local health department. § 14.15(11101).

(11) A person, health facility, or agency licensed to perform artificial insemination services on humans on an anonymous basis (see Definitions (2)) shall use only frozen sperm and shall test each potential sperm donor for HIV. The donated sperm shall be frozen, stored, and quarantined for not less than six months. Before the frozen sperm is used and not less than six months after the date of donation, the donor's blood shall be tested a second time for HIV. If at any time the test results are positive, the licensee shall not use the sperm for artificial insemination. §§ 14.15(16273), 14.15(20179).

(12) If an emergency patient is transported or assisted by a police officer, fire fighter, medical first responder, emergency medical technician, emergency medical technician specialist, or licensed paramedic, or other individual and the emergency patient tests positive for an infectious agent (see Definitions (5)) upon arrival at a health facility, the facility shall notify the individual who assisted or transported the patient that the individual may have been infected with an infectious agent. The individual shall first demonstrate in writing to the health facility that the individual was exposed to the blood, body fluids, or airborne agents of the patient in providing assistance or transporting the emergency patient to the health facility. If the patient tests positive for HIV, the facility shall not reveal that the infectious agent is HIV unless the individual submits a written request to the health facility for

notification as to HIV infection. The health facility shall notify the individual of the infection control procedures that the individual should take and the approximate date of the potential exposure. The notification shall occur within two days after the health facility obtains the patient's test results. If the potentially exposed individual provides the health facility with his or her address, or if the health facility has a means of determining such address in the ordinary course of business, the health facility shall notify the potentially exposed individual at that address. If the health facility does not have the address of the potentially exposed individual, the facility shall notify the police department, fire department, or life support agency (see Definitions (5)) that employs the individual. If the health facility is unable to determine who is the individual's employer, then the health facility shall notify the medical control authority or chief elected official of the governmental unit that has jurisdiction over the transporting vehicle. The medical control authority shall notify the potentially exposed individual or if unable to notify the individual, shall document in writing the notification efforts. The notification shall not identify the emergency patient who tested positive for the infectious agent. The information contained in the notice is confidential. § 14.15(20191).

(13) A prisoner, upon commitment to state correctional facilities, shall be temporarily confined in quarters apart from regular inmates, designated as a reception center. Within sixty days after arrival, the classification committee shall complete a comprehensive study of the prisoner in order to ensure that the prisoner is confined in the state correctional facility best suited to the type of rehabilitation required. Upon arrival at the reception center, the prisoner shall be tested for HIV unless the prisoner has already been tested upon arrest or upon conviction for the crime, and such testing occurred within three months of the prisoner's arrival at the reception center. Such prior testing must be documented in a record and transferred to the Department of Corrections by the court. The Department of Corrections shall keep a prisoner in administrative segregation, an inpatient care unit, or a separate unit from the general prisoner population if the prisoner receives a positive test result and is subsequently disciplined for: sexual misconduct that could transmit HIV; illegal intravenous use of a controlled substance; or assaultive or predatory behavior that could transmit HIV. The department shall report each positive test result to the department of community health. If an employee of the Department of Corrections is exposed to the blood or body fluids of a prisoner in a manner that could transmit HIV,

the prisoner shall be tested for HIV. If the prisoner refuses the HIV test, the inmate shall be considered HIV positive by the Department of Corrections. If an employee requests HIV testing, the Department of Corrections shall provide the employee with testing free of charge. If an employee requests equipment to prevent transmission of HIV, the Department of Corrections shall provide the employee with the equipment necessary to implement universal precautions. A prisoner who receives a positive HIV test result or who is considered by the Department of Corrections to be HIV positive shall not work in a health facility operated by the Department of Corrections. The Department of Corrections shall conduct a seroprevalence study to determine the percentage of prisoners who are HIV-infected. The results of HIV testing on prisoners shall be confidential. HIV test results of prisoners shall be disclosed by the department as permitted by law. The deputy director of the correctional facilities administration shall take steps to ensure that all prisoners who are tested for HIV shall receive counseling regarding AIDS which addresses, at a minimum, treatment, transmission, and protective measures. § 28.2327.

(14) If a correctional officer or other correctional employee is exposed to a prisoner's blood or other body fluid as a result of an assault, an emergency, or urgent care situation, the Department of Corrections shall cause the blood or body fluids of the prisoner to be submitted for HIV testing. If the results are positive, the Department of Corrections shall immediately notify the correctional employee of the test results. 1995 Mi. ALS 153.

(15) A police officer, fire fighter, local correctional officer, or other county employee, a court employee, or an individual making a lawful arrest who has received training in the transmission of bloodborne diseases in the workplace, and who, while performing his or her official duties, determines that he or she has been significantly exposed to blood or bodily fluids of another may request that the exposer be tested for HIV. This request shall be made to the exposee's employer in writing, on the form provided by the department as soon as possible, but no later than seventy-two hours after the exposure occurs. The requester is subject to the confidentiality requirements of the law and the request form shall not contain information that identifies the exposer by name, unless necessary for the purposes of testing. The employer shall accept as fact the requestor's description of his or her exposure and shall have the HIV test performed by the local health department or by a health care provider designated by the local health department. If the test subject consents to

the test, the test shall be performed at the location where the test subject is held or housed, and shall be performed as soon as practicable after the local health department receives the request for testing. If the test subject refuses to undergo the test, the requester's employer may petition the family division of the circuit court as appropriate. The local health department or health care provider that performs the test may charge the requestor for the reasonable and customary charges of each test. The requestor is responsible for the payment of the charges if the charges are not payable by the requestor's or the requestor's employer's health care payment or benefits plan. The tester is not required to provide counseling to the requestor unless the requestor is tested for HIV. The tester shall, on a form provided by the department, notify the requestor of the results of the test, whether positive or negative, within two days after the test results are obtained by the tester. Notification shall be transmitted directly to the requestor or, upon request, to his or her primary physician or other designated health professional. The notification shall include an explanation of the confidentiality requirements and shall also contain a statement recommending that the requestor undergo an HIV test. The notice required shall not contain information that would identify the person tested. The information contained in the notice is confidential and shall not be disclosed by a person who receives notice unless the purpose of the disclosure is consistent with the authorized purpose for which the information was obtained. A person who discloses information in violation of this provision is guilty of a misdemeanor. The local health department or designated health care provider shall report to the department each HIV-positive test result. § 14.15(5204).

(16) If an employee of the Department of Corrections is significantly exposed to the blood or bodily fluids of another prisoner, the employee may request that the prisoner be tested for HIV infection. The request shall be in writing on a form provided by the department within seventy-two hours after the exposure occurs. The request shall not contain information that identifies the prisoner. Upon receipt of the request, the department shall make a determination as to whether there is reasonable cause to believe that the exposure occurred and that the exposure was significant. If reasonable cause is found, the department shall test the prisoner for HIV, whether or not the prisoner consents to the test. The department is not required to give the prisoner a hearing or to obtain a court order. The department is not required to provide HIV counseling to the requestor, unless the department tests the requestor for HIV. If no reasonable cause is found or no significant exposure is found,

the department shall, in writing, on the request form, state the reason it determined that there was no reasonable cause or significant exposure. A copy of the completed request form shall be transmitted to the requestor within two days after the department makes its determination. The department shall notify the requestor of the test results, whether positive or negative, within two days of being received by the department. Notification shall be transmitted directly to the requestor or, upon request, to his or her primary physician or other designated health professional. The notification shall include an explanation of the confidentiality requirements and shall also contain a statement recommending that the requestor undergo an HIV test. The notice required shall not contain information that would identify the person tested. The information contained in the notice is confidential and shall not be disclosed by a person who receives notice unless the purpose of the disclosure is consistent with the authorized purpose for which the information was obtained. A person who discloses information in violation of this provision is guilty of a misdemeanor. The department shall report to the Department of Community Health each positive HIV test result. § 28.2327(2).

(17) If a department representative or a local health officer knows or has reasonable grounds to believe that an individual has failed or refused to comply with a warning notice, the department or local health department may petition the circuit court for an order. The petition shall state: the grounds and underlying facts that demonstrate that the individual is a health threat and has failed to comply with a warning notice; the petitioner's efforts to alleviate the health threat to others before the issuance of the warning notice; the type of relief sought; and a request for a court hearing on the allegations set forth in the petition. The requirements for the petition do not apply if an emergency order is sought. If a test subject refuses to undergo a test requested by an officer or employee or an arresting individual, the requestor's employer may petition the circuit court for an order. The petition shall state the following: substantially the same information contained in the request made to the requestor's employer and the name of the proposed test subject; the reasons for the requestor's determination that the exposure could have transmitted HIV, along with the date that the requestor received training in the transmission of bloodborne diseases; the fact that the requestee has refused to undergo the test; the type of relief sought; a request for a court hearing on the allegations. Upon receipt of a petition, the circuit court shall fix a date for hearing that shall be as soon as

possible, but not later than fourteen days after the date of the filing of the petition. Notice of the petition and the time and place of the hearing shall be served personally on the individual or proposed test subject and on the petitioner not less than three days before the date of the hearing. Notice shall include notice of the individual's or proposed test subject's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel. Notice may be waived by the requestee, and upon filing of the waiver, the court may hear the petition immediately. The court may use its discretion to determine the appropriate remedy, including the participation in designated treatment or medical testing to verify the individual's status as a carrier or for diagnosis, if it finds that the department or local health department has proven the allegations set forth the petition. § 14.15(5205)

Criminal Law (3)

Education (1)

Social & Medical Services (5), (7), (9)

MISCELLANEOUS

(1) The Department of Public Health (Department) shall use the Michigan Health Initiative Fund (Fund) to arrange for a media campaign to disseminate information on risk reduction, major risk factors, and preventable diseases including AIDS. The Department shall also use the Fund to arrange for the production of public service announcements regarding risk reduction and AIDS which shall be distributed to publicly supported radio and television stations, cable television studios, and commercial radio and television stations. § 14.15(5915).

(2) Athletic service providers (see Definitions (3)) shall place notices pertaining to the use of androgenic anabolic steroids in each educational athletic facility (see Definitions (3)) or recreational athletic facility (see Definitions (3)) owned or operated by such athletic services providers. The notices shall include a warning that the shared use of hypodermic needles can result in the transmission of AIDS. The notices shall be conspicuously placed in each locker room of the facility and near the entrance of each recreational athletic facility. § 14.15(26302).

MINNESOTA

All citations are to "Minn. Stat." unless otherwise noted.

DEFINITIONS

- (1) "Blood borne disease" is defined at § 147B.01.
- (2) "Communicable disease," "directly transmitted," "health threat to others," "indirectly transmitted," "licensed health professional," and "noncompliant behavior" are defined at § 144.4172.
- (3) "HIV" is defined at § 214.18 and § 144.761. "Emergency medical services agency" and "emergency medical services personnel" are defined at § 144.761. "Significant exposure," in relation to emergency medical services personnel, is defined at § 144.761.
- (4) "HIV minimum standards" is defined at § 245A.02.

CRIMINAL LAW

- Insurance (1)
- Social & Medical Services (6)
- Testing & Reporting (1), (2)
- Miscellaneous (2)

EDUCATION

- (1) The Commissioner of Education, in consultation with the Commissioner of Health, shall assist school districts in developing and implementing a program to prevent and reduce the risk of AIDS. § 121A.23.
- (2) The purpose of support services aid to public school children, prekindergarten through grade twelve, is to provide services and programs beyond the core instruction, including, among other things, AIDS awareness and prevention. § 126C.34.
 - Social & Medical Services (5)
 - Testing & Reporting (4)
 - Miscellaneous (1)

EMPLOYMENT

- Insurance (3)

HOUSING

- Social & Medical Services (1)

[MINNESOTA]

INSURANCE

(1) No health insurer may obtain or use the fact that an HIV test was performed or the results of an HIV test performed on a sex crime offender or on a potentially exposed crime victim in order to take any action with respect to insurance contracts, nor may an applicant for coverage be asked whether such a test has been performed. An authorization for the release of medical records for insurance purposes will exclude any test performed relative to a sex crime, regardless of whether the exclusion is expressly stated. § 72A.20.29.

(2) No health plan company may restrict an enrollee's choice of where enrollee receives services related to testing for AIDS and other HIV-related conditions or testing for other sexually transmitted diseases. § 62Q.14.

(3) The Commissioner of Human Services shall establish a program to pay health plan premiums on existing plans for HIV positive persons in order to enable them to have continued coverage. The applicant must provide a physician's statement indicating the applicant's HIV positive status and that the applicant will be, within three months, too ill to continue to work. The applicant must also demonstrate gross family income not exceeding 300 percent of the federal poverty guidelines, after deducting medical expenses and insurance premiums, and total assets not exceeding \$25,000. § 256.9365.

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) Boarding care homes and supervised living facilities licensed by the Department of Health must accept any HIV positive person as a resident unless the facility is unable to meet the patient's needs or the patient is otherwise ineligible for admission under state laws and rules. § 144.50. A nursing home must accept in residence a person who is HIV positive unless the facility cannot provide appropriate care or unless the person is otherwise ineligible for admission under state laws and rules. § 144A.04.

(2) Hospitals shall establish policies and procedures in accordance with Centers for Disease Control (CDC) recommendations to prevent transmission of HIV to patients. § 144.55.

(3) Applicants and license holders for the operation of chemical dependency treatment programs shall train and orient staff and

clients annually to the HIV minimum standards (see Definitions (4)) and maintain an annually updated list of referral sources for HIV-related services. §§ 245A.19, 245A.02.

(4) The State Commissioner of Health, in order to investigate a potential serious health threat or to locate persons who may have been exposed to a serious health threat (see Definitions (2)), may subpoena privileged medical information of patients who may have been exposed to HIV by a licensed dental hygienist, dentist, physician, nurse, dental assistant or physician's assistant. § 144.054.

(5) The state requires one hour per year of continuing education on the subject of infection control and blood borne disease control (see Definitions (1)) for those practicing acupuncture. Acupuncturists shall use sterilized equipment in compliance with CDC standards. § 147B.02.

(6) A hospital shall give written notice about sexually transmitted diseases (STDs) to a person receiving medical services who reports or shows signs of sexual assault, other unwanted sexual contact or sexual penetration. The notice must inform the patient of the risk of contracting STDs from a sexual assault, the symptoms of the STDs, and recommendations on testing. § 611A.20.

(7) In establishing the development of group housing beds, up to seventy percent or one hundred ninety supportive housing units in Anoka, Dakota, Hennepin, or Ramsey county must serve homeless adults with HIV or AIDS. § 256I.04.

(8) For those who qualify, diagnostic, screening and preventive services which include prenatal HIV risk assessment, education counseling and testing services are covered under public welfare. § 256B.04

(9) The commissioner of children, families, and learning, in consultation with the commissioner of health, shall assist districts in developing and implementing a program to prevent and reduce the risk of AIDS. Each district must have a program that at least includes: planning materials, guidelines, and other technically accurate and updated information; a comprehensive, technically accurate, and updated curriculum; cooperation and coordination among districts and SCs; a targeting of adolescents, especially those who may be at high risk of contracting AIDS, for prevention efforts; involvement of parents and other community members; in-service training for appropriate district staff and school board members; collaboration with state agencies and organizations having an AIDS risk reduction program; and participation

by state and local student organizations. The department may provide assistance at a neutral site to nonpublic school participating in a district's program. District programs must not conflict with the health and wellness curriculum developed under another section. If a district fails to develop and implement a program to prevent and reduce the risk of AIDS, the department must assist the service cooperative in the region serving the district to develop or implement the program. District may accept funds for AIDS programs developed and implemented under this section from public and private sources including public health funds and foundations, department professional development funds, federal block grants or other federal state grants. § 121A.23.

Testing & Reporting (1), (2), (3), (4)

TESTING & REPORTING

(1) The court may order HIV testing of a person convicted of a sex crime if the victim requests the test and if evidence exists that the broken skin or mucous membrane of the victim was exposed to the offender's semen or blood. The test and results are private data and are only released to the victim upon request. A positive test result shall be reported to the Commissioner of Health. The test results given to a victim shall be given by a licensed health professional (see Definitions (2)) trained to provide the appropriate counseling. § 144.763. The test result is then removed from medical or health records and destroyed. No reference to the testing may be maintained in the court records, the motion requesting the tests or the defendant's criminal record. § 611A.19.

(2) Emergency medical service personnel (see Definitions (3)) shall notify any facility treating medical patients of the emergency personnel's exposure to a patient's blood or other bodily fluid that, according to contemporary epidemiological standards, constitutes a significant exposure (see Definitions (3)). Upon determination that a significant exposure has occurred, the facility shall ask the patient to consent to testing for HIV. Test results will be reported to the potentially exposed emergency medical services worker without identifying the patient. The patient may refuse testing unless the patient is a prisoner under correctional authority. A patient who dies before an opportunity to consent arises shall be tested. The patient and the potentially exposed

emergency medical services worker shall be given recommendations as to appropriate counseling and testing. §§ 144.761 to 144.766.⁴⁶

(3) Procedures are prescribed for the failure of regulated (licensed) health professionals (see Definitions (2)) to comply with infection control procedures based on Center for Disease Control and local standards. An infected licensed health care professional is required to promptly report the information to the Commissioner of Health. Any institution required to report HIV status to the Commissioner shall also notify whether the reported person is also a regulated health care professional. Any person with actual knowledge that the regulated professional has been diagnosed with HIV infection may file a report with the Commissioner. The Commissioner and the relevant professional board have the authority to monitor the scope of the infected person's practice and the status of the infection relative to protecting the patient. Authority is granted to inspect the practice and records for infection control procedure compliance as well as to suspend the right to practice of infected regulated persons should they not comply with monitoring requirements. Data generated under this section is variously classified as investigative data, private data, or nonpublic data and may be disclosed only as necessary to implement this law, to alert persons threatened by illness, to prevent the spread of HIV, or to diminish an imminent threat to the public health. A board may refuse to grant a license or registration and may also impose disciplinary or restrictive action or a suspension against a regulated person who fails to follow infection control procedures or monitoring and reporting requirements or fails to comply with any other of the above measures. §§ 214.17 to 214.25.

(4) Carriers of HIV and other communicable disease (see Definitions (2)) which are transmitted through exchange of blood, semen, or vaginal secretions (direct transmission, see Definitions (2)) shall be encouraged to identify others who may be at risk because they have had contact with the carrier. The Commissioner of Health may issue a health directive requiring a specific carrier to cooperate with efforts of health authorities to prevent disease transmission, including participation in education, counseling, treatment programs, and medical testing of the person's carrier status. The written directive shall be served in the same manner as a summons and complaint under the Minnesota Rules of Civil Procedure. § 144.4172.

Insurance (1), (2)

Social & Medical Services (6)

46. See *In re Stilinovich*, 479 N.W.2d 731 (Minn. Ct. App. 1992).

MISCELLANEOUS

(1) The Commissioner of Health may award grants to boards of health, state agencies or councils, or nonprofit corporations to provide evaluation and counseling services to populations at risk for HIV infection, such as minorities, adolescents, IV drug users, and homosexual men. The Commissioner may award grants to agencies experienced in providing services to minority communities for outreach and education programs targeted at high risk groups including IV drug users and their partners, adolescents, gay and bisexual individuals, and women. § 145.924. The Commissioner of Health may award grants to community health boards or nonprofit corporations for case management services for persons infected with HIV to assist in preventing transmission to others. § 145.9245.

(2) There is a cause of action for coercion into prostitution. § 611A.81. Coercion into prostitution includes exploiting HIV status, especially where defendant's previous coercion led to HIV exposure. § 611A.80.

(3) A seller may provide each purchaser of an HIV home collection kit or hypodermic syringes and needles as authorized at the time of purchase, with written information about the telephone numbers for public HIV counseling and testing sites, the state's HIV hotline, disposal of used syringes, and general HIV prevention and care. The commissioner of health shall provide technical assistance and materials to pharmacies and to sellers related to compliance with this section. The commissioner shall provide printed materials, at no charge to pharmacists that sell hypodermic needles and syringes. A pharmacy or seller may request and the commission may authorize use of other methods for providing written information to purchasers. § 325F.785.

(4) During each two year cycle each physician assistant shall obtain 50 hours in continuing education with at least 2 hours in infection control, including blood borne diseases, which includes the HIV virus. §147A.25.

(5) Results of HIV tests of sex offenders under section 611A.19, are classified. § 13.99.107a.

MISSISSIPPI

All citations are to "Miss. Code. Ann." unless otherwise noted.

DEFINITIONS

- (1) "AIDS," "HIV," "sex offense," and "test" are defined at § 99-19-201.
- (2) "Health care provider" is defined at § 41-34-1.
- (3) "Infectious or communicable disease" includes AIDS. § 41-39-13.
- (4) "Special needs inmates" does not include HIV positive prisoners. § 47-5-1103.

CRIMINAL LAW

(1) Any person knowingly violating any rules or regulations promulgated by the State Board of Health shall be guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment or both. § 41-23-27.

(2) Any person suspected of having an infectious sexually transmitted disease who fails or refuses to allow a representative of the State Board of Health to examine or inspect them may be punished as for a misdemeanor. § 41-23-29.

(3) Failure to comply with the requirements specifying procedures for tagging the body of a deceased person who had an infectious or communicable disease (see Definitions (3)) (see Social & Medical Services (4)) shall constitute a misdemeanor and shall be punishable by fine or confinement in the county jail. § 41-39-13.

(4) Any person, other than a physician or person in charge of a health care facility, who willfully fails to make reports relating to AIDS (see Testing & Reporting (1)) shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine or confinement in the county jail or both. § 41-23-1.

(5) The county in which a victim was allegedly raped or sexually battered, or a child was battered, abused, or exploited, or an attempt to commit such crimes shall pay for the initial medical examination of the victim and the medical examination of the person arrested, charged, or convicted of such offense to determine if such person has a sexually transmitted disease (STD). § 99-37-25.

Testing & Reporting (5), (6)

[MISSISSIPPI]

EDUCATION

(1) The school nurse intervention program shall offer reproductive health education and referral to prevent teen pregnancy and sexually transmitted diseases (STDs). The program shall include instruction on abstinence as a means of prevention for pregnancy and STDs. § 41-79-5.

EMPLOYMENT

Testing & Reporting (3)

HOUSING

(1) The Mississippi Home Corporation may design and support programs to address special needs groups including HIV/AIDS carriers. § 43-33-717.

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) The State Board of Health shall have full power to isolate, quarantine, or otherwise confine, intern, and treat persons afflicted with infectious sexually transmitted diseases (STDs). § 41-23-27.

(2) Any person suspected of being afflicted with an infectious STD shall be subject to physical examination and inspection by any representative of the State Board of Health. § 41-23-29.

(3) Each board licensing health care providers may establish practice requirements based on applicable guidelines from the Centers for Disease Control. Such requirements are meant to protect the public from the transmission of HIV in the practice of a profession regulated by a licensing board. § 41-34-3.

(4) If a person who dies in a hospital or health care facility has been diagnosed as having an infectious or communicable disease (see Definitions (3)), the attending physician or person in charge of the hospital or health care facility shall affix a tag on the body, preferably on the great toe. The tag shall be on card paper stock and shall be at least five centimeters by ten centimeters. The tag shall be red, and shall include the words "BLOOD/BODY FLUID PRECAUTIONS

REQUIRED” in letters at least six millimeters in height. The name of the deceased person shall be written on the tag, and the tag shall remain affixed to the body until the preparation of the body for burial has been completed. If a person who has been diagnosed as having an infectious or communicable disease dies outside of a hospital or health care facility or without an attending physician, any family member or person making arrangements for the disposition of the body who knows that the deceased was infected with such disease shall advise the person taking charge of the body for disposition of this fact. The person taking charge of the body shall affix a tag on the toe of the deceased in the manner prescribed above. § 41-39-1.

Criminal Law (2), (3)

Housing (1)

Testing & Reporting (1), (4), (5), (6)

TESTING & REPORTING

(1) If a person diagnosed with AIDS dies in a health care facility, upon that person’s death, the attending physician, the person in charge of the health care facility, or the medical examiner shall report the cause or contributing cause of death to the Executive Officer of the State Board of Health. If a person diagnosed with AIDS dies without an attending physician, any family member or other person making disposition of the body who knows that the decedent had been diagnosed with AIDS shall report this fact to the medical examiner, who shall then report to the Executive Officer of the State Board of Health as specified above. Every physician or person in charge of a health care facility or laboratory shall report immediately every case of such disease required to be reported to the State Board of Health. Any physician or person in charge of a hospital or health care facility who knows that a patient has a medical condition specified by the Department of Health as requiring special precautions by health care providers (see Definitions (2)) shall report this fact and the need for appropriate precautions to any other institution or provider of health care services to whom such patient is transferred or referred. Any physician or person in charge of a health care facility or laboratory who fails to make the reports required under this section regarding AIDS shall be reported to the Board of Medical Licensure, or to the applicable licensing agency, and such failure shall be grounds for suspension of license. All persons who receive notification of the infectious condition of an individual shall hold such information in the strictest of confidence, shall not reveal the information to others, and

[MISSISSIPPI]

shall take only those actions necessary to protect the health of the infected person or others where there is a foreseeable, real, or probable risk of transmission of the disease. § 41-23-1.

(2) County health departments shall provide free testing for and treatment of sexually transmitted diseases (STDs). Such testing and treatment shall be kept in strict confidence. The county boards of supervisors shall make known to the public, through available media, that testing for and treatment of STDs is confidential. § 41-23-30.

(3) Licensing boards may establish requirements and procedures for licensees and licensure applicants to report that they are carriers of HIV to the board. Each report of HIV carrier status, record maintained, and meeting held by the licensing boards in the course of monitoring a licensee for compliance with the practice requirements established by the boards is confidential and exempt from the provisions of the Mississippi Public Records law (§§ 25-61-1, et seq.). §§ 41-34-5, 41-34-7.

(4) A hospital or physician, and employees of such hospital or physician, may conduct an AIDS or HIV test without specific consent for such test if the hospital or physician determines that the test is necessary for diagnostic purposes to provide appropriate care or treatment to the person being tested, or in order to protect the health and safety of other patients or persons providing care and treatment to the person being tested. The person who is tested shall be informed of the nature of the test which is to be conducted. § 41-41-16.

(5) Any person who is convicted of a sex offense (see Definitions (1)) and who is sentenced to any state or local correctional facility, placed on probation, or given a suspended sentence shall be tested for HIV and AIDS by the State Department of Health in conjunction with the State Department of Corrections. An offender who is confined for more than ninety days shall be tested for HIV and AIDS within thirty days before the date of the offender's release. The results of any positive HIV or AIDS tests shall be reported to the victim(s) of such offense and to the offender. Any positive HIV or AIDS test results shall also be reported to the victim's spouse and to the spouse of the person who is convicted of the sex offense, if either or both of them are married. The State Department of Health shall provide counseling and referral to appropriate treatment for victims of a sex offense where the convicted offender tests positive for HIV or AIDS. § 99-19-203.

(6) A juvenile adjudicated a delinquent for committing rape or another sex crime and who is placed in custody shall be tested for HIV

and AIDS. The results of a positive test shall be reported to the offender and the victim. The State Department of Health shall provide counseling and referral to appropriate treatment for victims if they so request. § 43-21-623.

Criminal Law (4)

MISCELLANEOUS

(1) The State Board of Health shall promulgate rules and regulations relating to the prevention of transmission of disease or infection during or relating to tattooing procedures, specifically including the transmission of HIV. § 73-61-1.

MISSOURI

All citations are to “Mo. Rev. Stat.” unless otherwise noted.

DEFINITIONS

(1) “Health care facilities,” “health care professional,” “HIV,” “HIV blood sampling,” “HIV infection,” “HIV testing,” and “invasive procedures” are defined at § 191.650.

(2) “Psychologically impacted property,” which includes real property in which an occupant is, or was at any time, infected with HIV or diagnosed with AIDS, is defined at § 442.600.

CRIMINAL LAW

(1) It is a class D felony for any individual knowingly infected with HIV to donate or attempt to donate blood, organs, sperm, or tissue, except for medical research. § 191.677.

(2) It is a class D felony for any individual knowingly infected with HIV to deliberately create a grave and unjustifiable risk of infecting another with HIV through sexual or other contact when the individual is aware of the risk. § 191.677.

(3) Any person who shall build, establish, continue, maintain, use, own, or lease any building, structure, or place used for the purpose of lewdness, assignation, or illegal purpose involving sexual or other contact through which transmission of HIV infection (see Definitions (1)) can occur is guilty of maintaining a nuisance. The structure in which such activities are conducted, the ground upon which the structure rests, the furniture, and other movable property used in conducting such activities are declared to be a nuisance and shall be enjoined and abated by a court order, which shall direct the effectual closing of the structure for one year. § 191.680.

Education (1)

Testing & Reporting (1), (2), (3), (5)

EDUCATION

(1) The Department of Health shall prepare public education and awareness programs for the general public, and the Department of Elementary and Secondary Education shall prepare educational programs for public schools, regarding means of transmission, prevention, and treatment of the HIV virus. The programs shall include: medically correct, age specific transmission and prevention programs for public

[MISSOURI]

school students beginning in the sixth grade, which stress moral responsibility and restraint with regard to sexual activity, as well as avoidance of drug abuse; risk education programs for specific populations at high risk of HIV infection (see Definitions (1)); educational programs on transmission and prevention of HIV infection in the workplace for use by employers; general public information programs and circulars containing factual information that will allow the public at large to assess its risk and develop individual judgment and behavior; and presentations for community service and school organizations describing the medical and psychosocial aspects of HIV infection, including information on how HIV is transmitted and how it can be prevented. None of the programs or printed information prepared or provided under this section shall promote sexual offenses, drug abuse, incest, or prostitution. § 191.668.

Testing & Reporting (8)

EMPLOYMENT

(1) It shall be an unlawful employment practice for an employer, on the basis of an individual's HIV infection (see Definitions (1)) status: to fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment; to limit, segregate, or classify employees or employment applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee; for a labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members or against any employer or employee, or to limit, segregate, or classify its membership, or in any way limit that individual's opportunities for employment or training; or for an employer or employment agency to print or circulate any statement, advertisement or publication, or to make any inquiry in connection with prospective employment, which expresses any discrimination. No employer, employment agency, labor organization, or joint labor management committee shall be required to grant preferential treatment to any group or individual on the basis of HIV infection status. §§ 191.665, 213.055.⁴⁷

Education (1)

47. *Rose City Oil Co. v. Missouri Comm'n on Human Rights*, 832 S.W.2d 314, 316-17 (Mo. App. Ct. 1992) (court found no discrimination based on handicap where convenience store employee who was falsely suspected of having AIDS was moved from sandwich making duties to cashier duties).

Social & Medical Services (3)
Testing & Reporting (2)

HOUSING

(1) It shall be an unlawful housing practice to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of a dwelling, or to deny or otherwise make unavailable a dwelling to any person because the person is infected with HIV. Other unlawful housing practices relating to discrimination against persons infected with HIV include: discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith; to make, print, or publish any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination on the basis of a person's HIV status; to represent to any person, because the person is infected with HIV, that any dwelling is not available for inspection, sale, or rental when such a dwelling is available; or to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry into the neighborhood of persons who are infected with HIV. §§ 191.665, 213.040.

(2) It shall be unlawful for any bank, building and loan association, insurance company, or other enterprise making commercial real estate loans, to deny a loan or other financial assistance to a person because that person is infected with HIV, or to discriminate against the person with relation to the terms of a loan or other financial assistance because the person is infected with HIV. §§ 191.665, 213.045.

(3) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service organization or facility relating to the business of selling or renting dwellings because the person is infected with HIV. §§ 191.665, 213.050.

(4) The fact that a parcel of real property, or any building or structure thereon, may be psychologically impacted (see Definitions (2)), or may be in close proximity to psychologically impacted real property, shall not be a material or substantial fact that is required to be disclosed in a sale, exchange, or other transfer of real estate. No cause of action shall arise, nor may any action be brought against any real estate agent or broker for failure to disclose to a buyer or other transferee of real estate that the transferred real property was psychologically impacted. § 442.600.

[MISSOURI]

Miscellaneous (2)

INSURANCE

(1) Upon renewal of any individual or group insurance policy, no insurer, health services corporation (HSC), or health maintenance organization (HMO) shall deny or alter coverage to any previously covered individual who has been diagnosed as having HIV during the previous policy or contract period only because of such diagnosis, or exclude coverage for treatment of HIV. The Director of the Department of Insurance shall establish standards for the use of HIV testing by insurers, HSCs, and HMOs. Only certified laboratories shall be authorized to perform HIV testing for an insurer, HSC, or HMO. The results of HIV testing of an applicant for insurance coverage shall not be disclosed by an insurer, HSC, or HMO, except as specifically authorized by such applicant in writing. Such results shall, however, be disclosed to a physician designated by the subject of the test. If there is no designated physician, the insurer, HSC, or HMO shall disclose the identity of individuals residing in Missouri who have a confirmed positive HIV test result to the Department of Health. Such disclosure shall be in a manner that ensures confidentiality. § 191.671.

Housing (2)

RESEARCH

(1) The identity of any person participating in a research project approved by an institutional review board shall not be reported to the Department of Health by the physician conducting the research project. § 191.656.

Criminal Law (1)

SOCIAL & MEDICAL SERVICES

(1) Any health care professional who, after disclosure of HIV infection has been made by a patient, discriminates against the patient on the basis of that HIV infection or who, prior to such disclosure, makes HIV testing a condition of treatment shall be subject to administrative disciplinary action for violation of a professional trust or confidence or the commission of an act of unprofessional conduct. § 191.699.

(2) A licensed health care facility (see Definitions (1)) that treats a patient infected with HIV shall notify the funeral establishment personnel, coroner, or medical examiner of the disease prior to the

removal of the patient from the health care facility after the death of such patient. Notification shall be conducted in a manner that protects the confidentiality of the deceased patient. § 191.703.

(3) All health care professionals (see Definitions (1)) and health care facilities shall adhere to universal precautions, as defined by the Centers for Disease Control (CDC), including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, to minimize the risk of transmission of HIV to patients. Health care professionals and health care facilities shall comply with current guidelines, established by the CDC, for disinfection and sterilization of reusable devices used in invasive procedures (see Definitions (1)). Health care professionals who have exudative lesions or weeping dermatitis of the hands, forearms, or other locations that may contact patients shall refrain from performing all invasive procedures and from handling patient-care equipment and devices used in performing invasive procedures until the condition resolves. As a condition for renewal of a certificate of registration or authority, permit, or license, all health care facilities shall provide satisfactory evidence that periodic training in infection control procedures is provided to all personnel who perform patient care services. All health care professionals who perform invasive procedures shall receive training appropriate for their specialty on infection control procedures relevant to HIV, including universal precautions and prevention of percutaneous injuries. The Department of Health shall develop regulations for such training. § 191.694.

(4) All emergency response employees are required to respond to and treat any patient regardless of HIV infection. § 192.808.

Criminal Law (1)

Education (1)

Insurance (1)

Testing & Reporting (2), (3), (4), (10)

Miscellaneous (1), (3)

TESTING & REPORTING

(1) If a person who is convicted of rape, sodomy, or incest is determined to be infected with HIV based on testing conducted upon the delivery of the person to the Department of Corrections, the Department of Health (Department) shall pay for the cost of HIV testing (see Definitions (1)) for victims of such crimes. The testing shall be limited to not more than two ELISA tests per year, and the costs of the tests shall

not be paid by the Department of Health for more than five years after the date the crime was committed. § 191.226.⁴⁸

(2) No person shall perform or conduct HIV testing except physicians, hospitals, and those persons authorized by the Department. The Department shall authorize only those persons who provide suitable verification to the Department that such testing will be performed in accordance with departmental regulations governing the types of tests performed and the manner in which they are administered. The Department may monitor the continued compliance of such persons with departmental regulations. All physicians, hospitals, and other persons authorized to conduct HIV testing shall provide consultation with the subject prior to taking a blood sample for testing and during the reporting of the test results to the test subject and shall report the identity of any individual confirmed to be infected with HIV to the Department. § 191.653. All information and records held or maintained by any agency, department, or political subdivision of the state concerning an individual's HIV infection status or the results of any individual's HIV testing shall be strictly confidential and shall only be disclosed to public employees within agencies, departments or political subdivisions who need to know in order to perform their public duties; to persons other than public employees who are entrusted with the regular care of those under the care and custody of a state agency, or as otherwise authorized by law. Unless the person acted in bad faith or with conscious disregard, no person shall be liable for violating any duty or right of confidentiality established by law for disclosing the results of an individual's HIV testing: to the Department; to health care personnel working directly with the infected individual who have a reasonable need to know the results of the testing for the purpose of providing direct patient health care; pursuant to written authorization of the subject of the test result; to the test subject or spouse of the test subject; to the parent or legal guardian of a minor test subject; to the victim of a sexual offense; or to employees of the state licensing board in the execution of their disciplinary duties. No person to whom the results of an individual's HIV testing have been disclosed shall further disclose the results. When the results of HIV testing are included in the medical record of the test subject, the inclusion is not to be construed as a disclosure so long as the medical record is afforded the

48. State *ex rel.* Callahan v. Kinder, 879 S.W.2d 677 (Mo. App. Ct. 1994) (court prohibited implementation of local rule requiring corrections facility to produce prisoner medical records as they relate to HIV and AIDS to the court for in camera inspection prior to any court appearance by the prisoner).

same confidentiality as other medical records. All communications between the subject of an HIV test and a physician, hospital, or other person authorized to perform HIV testing shall be privileged communications. Any person who tests positive for HIV shall notify any health care professional (see Definitions (1)) from whom such person receives health care services that they are infected with HIV. This notification shall be made prior to receiving services from the health care professional. Any person aggrieved by a violation of this section may bring a civil action for damages. § 191.656.

(3) All individuals who are delivered to the Department of Corrections and all individuals who are released or discharged from any correctional facility shall undergo HIV testing without the right of refusal before that person is released or discharged. In addition, the Department of Corrections may perform or conduct HIV testing on all individuals required to undergo annual or biannual physical examinations by the Department of Corrections at the time of such examinations. The Department of Corrections shall not perform HIV testing on an individual delivered to the Department of Corrections if similar HIV testing has been performed on the individual subsequent to trial or if the Department of Corrections is able to obtain the results of the prior HIV test. The Department of Corrections shall inform the victim of any sexual offense involving sexual intercourse of any confirmed positive HIV test result of the offender. § 191.659.

(4) The Department of Mental Health may perform HIV testing or sampling without the right of refusal on any individual who is under the care and custody of the Department of Mental Health or participating in a methadone treatment program and who has refused such testing whenever there are reasonable grounds to believe that the individual is infected with HIV and is a reasonable health threat to others. The Department of Mental Health shall not report to the Department the identity of any individual tested under its authority who tests positive for HIV if such reporting is prohibited by federal law or regulation. § 191.662.

(5) Any person who is convicted or who pleads guilty or nolo contendere to any sexual offense, or any juvenile who is adjudicated for an offense which would have been a sexual offense if committed by an adult, if such offense includes a sexual act as an element of the offense, shall be ordered by the court to undergo HIV testing prior to incarceration without the right of refusal. Costs of the testing shall be charged to the defendant as costs in the criminal proceeding, which will be covered by a

minimum bond amount posted by the defendant prior to the defendant's pre-trial release. The administrator of the jail or correctional facility in which the defendant is confined shall have access to the results of the HIV testing of the defendant. § 191.663.

(6) The Department of Health may seek, in its own name, a court order directing an individual to undergo HIV testing without the right of refusal after reasonable efforts have been made by the Department to obtain informed consent to the testing. The court shall grant such order whenever there are reasonable grounds to believe that such individual is infected with HIV and there is clear and convincing evidence that, if infected, the individual poses a serious and present health threat to others. The record of such a suit shall be closed to the public and, at the request of the individual, any hearing shall be held in camera. § 191.674.

(7) The Department shall designate one HIV testing site in the St. Louis area, one in the Kansas City area, and one in the Springfield area where those persons required to undergo HIV testing without the right of refusal may be tested anonymously. All physicians, hospitals, or other persons authorized by the Department who perform HIV testing may refuse to test an individual requesting anonymity and may refer such person to the designated HIV testing sites. A coded system that does not link individual identity with the request or result shall be used to report the results of such testing to the Department. All designated HIV testing sites shall be required to initiate contact notification when submitting test results to individuals who request anonymous testing and who test positive for HIV infection. § 191.686.

(8) Only after a school has adopted a policy that is consistent with recommendations of the Centers for Disease Control (CDC) on school children who test positive for HIV shall the Department and the parent or guardian of a child infected with HIV notify the superintendent of the appropriate school district of the identity of such child. The superintendent or chief administrative officer may disclose the identity of the infected child to those persons who are designated by the school district to determine the fitness of an individual to attend school and to those who have a reasonable need to know the identity of the child in order to provide proper health care. § 191.689.

(9) The Department may promulgate rules providing for mandatory premarital HIV testing if the CDC so indicates. § 191.692.

(10) Although the current assessment by the CDC of the risk of transmission of HIV by infected health care professionals does not

justify mandatory testing, health care professionals who perform invasive procedures are advised to know their HIV status. The Department shall establish and oversee a voluntary evaluation process for health care professionals infected with HIV who perform invasive procedures. This evaluation process may be assessed directly by an infected health care professional or by the director of a health care facility (see Definitions (1)) with the consent of the infected health care professional and after consultation with the health care professional's private physician. The confidential and individualized evaluation shall be conducted by an expert review panel appointed by the Department. Each panel shall include: the health care professional's private physician; an infectious disease specialist with expertise in the epidemiology of HIV transmission who is not involved in the care of the health care professional; a health care professional with expertise in the procedures performed by the infected health care professional; and a state or local public health official. The Department shall develop uniform evaluation criteria which shall be used in determining whether, and under what circumstances, any restrictions or limitations should be placed on an individual health care professional's medical practice. The individualized evaluation and the recommendations of the panel shall be based on the premise that HIV alone does not justify limiting the health care professional's duties. Information obtained during the evaluation process shall be confidential and shall only be disclosed to the health care facilities where the health care professional provides patient care. The Department shall, from time to time, review established standards for preventing the transmission of HIV from health care professionals to patients, modify existing standards, and require additional minimum standards, as appropriate, consistent with current medical knowledge and revised or updated guidelines from the CDC. The Department may exercise its general authority to intervene in instances where there is reason to believe that a health care professional is practicing in a manner that creates a grave and unjustifiable risk of injury to others. § 191.700.

Insurance (1)

Research (1)

Social & Medical Services (1)

MISCELLANEOUS

(1) Owners of motor vehicles who are physically disabled, including persons with AIDS, and who have disabilities limiting their

[MISSOURI]

ability to walk, as determined by a physician, may obtain disabled license plates, if they are residents of Missouri. § 301.142.

(2) All persons within the jurisdiction of the State of Missouri are free and equal and shall be entitled to the full and equal use and enjoyment of any place of public accommodation without discrimination or segregation on the grounds of HIV infection (see Definitions (1)). It is an unlawful discriminatory practice for any person to refuse, withhold from, or deny any other person any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, or to segregate or discriminate against any person in the use thereof, on the grounds of HIV infection. The provisions of this section shall not apply to a private club, a place of accommodation owned by or operated on behalf of a religious corporation, association, or society, or other private establishments, unless the facilities of such establishments are made available to customers or patrons of a place of public accommodation. §§ 191.665, 213.065.

(3) The Department of Health shall regularly report to the appropriate committees of both houses of the General Assembly: the number of individuals with HIV for whom a health care plan has been developed; the nature and extent to which the Department has utilized judicial proceedings in a manner that does not identify any individual subject to such proceedings; the form and extent of the handling of federal funds available to the Department of Health for disbursement; the form and extent of programs and efforts funded by state funds; and any other relevant information requested by the committees. § 191.683.

MONTANA

All citations are to “Mont. Code Ann.” unless otherwise noted.

DEFINITIONS

- (1) “AIDS,” “HIV,” “contact,” “post-test” and “pretest” counseling, “release of test results,” and “written informed consent” are defined at § 50-16-1003.
- (2) “Direct-entry midwife” is defined at § 37-27-103(4).
- (3) “Emergency service provider” is defined at § 50-16-701(4).
- (4) “Infectious diseases” include HIV. § 50-16-70.2.
- (5) “Sexually transmitted diseases” specifically includes HIV. § 50-18-101.

CRIMINAL LAW

- (1) Deviate sexual conduct includes homosexuality and bestiality. The fact that a person seeks testing or receives treatment for HIV may not be used as a basis for prosecution for “deviate sexual conduct” nor is it admissible in evidence in such a prosecution. § 45-5-505.
- (2) A knowing or purposeful violation of the provision relating to HIV testing, counseling, and the need for informed consent (see Testing & Reporting (3) and (4)) is a misdemeanor. § 50-16-1007.
- (3) A knowing and purposeful violation of the provision relating to the testing of donors of organs, tissue, or semen (see Testing & Reporting (5)) is a misdemeanor. § 50-16-1008.
- (4) A person who discloses or compels another to disclose confidential health care information relating to the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act (§§ 50-16-500 to 553) (see Testing & Reporting (6)), is guilty of a misdemeanor. § 50-16-1009.
- (5) It is unlawful to prescribe, sell, or recommend any drugs, medicine, or other substances for the cure or alleviation of a sexually transmitted disease (STD) (see Definitions (5)) except upon prescription signed by a person legally authorized to do so by the pharmacy laws of the state. Violation of this provision is a misdemeanor. §§ 50-18-110, 50-18-113.
- (6) No person shall issue a certificate of freedom from an STD. However, a physician or health officer may issue a statement of

[MONTANA]

freedom from diseases in an infectious state only if the statement is written in such a way that it can not be used to solicit sexual intercourse. Violation of this provision is a misdemeanor. §§ 50-18-111, 50-18-113.

(7) A person infected with an STD who knowingly exposes another person to infection is guilty of a misdemeanor. §§ 50-18-112, 50-18-113.

Testing & Reporting (4), (8), (9)

EDUCATION

(1) The Legislature recognizes that the epidemic of HIV infection, the causative agent of AIDS and related medical conditions, constitutes a serious danger to the public health and welfare. It is the intent of the Legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection, and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education. § 50-16-1002.

Social & Medical Services (5)

EMPLOYMENT

HOUSING

INSURANCE

Testing & Reporting (4)

RESEARCH

Testing & Reporting (4)

SOCIAL & MEDICAL SERVICES

(1) A direct-entry midwife (see Definitions (2)) shall recommend that patients seeking prenatal care secure, among other health care services, screening for HIV when appropriate. § 37-27-312.

(2) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition. § 50-5-105.

(3) The Montana Public Health Improvement Act is enacted to strengthen the ability to prevent health problems and to focus public health resources on the public health threats determined to be priorities in

communities and the state. This act provides for a “public health improvement task force” that shall prepare a public health improvement plan that addresses population based health activities, including efforts to prevent and control AIDS. §§ 50-1-402, 50-1-405.

(4) A minor may give consent to medical or surgical care or services given by a clinic, a hospital, or a physician licensed to practice medicine in the state if the minor is afflicted with a sexually transmitted disease (STD) (see Definitions (5)). Notification or disclosure to the spouse, parent, or legal guardian of a minor concerning treatment of a minor by a physician or other health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When a minor is found not to be afflicted with an STD, no information relating to the health care given shall be given to the parents or legal guardian if they have not already been informed, without the consent of the minor. §§ 41-1-402 to 403.

(5) The Department of Health and Environmental Sciences shall undertake to prevent, control, and prescribe treatments for STDs and may conduct education campaigns for this purpose. Rules adopted by the Department of Health and Environmental Sciences are binding on all persons and have the effect of law. §§ 50-18-102, 50-18-105.

Criminal Law (2)

Testing & Reporting (1), (2), (3), (4), (5), (6), (7), (8)

Miscellaneous (1)

TESTING & REPORTING

(1) If an emergency services provider (see Definitions (3)) has had an exposure that may allow infection by HIV, the patient’s physician shall seek consent for an HIV test. However, should written informed consent be unavailable, the health care facility shall perform the test without consent on previously collected blood or other bodily fluid and provide the test results and post-test counseling (see Definitions (1)) to the patient. § 50-16-702.

(2) If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease (STD) is acting in a way which might expose another to infection, the physician or the other person shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case. § 50-18-106.

(3) If found necessary to protect the public health, state and local health officers or their authorized deputies or agents shall: examine or have examined persons reasonably suspected of being infected with an STD; require infected persons to report for treatment to a reputable physician; isolate or quarantine persons who refuse examination or treatment; and investigate sources of infection. Only the state or local health officer may terminate isolation or quarantine. § 50-18-107.

(4) As part of the AIDS Prevention Act (§§ 50-16-1001 to 1013) an HIV-related test may be ordered only by a health care provider and only with the written informed consent (see Definitions (1)) of the test subject or legal guardian or of the next of kin if the subject is unconscious or incapacitated and the test is medically indicated. In the absence of a legal guardian, or if designated by the hospital records, a significant other may act on the subject's behalf and give written informed consent. Pretest counseling (see Definitions (1)) must be provided to the person executing consent. Health care providers shall inform inquiring persons of the availability of anonymous testing. In the written consent to testing, the subject shall designate a health care provider to receive the results and inform the subject in person and provide post-test counseling (see Definitions (1)). Where the test is pursuant to an application for insurance, the insurance company must make a negative test result available to the subject and must provide a positive result to the health care provider designated by the subject. A minor may consent, or refuse to consent, to an HIV-related test. This section does not apply to: human tissue donation; anonymous research situations; mentally incapacitated patients where significantly related agents are unavailable and where testing is medically indicated; public health investigation of sources of STDs and the examination and treatment of prisoners for STDs (see Testing & Reporting (9)), where pretest and post-test counseling must still be provided; and exposure of emergency or other health care personnel (see Testing & Reporting (1)). § 50-16-1007. A person aggrieved by a violation of this section has a civil remedy. § 50-16-1013.

(5) Donors of organs, semen, or tissue shall be tested, except under emergency circumstances. § 50-16-1008. A person aggrieved by a violation of this section has a civil remedy. § 50-16-1013.

(6) The identity of an HIV-related test subject and the test results are confidential, except as allowed under the Uniform Health Care Information Act (§§ 50-16-501 to 553). State health authorities may disclose the identity of an HIV-related test subject or the results only to

the extent allowed under the Government Health Care Information Act (§§ 50-16-601 to 611). The health care provider who informs a test subject of a positive result shall encourage direct notification of prior contacts and voluntary disclosure of prior contacts for blind state notification of potential HIV exposure. § 50-16-1009. A person aggrieved by a violation of this section has a civil remedy. § 50-16-1013.

(7) The Department of Health and Environmental Sciences shall adopt reasonable rules concerning reports to be submitted by any laboratory making blood tests for women seeking prenatal care. The department may use information derived from positive STD test reports for follow-up procedures required for the protection of public health. All positive tests for any STDs must be reported directly to the Department of Health and Environmental Sciences by the laboratory preparing the test. §§ 50-19-102, 50-19-105.

(8) Persons convicted of a sexual offense as enumerated in § 46-23-502 must, at the request of the victim (or parent or guardian), be administered testing to detect HIV or other STDs. Test results shall be released only to the convicted person and the victim. The victim (or parent or guardian) may request counseling regarding HIV and HIV testing and referral for appropriate health care and support services. § 46-18-256.

(9) Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for an STD. If infected, the person must be treated by health authorities. § 50-18-108.

Criminal Law (1), (2), (3), (4)

Social & Medical Services (4)

MISCELLANEOUS

(1) The Department of Health and Environmental Sciences shall cooperate with federal agencies and may accept, deposit, and disburse federal funds available for the prevention, treatment, and control of sexually transmitted diseases (see Definitions (5)). § 50-18-103.

NEBRASKA

All citations are to "Neb. Rev. Stat." unless otherwise noted.

DEFINITIONS

- (1) "Designated physician," "emergency medical services provider," and "significant exposure" are defined at § 71-507.
- (2) "Formulary" is defined at §§ 71-1 and 147.48.
- (3) "Infectious disease or condition" includes HIV. §§ 71-507, 71-514.02.
- (4) "Medical literature" is defined at § 44-788.
- (5) "Provider agency" is defined at §§ 71-507 and 71-514.02.
- (6) "Sexually transmitted diseases" is defined at § 71-502.01.
- (7) "Significant exposure to blood or other body fluid" is defined at § 71-514.02.

CRIMINAL LAW

- Social & Medical Services (5)
- Testing & Reporting (1), (5)

EDUCATION

- (1) A school district shall not deny admission to a student on the basis that the student is suffering from or is suspected of suffering from HIV infection or AIDS. § 20-168.
- (2) The Department of Health and Human Services shall contract with Native American health organizations or public health organizations that have a substantial Native American clientele to provide educational and public health services targeted to Native American populations. One of the services that may be considered by the department for such contracts is testing and education for AIDS and other sexually transmitted diseases. § 71-7617.
 - Employment (2)
 - Social & Medical Services (2)

EMPLOYMENT

- (1) An employer shall not refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment on the basis that the individual is suffering or is suspected of suffering from HIV infection or AIDS. § 20-168.

[NEBRASKA]

(2) Actions otherwise prohibited as employment or educational discrimination pursuant to § 20-168 shall not constitute a violation if the individual suffering from HIV infection or AIDS poses a direct threat to anyone's health or safety or is unable to perform the duties of a current or prospective job. § 20-169.

(3) Health care workers who are infected with HIV and provide direct patient care shall seek counsel from an expert review panel and be advised under what circumstances, if any, they may continue to practice. Failure to comply with the recommendations of the panel shall be considered unprofessional conduct. § 71-534. Factors to be considered by the panel include, but are not limited to: whether the individual's practice includes exposure-prone invasive procedures; the type of procedures performed; the infection control technique; the mental and physical condition of the health care worker; and the worksites of the health care worker. Recommendations must be in writing. § 71-535.

Social & Medical Services (4)

HOUSING

(1) A seller or lessor shall not refuse to sell or lease a dwelling to an individual on the basis that the individual, a member of the individual's family, or a person who will be residing with the individual is suffering or is suspected of suffering from HIV infection or AIDS. § 20-168.

Miscellaneous (2)

INSURANCE

(1) Any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for deliver, or renewed in this state and any medical expense-incurred policy, except policies that provide coverage for a specified disease or other limited-benefit coverage, and any self-funded employee benefit plan which provides reimbursement for prescription drugs approved by the Federal Food and Drug Administration (FDA) for treatment of HIV or AIDS shall not exclude coverage of any drug or combination of drugs on the basis that the drug or combination of drugs has not been approved by the FDA for the treatment of HIV or AIDS in the US Pharmacopoeia-Drug Information and is approved for sale by the FDA or the drug or combination of drugs is recognized for treatment of HIV or AIDS in medical literature and is approved for sale by the FDA. Any coverage of a drug or combination of drugs shall include medically necessary services associated with the

[NEBRASKA]

administration of the drug if such services are covered by the insurance policy, contract, or plan. Coverage is not required for any experimental or investigational drug not approved by the FDA. This section applies to policies, plans, or contracts for insurance delivered, issued for delivery, or renewed in this state after July 15, 1998. § 44-788.

Testing & Reporting (5)

RESEARCH

Social & Medical Services (2)

SOCIAL & MEDICAL SERVICES

(1) The Legislature authorizes a program of services to protect the public health from AIDS. Persons with AIDS and its related diseases shall receive appropriate and humane care. All members of the general public shall have accurate and complete information concerning the characteristics of the disease and avoidance of infection. The public shall be motivated to protect themselves and others against the spread of the disease. § 71-501.01.

(2) The Department of Health (Department) may establish and administer a statewide AIDS program for the purpose of providing education, prevention, detection, and counseling to protect the public health. In order to implement the program, the Department may do the following: apply for, receive, and administer federal and other public and private funds; contract for services, equipment, and property; provide education and training regarding AIDS to the general public and to health care providers; provide resource referrals for medical care and social services to persons affected by AIDS; contract or provide for voluntary, anonymous, or confidential screening, testing, and counseling services; cooperate with the Centers for Disease Control and Prevention for the purposes of research and investigation on AIDS; offer cultural services for persons identified as HIV positive, including, but not limited to, post-test counseling, partner notification, case management, behavior modification, laboratory quantification of lymphocyte subsets, immunization, tuberculosis testing, prophylactic treatment, and referral for other social and medical services. § 71-501.02.

(3) The Department shall adopt and promulgate such rules and regulations as are necessary to control and suppress sexually transmitted diseases (STDs) (see Definitions (6)). § 71-502.02.

(4) The Director of Health shall approve a formulary (see Definitions (2)) to be used by public health clinics operating with a drug

dispensing permit. The formulary may include drugs and devices to treat STDs. § 71-1, 147.48. The formulary advisory committee shall consist of eight members, two of which shall be employees of the Department with knowledge of and interest in reproductive health and STDs. § 71-1,147.59.

(5) The Director of Health and Human Services, the Director of Regulation and Licensure, or local director of health, if a physician, an agent of a director of health, or any physician with the consent of any patient shall make a diagnostic examination for STDs and prescribe for and treat such person for STDs including prophylactic treatment for exposure to STDs whenever such patient is suspected of having an STD or contact with anyone having an STD. All such examinations and treatment may be performed without the consent of or notification to a parent, guardian, or any other person having custody of such person. In any such case, the Director of Health and Human Services or local director of health, if a physician, an agent of a director of health, or any physician shall incur no civil or criminal liability by reason of an adverse reaction to medication administered if reasonable care is taken to elicit from a person under twenty years of age a history of sensitivity or previous adverse reaction to medication. Parents shall be liable for expenses of treatment to minors under their custody. In the event such person is infected with an STD, the State or local director of health may cause an interview of the person by an STD investigator to secure the names of sexual contacts so that appropriate investigation can be made in an effort to locate and eliminate sources of infection. § 71-504.

Employment (3)

Testing & Reporting (1), (2), (3), (4), (5)

TESTING & REPORTING

(1) When a person has been convicted of sexual assault, sexual assault of a child, or any other offense under Nebraska law where sexual contact or sexual penetration is an element of the offense, the judge shall, at the request of the victim, order the convicted person to submit to an HIV test as part of the sentence if the circumstances of the case demonstrate a possibility of HIV transmission. The test shall be conducted under the jurisdiction of the Department of Correctional Services, which shall make the test results available only to the victim, the parents or guardians of the victim if the victim is a minor or is mentally incompetent, the court issuing the order for testing, and the Department of Health. If the test indicates the presence of HIV, the Department of

[NEBRASKA]

Correctional Services shall provide counseling and appropriate health care and support services. The Department of Correctional Services shall provide the Department of Health with the test result and any information regarding the victim's request. The Department of Health shall notify the person who made the request and shall provide testing, counseling, and referral to appropriate health care and support services. The cost of the testing shall be paid for by the convicted person tested unless the court has determined that the convicted person is indigent. Filing a notice of appeal shall not automatically stay an order that a convicted person submit to an HIV test. § 29-2290.

(2) Whenever any statute of the State, ordinance or resolution of a municipality or political subdivision, or rule or regulation of an administrative agency requires medical practitioners or other persons to report or notify of cases of communicable diseases including sexually transmitted diseases (see Definitions (6)), such reports or notifications and the resulting investigations shall be confidential except as provided in this section. Such reports or notifications shall not be subject to subpoena and shall be privileged and inadmissible as evidence in any legal proceeding. To protect the public health, such reports may be disclosed by the Department of Health and Human Services and the official local health department to the Centers for Disease Control and Prevention in such a manner as to ensure that the identity of the individual cannot be ascertained. In order to further protect the public health, the information in the report or notification, including sufficient information and identification to ensure that the necessary investigation is made, may be disclosed to official state and local health departments of other states, territories, and the District of Columbia. The appropriate board, health department, agency, or official may: publish analyses of such reports and information for scientific or public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; discuss the report or notification with the attending physician; and make any necessary investigations. Any medical practitioner, official health department, or other person making such reports or notifications shall be immune from suit for slander, libel, or breach of privileged communication based on any statements contained in such reports or notifications. § 71-503.01.

(3) If an emergency services provider (see Definitions (1)) has a significant exposure (see Definitions (1)) from a patient that, in the opinion of the designated physician (see Definitions (1)), could involve the transmission of HIV, the patient's attending physician shall initiate

diagnostic blood testing of the patient. If the patient or patient's representative refuses to give consent for such testing and a sample of the patient's blood is available, the sample shall be tested for HIV. If the patient or patient's representative refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency medical services provider. The emergency medical services provider may petition the district court for an order to test a patient. If a patient dies without the opportunity to consent to blood testing, HIV testing shall be conducted. § 71-510.

(4) If a health care provider has a significant exposure to the blood or body fluid (see Definitions (7)) of a patient as determined and documented by a designated representative of the provider agency (see Definitions (5)), the patient shall be informed of the patient's right to consent to the diagnostic testing for the presence of an infectious disease or condition (see Definitions (3)). The patient shall be informed that any refusal of consent to testing shall be communicated to the health care provider. If the patient is unconscious or incapable of signing an informed consent form, consent may be obtained from the patient's next of kin or legal guardian. If the patient's next of kin or legal guardian refuses to grant consent and a sample of the patient's blood or other body fluids is available, the sample shall be tested. The patient's next of kin or legal guardian shall then be notified of the testing and informed of the purpose of the test and the result. If the HIV test result is positive, the health care provider or provider agency shall refer the patient for post-test counseling. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood or other body fluid is not available, the health care provider or provider agency may petition the district court for an order to test. If a patient dies without the opportunity to consent to blood testing, testing for the presence of an infectious disease or condition shall be conducted. Routine drawing of blood or other body fluid for the purpose of testing for infectious diseases or conditions without obtaining consent is prohibited. § 71-514.03.

(5) No person may be tested for the presence of HIV unless he or she has given written informed consent to the testing. A parent or guardian of a minor child or a judicially appointed guardian may give such consent. A person seeking an HIV test has the right to remain anonymous. A health care provider shall confidentially refer such person to a site which provides anonymous testing. Consent is not required for HIV testing by a health care provider: of a human body part pursuant to

the Uniform Anatomical Gift Act when such testing is necessary to assure medical acceptability of such gift; for insurance or underwriting purposes with the consent and written authorization of the test subject; of a person in the care of the Department of Correctional Services or a person who has committed a sexual offense; or in cases of significant exposure (see Testing & Reporting (3)). § 71-531.

(6) The Department of Health and Human Services and Human Services Regulation and Licensure shall adopt and promulgate rules and regulations which make HIV infection reportable in the same manner as communicable diseases. § 71-532.

Social & Medical Services (2)

Miscellaneous (1)

MISCELLANEOUS

(1) No person shall be discriminated against on the basis of having taken an HIV antibody test. Each agency of the state shall examine policies and practices that may intentionally or unintentionally result in discrimination against a person who has taken an HIV test or has been diagnosed with AIDS to ascertain the extent and types of discrimination that may exist. § 20-167.

(2) A place of public accommodation shall not deny equal access to such public accommodation on the basis that an individual is suffering or is suspected of suffering from HIV infection or AIDS. § 20-168.

NEVADA

All cites are to "Nev. Rev. Stat. Ann." unless otherwise noted.

DEFINITIONS

- (1) "Incident" is defined at § 209.385.
- (2) "Sexual penetration" is defined at § 441A.320.

CRIMINAL LAW

(1) It is a felony for a person who has tested HIV positive to knowingly or willfully act in a manner intended or likely to transmit the disease to another. It is an affirmative defense that the exposed person knew the defendant was HIV positive and that the conduct could result in exposure and knowingly consented to such conduct. § 201.205.

(2) Engaging in prostitution or solicitation after testing HIV positive is a felony. § 201.358.

Education (2), (3)

Social & Medical Services (2)

Testing & Reporting (1), (3), (4), (5), (6)

Miscellaneous (1)

EDUCATION

(1) Sex education shall include factual instruction concerning AIDS, sexually transmitted diseases and sexual responsibility. Parents or guardians must be notified of the course in writing, have course materials made available to them for inspection, and return a signed consent form in order for the pupil to attend. § 389.065.

(2) The director of a correctional facility shall establish an HIV education program for inmates and department employees. § 209.385.

(3) Members of the Board of Parole Commissions may choose to attend courses on AIDS as part of the sixteen hours of required annual coursework. § 213.108.

(4) A charter school must provide instruction on AIDS and the human reproductive system, related to communicable diseases and sexual responsibility. § 386.550

Testing & Reporting (1), (5)

EMPLOYMENT

Miscellaneous (1)

[NEVADA]

HOUSING

(1) A seller of real property, the seller's agent, and the buyer's agent are not liable for damages for failure to disclose certain facts concerning property, including that it was occupied by someone exposed to HIV or suffering from AIDS. § 40.770.

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) The Health Division may establish such outpatient care facilities as it deems necessary for the care of persons with AIDS or HIV-related disease and provide those facilities with financial or other assistance. § 441A.330.

(2) A person diagnosed as having AIDS who fails to comply with a written Health Authority order or who engages in behavior which may spread the disease is, in addition to other penalties, subject to confinement by court order. § 441A.300.

(3) Consent of the parent or legal guardian of a minor is not necessary in order to authorize examination and treatment of a minor for a sexually transmitted disease (STD). § 129.060. The Health Authority may require the minor to undergo examination and treatment. § 441A.310.

(4) Wherever possible, the Health Division shall control, prevent and treat STDs. § 441A.240. The Health Division may establish and provide financial or other support to clinics that it believes is reasonably necessary for the prevention, control, treatment, or cure of STDs. § 441A.250.

(5) A physician, clinic or dispensary treating a person in the state who has an STD and is unable to afford approved treatment for the disease may receive medical supplies or financial assistance from the Health Division. A physician, clinic or dispensary accepting supplies or aid shall comply with all prescribed conditions. § 441A.260.

(6) Physicians, clinics and dispensaries providing treatment to people with STDs shall instruct them on prevention of the spread of the disease and in the necessity of systematic and prolonged treatment. § 441A.270.

(7) A physician shall encourage and attempt to persuade a person diagnosed with an STD to submit to treatment. If the person does not submit, the physician shall notify the Health Authority, which shall take appropriate action to ensure that the person receives adequate treatment. § 441A.280.

(8) A person who has an STD shall, upon request, inform the Health Authority of the source of possible risk of infection. § 441A.290.
Testing & Reporting (2,) (3), (5)

TESTING & REPORTING

(1) When the Health Authority knows of the presence of a communicable disease within a school, child care, medical, or correctional facility, it shall notify the director of the facility and direct any action necessary to prevent infection. Conversely, the director of a facility with such knowledge or suspicion, including a superintendent of a school who knows of HIV in the school, shall notify the Health Authority, which shall investigate and direct any action needed to prevent further infection. A parent or guardian shall not knowingly permit a child who has a communicable disease to attend school or child care if health regulation requires exclusion. § 441A.190.

(2) All personal information of a reported or suspected case of communicable disease is confidential medical information and must not be disclosed, even pursuant to a subpoena, search warrant, or discovery, except as follows: for anonymous statistical purposes; in order to report abuse or neglect; to relevant emergency personnel; where there is a medical need to know; with written consent (see Testing & Reporting (3)); where an AIDS or an HIV-related diagnosis is disclosed to the Welfare Division for purposes of providing medical assistance; if otherwise specifically authorized by statute, for prosecution under the communicable disease chapter; or in a proceeding for an injunction pursuant to the communicable disease chapter. § 441A.220.

(3) A person arrested or a minor detained for commission of a crime in which sexual penetration (see Definitions (2)) is alleged shall be tested for HIV and other sexually transmitted diseases (STDs). The Health Authority shall disclose the test results to the victim or victim's parent or guardian and the arrested person or the arrested person's parent or guardian regardless of consent. If the sexual assault victim may have been exposed, the victim may request HIV or other STD testing, counseling, and referral to health care and other assistance. A convicted perpetrator shall pay the costs of the testing. § 441A.320.

(4) Persons arrested for prostitution or solicitation that is not in a licensed house of prostitution must submit to HIV testing and if convicted shall pay the cost of such testing. Notification and acknowledgment of the test result is prescribed. The court record shall show when a defendant received the result of the test. A bench warrant may issue to compel the presence of a defendant who attempts to avoid acknowledging notification. § 201.356.

(5) Offenders in custody of the Correctional Department shall submit to HIV testing as the Director of the Department of Corrections determines appropriate and shall receive counseling regarding HIV, both upon incarceration and following any incident (see Definitions (1)) involving the offender. The name of an offender who tests positive must be disclosed to the Director, the warden of the relevant facility, medical administrators, and any employee whose duties involve the offender or require contact with blood or bodily fluid. The offender will be segregated from HIV negative offenders if the offender engages in risky behavior (battery; same sex anal intercourse, fellatio or cunnilingus; sexual intercourse; or illegal intravenous drug use). § 209.385.

(6) Offenders released from prison shall submit to HIV testing. § 209.511.

Criminal Law (1), (2)

Miscellaneous (1)

MISCELLANEOUS

(1) The owner, operator, or agent of a house of prostitution who employs a prostitute after he or she knows or should know that the prostitute has tested HIV positive is liable for damages to a person exposed as a result of the employment. § 41.1397.

NEW HAMPSHIRE

All citations are to "N.H. Rev. Stat. Ann." unless otherwise noted.

DEFINITIONS

(1) "Antibody," "antigen," "exposure prone invasive procedure," "health care worker," "human immunodeficiency virus," and "serologic positive" are defined at § 141-F:2.

(2) "Bloodborne disease" and "critical exposure" are defined at § 281-A:2.

(3) "HIV" is defined at § 632-A:10-b.

(4) "Source individual" means any person whose blood, body fluids, tissue, or organs were specifically identified as the source of an exposure of an emergency response/public safety worker to an infectious disease. § 141-G:1.

CRIMINAL LAW

(1) It is a crime to violate the provisions regarding the obtaining of the informed consent of test subjects, certified reception of informed consent before testing, reporting of test results, and confidentiality of records pertaining to HIV testing (see Testing & Reporting (2), (3), (4), (5)). A natural person who violates this provision shall be guilty of a misdemeanor. Any other person who violates this provision shall be guilty of a felony. § 141-F:11.

Housing (1)

EDUCATION

(1) The Department of Public Health Services shall: provide information and guidance to the Department of Education for its development of courses and programs regarding HIV; develop training courses and materials on HIV and related issues for police, fire, and emergency medical services personnel, and assist in the development and implementation of such courses and materials; distribute informational materials on HIV to health care providers, health care institutions, local health and social service agencies, local units of government, and other public or private agencies and organizations; provide information to persons at high risk of acquiring HIV; provide assistance to government agencies, school districts, health care institutions, businesses, and industries to establish policies and practices for coping with HIV; disseminate information to the general public, using print and broadcast

[NEW HAMPSHIRE]

media, on HIV, its causes and effects, and on methods of prevention and control; conduct training sessions and workshops on HIV, upon request, for educators, physicians, and the staff and volunteers of hospitals and other licensed health care agencies; and provide an informational brochure relating to HIV to persons applying for a marriage license and make such a brochure available to town and city clerks for distribution. § 141-F:3.

(2) The State Board of Education shall develop and provide HIV-related educational material to all school boards and private and public elementary, secondary, and postsecondary educational and vocational training institutions for the delivery of appropriate courses and programs. The Board shall also evaluate AIDS information programs and course counseling activities at private and public secondary and postsecondary educational and vocational educational institutions. § 186:11.

EMPLOYMENT

(1) It shall not be required that health care workers (see Definitions (1)) be tested for HIV as a condition of employment or practice in a health facility. § 141-F:9-a.

Education (1)

Social & Medical Services (2)

Testing & Reporting (7)

HOUSING

(1) It shall be an unlawful discriminatory practice for any person who is an owner, lessee, sublessee, assignee, managing agent, or other person having the right to rent or lease a dwelling or commercial structure to evict a tenant solely on the grounds that the person has AIDS or is suspected of having AIDS. § 354-A:10.

INSURANCE

(1) Any person engaged in the business of insurance who performs an HIV test on an applicant for insurance must obtain the written informed consent of the applicant. Testing may only be performed by a laboratory certified by the Department of Public Health Services or, if outside the state, by a laboratory licensed by the U.S. Department of Health and Human Services. If an applicant tests positive, the person who performed the test may disclose the test result only to the

individual tested or a person authorized by the written consent of the individual tested to receive such test results. If the test results are positive or indeterminate and the individual tested has not given written consent authorizing a physician to receive the test results, such individual shall be urged, at the time the individual is informed of the positive or indeterminate test results, to contact the Department of Public Health Services for appropriate counseling. A person who requires an HIV test shall maintain all test results and records pertaining to test results as confidential and protected against inadvertent or unwarranted intrusion. Such test results obtained by subpoena or any other method of discovery shall not be released or made public outside the proceedings. The Commissioner of Insurance shall adopt rules relative to record keeping designed to maintain the confidentiality of an individual tested under this section. The Commissioner shall also determine who may have access to such records and the conditions of such access. § 417:4.

Testing & Reporting (7)

RESEARCH

Testing & Reporting (2)

SOCIAL & MEDICAL SERVICES

(1) The Department of Public Health Services (Department) shall, within the limits of appropriated funds, augment community efforts by providing, directly or by contract with local health or social service agencies, services relating to HIV. § 141-F:3.

(2) No health care worker (see Definitions (1)) who is knowingly infected with HIV shall perform or participate in the performance of any exposure prone invasive procedure (see Definitions (1)) unless the health care worker has filed a letter of application with the Director of the Department to engage in such procedures. Upon receipt of such letter of application, the Director shall, within thirty days, notify the licensing authority responsible for licensing the applicant and appoint an expert review panel to make a decision whether to approve the application, deny the application, or approve the application subject to specific conditions. Health care workers who submit letters of application under this section shall have consented to the release of their identity, medical records, and documents necessary to carry out the provisions of this section to the Department, to the expert review panel, to the relevant health care licensing authorities, and to relevant employers engaged in providing health care. A letter of application submitted in accordance

[NEW HAMPSHIRE]

with this section shall immediately stay the licensing board from exercising any jurisdiction over the applicant based on the infectious disease issues raised in the application until the licensing board receives notice of a review panel decision. Any decision made by the expert review panel shall be based upon an interview with the applicant and a review of medical records and similar relevant documents. Members of the expert review panel shall base their decision solely upon the risk of transmission of HIV from the applicant to patients during the course of exposure prone invasive procedures. The panel may interview the applicant, but no testimony shall be taken as such, and no formal evidentiary hearing shall be held before the panel. An applicant's failure to cooperate with an expert review panel request for information shall be a basis for the expert review panel to deny the application. The expert review panel shall approve or deny an application and may impose certain conditions limiting the type of exposure prone invasive procedures the health care worker may perform and the circumstances under which such procedures may be performed. The review panel may also require notification of previous patients who may have experienced exposure prone invasive procedures in which the health care worker participated while serologic positive (see Definitions (1)), notification of prospective patients prior to undergoing exposure prone invasive procedures, and notification of past and future employers engaged in the provision of health care. The review panel shall require notification of current employers engaged in the provision of health care when any conditions are imposed. Any decision made by the review panel to grant or deny an application, or to impose conditions, shall require a vote of at least three members of the expert review panel. § 141-F:9-b. A separate expert review panel shall be appointed by the Director of the Department for each letter of application submitted under § 141-F:9-b. Each panel shall include five persons, one from each of the following categories: the infected health care worker's personal physician or a physician designated by the health care worker; a licensed physician who has completed postgraduate training in infectious diseases; a health care worker with expertise in the procedures performed or assisted by the infected health care worker; an infection control professional such as a hospital epidemiologist; and the Director of the Department or a designee, who shall serve as chairperson of the panel. Expert review panel members shall be immune from liability for actions taken on applications submitted to the Director or any other matter before the expert review panel, except that they shall be subject to the penalties for violating any confidentiality

provisions (see Testing & Reporting (5)). No person involved in any proceeding under this subdivision shall disclose the identity of an infected health care worker, except as permitted (see Testing & Reporting (5)). All notes, records, proceedings, or other materials which identify the infected worker and are developed as a result of the applications to the expert review panel shall be confidential. § 141-F:9-c. The expert review panel shall make its decision on a letter of application within ninety days of the appointment of such panel by the Director of the Department. The panel shall immediately notify the appropriate state licensing authority of its decision. If the decision places restrictions or limitations on the health care worker's activities, the licensing authority shall promptly enter that restriction or limitation on the worker's license. The restriction shall take effect thirty days from the date of notice unless, prior to that date, the applicant requests a hearing on the proposed restrictions or limitations under the licensing authority's disciplinary hearing procedures. § 141-F:9-d.

(3) The Director of the Department may request or order the examination, isolation, quarantine, and treatment of any person reasonably suspected of having been exposed to or of exposing another person or persons to a sexually transmitted disease (STD). Any minor fourteen years of age or older may voluntarily submit to medical diagnosis and treatment for an STD, and a licensed physician may diagnose, treat, or prescribe for the treatment of an STD in a minor fourteen years of age or older without the knowledge or consent of the parent or legal guardian of such minor. § 141-C:18.

Education (1)

Insurance (1)

Testing & Reporting (2), (4), (5), (8)

TESTING & REPORTING

(1) The Department of Public Health Services (Department) shall provide laboratory testing services to detect the presence of HIV, which is included in the list of communicable diseases, in samples submitted by health care providers. § 141-F:3. The Director of the Department shall adopt rules relative to adding to the list of communicable diseases for which testing shall be available and establishing a fee schedule for such tests. The Director may waive such fees when it is in the best interest of the health of the public to do so. § 141-C:19.

(2) No physician, advanced registered nurse, employee of a health care facility, blood bank, blood center, or plasma center may give an HIV test without the written informed consent of the person being tested unless testing occurs in one of the following situations: any blood bank, blood center, plasma center, or agency which purchases or receives donated whole blood, blood plasma, or a blood product or derivative shall, prior to its distribution or use, test such blood for HIV; a physician or advanced registered nurse practitioner who procures, processes, distributes, or uses a donated human body part, tissue, or fluid may, without obtaining consent to the testing, test for HIV, in order to assure medical acceptability of the gift for the purpose intended; a health care facility engaged in medical research may subject body parts, fluids, or tissue to HIV testing if it is done in such a manner that the identity of the test subject is not known and may not be retrieved by the researcher; individuals convicted and confined to a correctional facility pursuant to a court order, or committed to New Hampshire Hospital, may be tested for HIV (see Definitions (3)) without first obtaining written consent, when the results of such tests are necessary for the placement and management of such individuals in the facility; a physician or a person authorized by the physician may, without obtaining consent to the testing, test for HIV when the person being tested is incapable of giving informed consent and when an HIV test is immediately necessary to protect the health of the person. § 141-F:5.

(3) The Department shall offer laboratory testing for the presence or absence of HIV antibodies or antigens (see Definitions (1)). Each sample for testing shall be submitted with a statement signed by a physician, or by a person authorized by a physician, attesting that the person has consented to the test. § 141-F:6.

(4) Test results of samples submitted for laboratory testing for HIV shall not be disclosed to any person or agency except the physician ordering the test or a person authorized by the physician and the Director of the Department. Test results shall be disclosed to the test subject by the physician or person authorized by the physician. The test subject shall be provided with appropriate counseling at the time of notification. If a person with a serologic positive (see Definitions (1)) test result is less than eighteen years of age or is mentally incapable of understanding the ramifications of a positive test result, the physician or person authorized by the physician may disclose the test result to a parent or legal guardian. In such cases, the parent or legal guardian shall be entitled to appropriate counseling. If a person with a positive HIV test result is confined to a

facility pursuant to a court order or committed to a mental health facility, the results of the test shall be disclosed to the medical director or chief medical officer of such facility by the physician or person authorized by the physician. The medical director or chief medical officer of the facility shall provide the administrator in charge of the facility with whatever medical data is necessary to properly assign, treat, or manage the affected individual. The administrator may disclose this information only to those individuals who require such information to properly assign, treat, or manage the affected individual. § 141-F:7.

(5) The identity of an HIV test subject shall not be disclosed, except as provided by statute (see Testing & Reporting (4)). All records and any other information pertaining to a person's HIV test shall be maintained as confidential and protected from inadvertent or unwarranted intrusion. Such information obtained by subpoena or any other method of discovery shall not be released or made public outside of such proceedings. The identity of an HIV test subject may be disclosed in response to a written request if the test subject has given written authorization for such disclosure. Such written request shall state the reasons for the request and shall contain only the identity of the infected person. A physician or other health care provider may disclose information pertaining to the identity and test results of an HIV test subject to other physicians and health care providers directly involved in the health care of the person when the disclosure of such information is necessary to protect the health of the person tested. The identity of an HIV test subject who is found to be infected may be disclosed to a blood bank, blood center, plasma center, or other agency which receives blood donations, provided that the information remains confidential and protected from inadvertent or unwarranted intrusion or disclosure. § 141-F:8.

(6) The Director of the Department or a designee of the Director shall conduct follow-up activities when reports of an HIV positive individual are provided. Such activities shall be conducted with due regard to the personal and property rights of the individual and shall be limited to discovering the potential source of infection and to identifying persons who may have been infected by such individual. The Director shall attempt to do contact referral and shall encourage the individual to notify any persons who may have been infected and urge such persons to undergo HIV testing. § 141-F:9.

(7) An employer or the employer's insurance carrier may furnish testing for the presence of a bloodborne disease (see Definitions

(2)) when a critical exposure (see Definitions (2)) that arises out of and in the course of employment occurs. Such testing shall be provided without prejudice as to the issue of the causal relationship of any subsequently diagnosed bloodborne disease to the employee's work and without prejudice to the compensability of the bloodborne disease as an occupational disease or accident injury. § 281-A:23.

(8) When a source individual (see Definitions (4)) is transported to a health care facility, the infection control officer shall receive and review a copy of the emergency response or public safety worker incident report form. If the transported source individual is diagnosed as having an infectious disease which could have been transmitted via the unprotected exposure, the infection control officer shall notify the appropriate medical referral consultant orally within forty-eight hours, and in writing within seventy-two hours of the determination. The Department shall determine the method by which the written notification of the incident report is conveyed to the medical referral consultant. When the source individual is transported to a health care facility, the testing performed on the transported source individual shall not be in addition to any testing which would be conducted during the care and treatment of the individual, unless additional tests are determined to be necessary by the infection control officer and the individual's attending physician because of the nature of the unprotected exposure, and the individual consents to the tests. Any drawing of blood and testing for HIV carried out under the above circumstances, any notifications of persons about such test results, and the confidentiality of such test results shall be in accordance with the provisions concerning HIV education, prevention, and control (see Testing & Reporting (4), (5), (6)). § 141-G:5.

Criminal Law (1)
Employment (1)
Insurance (1)
Social & Medical Services (2), (3)

MISCELLANEOUS

(1) Any person who purposely violates the provisions dealing with confidentiality (see Testing & Reporting (4) and (5)) and thereby discloses the identity of a person infected with HIV shall be liable to such person for actual damages, court costs, and attorney's fees, plus a civil penalty of up to \$5000 for such disclosure. § 141-F:10.

[NEW HAMPSHIRE]

NEW JERSEY

All citations are to "N.J. Stat. Ann." unless otherwise noted.

DEFINITIONS

(1) "AIDS" and "HIV infection" are defined at §§ 26:5C-5, 10:5-5, and 1995 N.J. Laws 174.

(2) With regards to the testing of patients at State psychiatric facilities, "AIDS" and "HIV infection" are defined at § 30:4-7.7.

(3) "HIV related illness," "HIV related test," "identifying information," and "informed consent" are defined at § 26:5C-5.

(4) "Handicapped" is defined at § 10:5-5 and includes suffering from AIDS or HIV infection.

CRIMINAL LAW

(1) A person is guilty of a crime of actual sexual penetration in the third degree who, knowing that he or she is infected with HIV or any other related virus identified as a probable causative agent of AIDS, commits an act of sexual penetration without the informed consent of the other person. § 2C:34-5.

Testing & Reporting (1), (2), (5), (7), (8)

Miscellaneous (3), (9)

EDUCATION

(1) The Commissioner of Health shall establish a program to educate the public, which shall include an information campaign to encourage persons who suspect exposure to AIDS to seek medical testing and counseling and a statewide telephone hotline to answer requests for information and referral. The Commissioner shall also establish a program to educate health care professionals and others who are required to have contact with people who have AIDS about the diagnosis and treatment of AIDS. § 26:5C-3.

(2) All employees of a State psychiatric hospital shall be trained to use universal precautions to avoid infection with any sexually transmitted disease. § 30:4-7.8.

Social & Medical (3), (4), (6)

Testing & Reporting (6)

Miscellaneous (2), (9)

EMPLOYMENT

HOUSING

Social & Medical Services (7)

INSURANCE

RESEARCH

Miscellaneous (2)

SOCIAL & MEDICAL SERVICES

(1) The Commissioner of the Department of Health (Department) shall establish departmental and local support programs to provide early detection, counseling, social services, and referrals for those who suspect exposure to AIDS. § 26:5C-3.

(2) The Department may provide appropriate laboratory services for the diagnosis of sexually transmitted diseases (STDs) and antibiotics and other appropriate drugs for the treatment and prevention of STDs. The Commissioner of Health may promulgate rules and regulations pertaining to payment for services and materials provided by the Department, including a schedule of fees for such services and materials, consistent with the promotion of public health and the prevention of disease within the state. § 26:4-47.

(3) The Legislature declares that it is imperative that programs be established for diagnosing and treating persons who have been exposed to AIDS, for referring AIDS victims and their families to sources of treatment and counseling, and for providing an educational program to health care professionals to heighten their awareness of the latest diagnostic procedures and treatments. The Legislature further declares that a task force be established to coordinate the medical and social services needed by AIDS victims. § 26:5C-2.

(4) The University of Medicine and Dentistry of New Jersey shall, in coordination with the Department of Health, serve as a resource center and may offer diagnostic procedures, medical treatment, and counseling, as well as any other services that may be necessary to assist AIDS victims and their families. § 26:5C-4.

(5) The Legislature finds that due to the severity of health and social problems such as AIDS, the Division of Youth and Family Services in the Department of Human Services often works with families

[NEW JERSEY]

over a period of many years, and the children of these families often spend a majority of their young lives in foster care. Research has shown that children who are placed in a great number of different foster homes develop emotional and psychological problems. Therefore, the obligation of the state to recognize and protect the rights of children in the child welfare system should be fulfilled in the context of a clear and consistent policy which limits the repeated placement of children in foster care and promotes the eventual placement of these children in stable and permanent homes. § 30:4C-53.1.

(6) A physician who dispenses drugs or medicines in a hospital emergency room, a student health center, or a publicly subsidized community health center, family planning clinic, or prenatal clinic may dispense more than a seven-day supply of drugs or medicines to a patient when the physician is dispensing drugs pursuant to an AIDS protocol. The general requirement that drugs or medicines be dispensed at or below the cost of such drugs to the physician, plus an administrative cost of ten percent or less, shall not apply when such drugs are dispensed pursuant to an AIDS protocol. § 45:9-22.11.

(7) In response to findings that many adults living with HIV and AIDS in New Jersey are currently homeless or at risk of homelessness, the Scattered Site AIDS Permanent Housing Program in the New Jersey Housing and Mortgage Finance Agency will provide housing opportunities for persons with HIV or AIDS and their families. The agency shall administer the program in cooperation with the New Jersey Department of Health, the New Jersey Department of Human Services, the AFL-CIO Housing Investment Trust, and the U.S. Department of Housing and Urban Development. Within the agency, there is established a "Supportive Housing Fund," which shall be a non-lapsing, revolving fund, and which shall be the repository for funds appropriated or otherwise made available for these purposes, and any interest earned thereon. The fund shall be administered by the Agency, in accordance with its authority to manage funds for housing programs. There is also established within the New Jersey Housing and Mortgage Agency a statewide steering committee for the Scattered Site AIDS Permanent Housing Program. The committee shall be comprised of representatives of: the Agency, the Department of Health, the Department of Human Services, and the project sponsors. The steering committee shall address issues that affect all projects in the program. §§ 55:14L-1 to 55:14-5.

(8) There is established the Drug Utilization Review Board in the Department of Human Services to advise the Department on the implementation of a drug utilization review program. The board shall establish an AIDS/HIV Drug Utilization Review Committee to address the specific prescribing needs of persons with AIDS/HIV, in addition to other committees. It shall be the responsibility of each committee to evaluate the specific prescribing needs of its beneficiary population, and to submit recommendations to the board in regard thereto. The Board shall consist of at least two persons who specialize in AIDS/HIV care, one of who specializes in AIDS/HIV care. § 30:4D-17.17a.

Education (1)

Testing & Reporting (2), (4), (5), (6), (9)

Miscellaneous (1), (2), (10)

TESTING & REPORTING

(1) A court shall order a person convicted of, indicted, or formally charged with a criminal offense, a disorderly persons offense or a petty disorderly persons offense, or a juvenile charged with delinquency or adjudicated delinquent for an act which, if committed by an adult would constitute a crime, a disorderly persons offense or a petty disorderly offense, to submit to testing for AIDS, HIV, or any other related virus identified as a probative causative agent of AIDS if a law enforcement officer, the victim, or other person suffered a prick from a hypodermic needle in the course of the commission of the act, provided there is probable cause to believe that the defendant or juvenile is an intravenous user of controlled dangerous substances or a law enforcement officer, the victim or other person in the commission of the act, had contact with the defendant or juvenile which involved or was likely to involve the transmission of bodily fluids. The court shall only issue the order upon the request of the law enforcement officer, victim of the offense or other affected person made at the time of indictment, charge or conviction. The defendant or juvenile shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary. Court ordered tests shall be performed as soon as practicable. The results of such tests are confidential and shall only be disclosed as authorized by law or court order. However, the results shall be reported to the offender, the appropriate Office of Victim-Witness Advocacy if the victim of the offense is tested, and the affected law enforcement officer. Upon receipt of the results, the Office of Victim-Witness Advocacy shall provide the victim with appropriate counseling, referral for counseling

and if appropriate, referral for health care. A court may order a defendant or juvenile, at the time of sentencing, to reimburse the State for the costs of the ordered tests. Persons who perform the ordered tests in accordance with accepted medical standards for the performance of such tests shall be immune from civil and criminal liability arising from their conduct. §§ 2A:4A-43.4, 2C:43-2.3.

(2) A court shall order a person convicted of, indicted for, or formally charged with, or a juvenile charged with delinquency or adjudicated delinquent for an action which if committed by an adult would constitute aggravated sexual assault or sexual assault to submit to a test for AIDS, HIV, or other related viruses. The court shall issue such an order only upon the request of the victim and upon application of the prosecutor made at the time of indictment, charge, or conviction. The person or juvenile shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary. Such testing shall be performed as soon as practicable. The results of the test shall be reported to the offender and to the appropriate Office of Victim-Witness Advocacy. Costs for such HIV tests shall be reimbursed by the Office of Victim-Witness Advocacy. A court may order an offender, at the time of sentencing, to reimburse the state for the cost of such testing. Upon receipt of the result of an HIV test performed on a sex offender, the Office of Victim-Witness Advocacy shall provide the victim with appropriate counseling, referral for counseling and, if appropriate, referral for health care. The Office of Victim-Witness Advocacy shall notify the victim or make appropriate arrangements for the victim to be notified of the test result. The result of an HIV test ordered pursuant to this section shall be confidential and shall not be disclosed except as authorized by law or court order. Persons who perform tests ordered pursuant to this section in accordance with accepted medical standards for the performance of such tests shall be immune from civil and criminal liability arising from their conduct. §§ 2C:43-2.2,⁴⁹ 2A:4A-43.1.⁵⁰

(3) All diagnosed cases of AIDS and all diagnosed cases of HIV infection shall be reported to the Department of Health along with the identifying information (see Definitions (3)) for the person diagnosed. Anonymous testing shall also be available in up to six testing sites throughout the state. These sites shall be required to report all diagnosed

49. *Id.*

50. State *ex rel.* J.G., 660 A.2d 1274, 1286 (N.J. Super Ct. Ch. Div. 1995) (mandatory HIV testing of persons convicted or adjudicated delinquent of aggravated sexual assault is unconstitutional).

cases of AIDS and all diagnosed cases of HIV infection, but shall not be required to request or report identifying information. § 26:5C-6.

(4) If the attending physician, registered professional nurse, or state or county medical examiner who makes the actual determination and pronouncement of death determines or has knowledge that the deceased person was infected with HIV suffered from AIDS, or AIDS related complex, the attending physician, registered professional nurse, or state or county medical examiner shall immediately place written notification of the condition with the remains and shall provide written notification of the condition to the funeral director who is responsible for the handling and disposition of the body. § 26:6-8.2.

(5) In a case involving a victim of sexual assault or aggravated sexual assault, the Office of Victim-Witness Advocacy or the county prosecutor's office involved in the case shall notify the victim of the victim's right to obtain an approved AIDS or HIV test and assist the victim in obtaining a test and appropriate counseling and medical care. The Office of Victim-Witness Advocacy shall also notify the victim of the victim's right to obtain a court order requiring the offender to submit to an AIDS or HIV test in the event that the offender is indicted, formally charged, convicted, or adjudicated delinquent. The Office shall communicate the request of a victim who seeks an order for such testing to the prosecutor handling the case and notify the victim or arrange for the victim to be notified of the test result and shall assist the victim in applying to the Violent Crimes Compensation Board for compensation for the costs of testing, counseling, and medical care. § 52:4B-44.

(6) A physician or other health care practitioner who is the primary caregiver for a pregnant woman or a woman who seeks treatment within four weeks of giving birth shall provide the woman with information about HIV and AIDS (see Definitions (1)) and the benefits of being tested and shall give her the option of being tested. The woman shall acknowledge receipt of this information and her preference regarding testing. A woman may not be denied appropriate care because she decides not to be tested. The Commissioner of Health shall establish guidelines regarding notification to a woman whose test result is positive and provide, to the maximum extent possible, for counseling about the significance of the test result. Information obtained from such a test is confidential as provided in the AIDS Assistance Act (§§ 26:5C-1 to 26:5C-14) (see Testing & Reporting (1), (2), (3), and (4)) and a woman who has or is suspected of having AIDS or HIV infection may pursue a

civil action for unauthorized disclosure as provided in the AIDS Assistance Act. 1995 N.J. Laws 174.

(7) A woman who has, or is suspected, of having AIDS or HIV Infection may pursue an action against a person who makes an unauthorized disclosure of any information concerning the woman's positive test results for the presence of antibodies to HIV. § 26:5C-18.

(8) A semen bank shall perform an HIV test on a potential donor prior to that person donating semen and shall freeze all donated semen for a waiting period of at least six months. A semen bank shall perform the HIV test only after the donor has provided written informed consent. A donor who refuses to provide written informed consent to an HIV test or tests positive for HIV shall not be permitted to donate semen. The cost of the HIV test shall be borne by the recipient of the donation. The Commissioner of Health and Senior Services shall establish procedures for notification by a semen bank to donors of screening results and referrals to appropriate counseling and health care services as necessary. § 26:5C-22. A semen bank which violates this act is guilty of a disorderly persons offense and is liable for a penalty of not more than \$1,000 for each offense. § 26:5C-23.

(9) An adult patient who is admitted for treatment at a State psychiatric hospital shall be required, upon admission, to submit blood testing for sexually transmitted diseases, as determined by the Commissioner of Human Services. The guardian, or the patient at a time appropriate to the patient's psychiatric condition, shall be provided with information and counseling regarding the benefits of being tested for HIV infection (see Definitions (2)). The guardian, or patient, shall then be presented with the option of HIV testing. The Commissioner shall then develop guidelines for the treatment and confinement of a patient who tests positive for a sexually transmitted disease, in consultation with the Commissioner of Health and Senior Services, and in accordance with recommended protocols established by the Center for Disease Control and Prevention of the United States Public Health Services. § 30:4-7.8.

Education (1)

Miscellaneous (9)

MISCELLANEOUS

(1) A record maintained by any of the following parties which contains identifying information (see Definitions (3)) about a person who has or is suspected of having AIDS or HIV infection is confidential and shall be disclosed only for purposes authorized by the

AIDS Assistance Act (§§ 26:5C-1 to 14): the Department of Health; a local health department; an organization pursuant to a contract with, grant from, or regulation by the Department of Health; a health care provider or facility; a laboratory; a blood bank; a third-party payor; or any other institution or person. § 26:5C-7.

(2) The content of a record containing identifying information about a person who has or is suspected of having AIDS or HIV may be disclosed in accordance with the prior written informed consent (see Definitions (3)) of the person who is the subject of the record. If the prior written informed consent of the person who is the subject of the records is not obtained, the person's records shall be disclosed only under the following conditions: to qualified personnel for the purpose of conducting scientific research, following a review of the research protocol by an Institutional Review Board; to qualified personnel for the purpose of conducting management audits, financial audits, or program evaluation; to qualified personnel involved in medical education or in the diagnosis and treatment of the person who is the subject of the record; to the Department of Health as required by State or federal law; as permitted by rules and regulations adopted by the Commissioner of Public Health for the purposes of disease prevention and control; and in all other instances authorized by State or federal law. Unless it is vital to an audit or evaluation, the identity of the test subject shall not be revealed in any manner for the purposes of research, evaluation, or an audit. § 26:5C-8.

(3) A record of a person who has or is suspected of having AIDS or HIV may be disclosed by an order of a court of competent jurisdiction which is granted pursuant to an application showing good cause therefor. At a good cause hearing the court shall weigh the public interest and the need for disclosure against the following considerations: the injury to the person who is the subject of the record; the injury to the physician-patient relationship; and the injury to the services offered by the program. Upon the granting of the order, the court, in determining the extent to which a disclosure of all or any part of a record is necessary, shall impose appropriate safeguards to prevent an unauthorized disclosure. A court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a prosecution for a crime of which the person is suspected only if the crime is a first degree crime and there is a reasonable likelihood that the record in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution. A record shall not be used to initiate or

substantiate any criminal or civil charges against the person who is the subject of the record or to conduct any investigation of that person. The court shall deny an application for disclosure of a person's record unless the court makes a specific finding that the program was afforded the opportunity to be represented at the hearing. A program operated by a federal, state, or local government agency or department shall be represented at the hearing. § 26:5C-9.⁵¹

(4) The limits on disclosure set forth in the AIDS Assistance Act shall continue to apply to records relating to AIDS and HIV infection concerning a person who has been a patient or participant in a program, whether or not that person remains a patient or participant in the program. § 26:5C-10.

(5) Any record disclosed under the AIDS Assistance Act shall be held confidential by the recipient of the record and shall not be released by said recipient unless the conditions of the AIDS Assistance Act are met. § 26:5C-11.

(6) When consent is required for disclosure of the record of a deceased or legally incompetent person who has or is suspected of having AIDS or HIV infection, consent may be obtained from any of the following: an executor, administrator of the estate, or authorized representative of the legally incompetent or deceased person; the person's spouse or primary caretaking partner or, if none, another member of the person's family; or the Commissioner of Health in the event that a deceased person has neither an authorized representative or next-of-kin. § 26:5C-12.

(7) When consent is required for disclosure of the record of a minor who has or is suspected of having AIDS or HIV infection, consent shall be obtained from the parent, guardian, or other individual authorized under state law to act on the minor's behalf. § 26:5C-13.

(8) A person who has or is suspected of having AIDS or HIV infection who is aggrieved as a result of a violation of the AIDS Assistance Act may commence a civil action against the individual or institution who committed the violation to obtain appropriate relief, including actual damages, equitable relief, and reasonable attorney's fees and court costs. Punitive damages may be awarded when the violation evidences wantonly reckless or intentionally malicious conduct by the

51. *Snyder v. Mekhjian*, 593 A.2d 318, 322 (N.J. 1991) (authorizing disclosure of records maintained by blood banks relating to HIV status of donors does not impermissibly infringe on donor's constitutional right of privacy).

person or institution who committed the violation. Each disclosure made in violation of this act is a separate and actionable offense. § 26:5C-14.

(9) The Commission on Higher Education shall appoint an advisory committee of experts which shall develop a "Campus Sexual Assault Victim's Bill of Rights" which affirms support for campus organizations which assist sexual assault victims. This Bill of Rights shall provide that victims of sexual assaults that occur on the campus of any public or independent institution of higher education in the State and where the victim or alleged perpetrator is a student at the institution or when the victim is a student involved in an off-campus sexual assault, shall have certain rights accorded to them. Among these enumerated rights shall be the right to be informed of and assisted in exercising any rights to confidential or anonymous testing for sexually transmitted diseases or HIV and the right to be informed of and assisted in exercising any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases. § 18A:61E-2.

(10) The Legislature finds that of the cumulative total of AIDS cases reported in 1988 in the State, 34% were White, 52% were Black, and 13% were Hispanic. Black and Hispanic women represent 77% of all female AIDS cases in the State. The Legislature further finds that presently there is no coordinated State effort to address the wide disparity in death, disease, and injury rates, and, therefore, there is a need to establish a New Jersey Office on Minority Health to identify and develop innovative programs which will close the gap between the health status of White and minority populations in this State and to coordinate current State programs which seek to address minority health concerns. § 26:2-160.

(11) The legislature finds and declares: over one-half of the people with hemophilia in this county were infected with HIV in the 1980s from contaminated blood products; AIDS stigmatizes and isolates its victims; victims, their families and survivors have been reluctant to step forward and seek compensation for their injuries through the legal system because of their legitimate fear of attendant publicity; because of this fear and/or their unawareness that blood product manufacturers may have had the technical capacity to address the situation and may have been responsible for their injuries, many do not seek timely redress; the scientific complexity of the issue, the compelling psychological and emotional trauma associated with the disease, the lack of publicly available information and the lack of definitive studies at the time

combined to create a singular, unique circumstance which existing limitations principles are ill-situated to address. In lieu of these problems, the legislature wanted to create a remedy for the bar which may be imposed by the statute of limitations in these cases. No action for damages based upon personal injury, survivorship or wrongful death brought against a proprietary manufacturer of blood products based upon infusion of a blood product resulting in contracting HIV or AIDS shall be deemed to accrue prior to July 13, 1995. This limitation applies to all pending claims, including any action which has been filed with a court but not yet dismissed or finally adjudicated. § 2A:14-26.1.

NEW MEXICO

All citations are to "N.M. Stat. Ann." unless otherwise noted.

DEFINITIONS

(1) The term "genetic analysis," which excludes testing which monitors for HIV. § 24-21-2.

CRIMINAL LAW

(1) A person who makes an unauthorized disclosure of results of an STD or HIV test is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars or both. §§ 24-1-9.7, 24-2B-9.

Testing & Reporting (4), (8), (10), (13), (14), (15)

EDUCATION

(1) Funds are appropriated for the Health and Environment Department to contract with an Albuquerque-based volunteer organization of persons with AIDS or HIV positive individuals to provide self-help, prevention, and education and to consult with and make recommendations to state agencies. § 9-7-4.

Social & Medical Services (2), (3), (4)

EMPLOYMENT

(1) No employer may require an individual to disclose the results of an HIV test as a condition for hiring, promotion, or continued employment unless the absence of HIV infection is a bonafide occupational qualification. The employer will have the burden of proving that the HIV test is necessary in evaluating whether the employee is currently able to perform in a reasonable manner the duties of the job or whether the individual will pose a significant risk of transmitting HIV to others in the course of normal work activities, and that there is no reasonable means of accommodation short of requiring the test. § 28-10A-1.

HOUSING

(1) Disclosure of information regarding ownership or occupancy of real estate by a person suspected to be infected with HIV or

diagnosed with AIDS is not required in real estate transactions. No liability arises from the failure to disclose such information. § 47-13-2.

INSURANCE

Testing & Reporting (5)

RESEARCH

Social & Medical Services (2)

Testing & Reporting (5)

SOCIAL & MEDICAL SERVICES

(1) Any person, regardless of age, has the capacity to consent to an examination and treatment by a licensed physician for any sexually transmitted disease. § 24-1-9.

(2) The Department shall establish and administer a harm reduction program for the purposes of sterile hypodermic syringe and needle exchange; compile data to assist in planning and evaluating efforts to combat the spread of blood-borne disease; and make an annual report, including legislative recommendations to the legislative health and human services committee by October 1 of each year. The department shall appoint an advisory committee, to include representation from: the HIV/STD bureau of the department. The advisory committee shall develop policies and procedures for evaluation of the harm reduction program; develop criteria for data collection and program evaluation; and meet as necessary to analyze data and monitor and procure a report on the harm reduction program. § 24-2C-4.

(3) The purpose of the Harm Reduction Act is to prevent the transmission of HIV and other blood-borne diseases and encourage intravenous drug users to seek substance abuse treatment and ensure that participants receive individual counseling and education to decrease the risk of blood-borne diseases.

(4) The Harm Reduction Program shall provide: sterile hypodermic syringes and needles in exchange for used hypodermic syringes, needles, or other objects used to inject controlled substances into the human body; education to participants on the transmission of HIV and preventative measures; and referrals to substance abuse treatment services for participants. § 24-2C-5.

Education (1)

Testing & Reporting (1), (3), (4), (5), (8), (9)

Miscellaneous (1)

TESTING & REPORTING

(1) No HIV test shall be performed without first obtaining written informed consent or without documentation in the medical record indicating informed consent. Before informed consent is obtained, the patient shall receive a full explanation of the test. § 24-2B-2.

(2) Informed consent shall be obtained from the legal guardian of the test subject or other person authorized by law when the subject is not legally competent. A minor has the capacity to give informed consent to being tested for HIV. § 24-2B-3.

(3) No positive test result shall be revealed to the subject without providing or referring the person for counseling regarding the test's meaning, the possible need for additional testing, the availability of health and mental health care and social and support services, and the benefits of locating and counseling the person's prior potential contacts (see Testing & Reporting (9)). § 24-2B-4.

(4) Informed consent is not required for: blood or tissue donation situations; medical emergencies; anonymous research situations; a potentially exposed health care worker where the subject of the test would be otherwise unable to consent; and other anonymous settings such as public health agencies and sexually transmitted disease (STD) clinics. § 24-2B-5. Informed consent is not required for HIV or other STD tests performed on criminals convicted of an offense involving contact between the penis and the vulva, the anus or the mouth, contact between the mouth and vulva, or contact between the mouth and anus. Informed consent is also not required if the court determines that there was transmission of blood, semen or vaginal secretions between the offender and victim. If consent is not obtained, the victim, or the victim's parent or guardian, may petition the court to order that a test be performed within ten days after filing. §§ 24-2B-5, 24-1-9.1.

(5) No person or agent or employee thereof who require or administer an HIV test shall disclose the test subject's identity, except to: a legally authorized guardian or representative; a person designated in a legally effective release; an authorized health care provider; the Department of Health and the Center for Disease Control, in accordance with reporting requirements; a health care facility involved in blood, semen, or human body part donation; health facility committees or oversight review organizations so long as the subject's identity remains confidential; authorized researchers who may not further disclose any

identifying characteristics or information; and insurers requesting the test for application purposes. § 24-2B-6.

(6) Disclosure requires an accompanying written statement warning that any further disclosure requires written release, unless otherwise permitted by state law. § 24-2B-7.

(7) Test subjects are not prohibited from disclosing the results of HIV tests performed on them. § 24-2B-8.

(8) All STDs shall be reported immediately and in writing, on a supplied departmental form, to the District Health Officer by any physician, clinic, penal institution, or lab that treats the STD. The District Health Officers, in turn, shall make weekly reports of all cases to the Department of Health. § 24-1-7.

(9) If any attending physician knows or has reason to suspect that a person having an STD may expose another person through risky behavior, the physician shall notify the District Health Officer of the name and address of the diseased person and of the facts of the case. § 24-1-8.

(10) A test designed to identify any STD or an HIV test may be performed on a person, upon the filing of a complaint, information or any indictment alleging that the person committed a state criminal offense involving contact between the penis and the vulva, the penis and anus, the mouth and penis, the mouth and vulva, or the mouth and anus. If consent to perform a test on an alleged offender cannot be obtained, the victim of the alleged criminal offense may petition the court, through the prosecuting office or personally, to order that a test be performed on the alleged offender; provided the test is first performed on the victim of the alleged offense. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged offense. If the victim is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may petition the court to order that a test be performed on the alleged offender. The court may issue an order based on a finding of good cause after a hearing at which both the victim and the alleged offender have a right to be present. Only affidavits and medical reports regarding the facts that support or rebut the issuance of an order shall be admissible. The hearing shall be conducted within seventy-two hours after the victim petitions the court for the order. The petition and all proceedings in connection therewith shall be under seal. The court shall issue the order and the test shall be administered to the alleged offender within ten days after the petition is filed. The result of the test shall be disclosed only to the alleged offender

and to the victim of the alleged criminal offense or the victim's parent or legal guardian. When the victim or alleged offender has a positive test result, both the alleged offender and the victim shall be provided with counseling. The court's order shall direct the Department of Health to be responsible for the administration of and payment for the test and the lawful distribution of the test results. The prosecuting attorney may not use in a criminal proceeding arising out of the alleged criminal offense the fact that a test was administered to the alleged offender or the results of the test. This section does not affect the rights and remedies available to the victim in any civil action. The administration of a test pursuant to this section does not preclude the subsequent administration of another test. §§ 24-1-9.2, 24-2B-5.2.

(11) No positive test results for a STD shall be revealed to the person upon whom the test was performed without the person performing the test or the health facility at which the test was performed providing or referring that person for individual counseling about (a) the meaning of the test results; (b) the possible need for additional testing; (c) the availability of appropriate health care services, including mental health care, social and support services; and (d) the benefits of locating and counseling any individual by whom the infected person may have been exposed to the STD and any individual whom the infected person may have exposed to the STD. § 24-1-9.3.

(12) No person or the person's agents or employees who require or administer a test for STDs shall disclose the identity of any person upon whom a test is performed or the result of such a test in a manner that permits identification of the subject of the test, except to the following persons: the subject of the test or the subject's legally authorized representative, guardian or legal custodian; any person designated in a legally effective release of the test results; an authorized agent, physician or employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of bodily fluids or tissues and the agent or employee has a need to know such information; the Department of Health and the Centers for Disease Control and Prevention of the United States public health services in accordance with the reporting requirements for a diagnosed case of a STD; a health care facility or health care provider that procures, process, distributes or uses a human body part from a deceased person, semen for purposes of artificial insemination, blood or blood products for transfusion or injection, or human body parts for transplant;

health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, as long as any identity remains confidential; authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and for purposes of application or reapplication for insurance coverage, upon which an insurer or reinsurers upon whose request the test was performed. § 24-1-9.4.

(13) No person to who the result of a test for STDs have been disclosed may disclose the test results to another person, except as authorized by law. Whenever disclosure is made, it shall be accompanied by a statement in writing that includes the following or substantially similar language: "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 state law. A person who makes an unauthorized disclosure of this information is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars (\$500) or both." § 24-1-9.5.

(14) A victim of an alleged criminal offense who receives the STD test results of a test performed on their alleged offender may disclose the results as is reasonably necessary to protect his health and safety or the health and safety of his family or sexual partner. § 24-1-9.6.

(15) A tests designed to identify HIV virus or its antigens may be performed on a person, upon the filing of a complaint, information or any indictment alleging that the person committed a state criminal offense involving contact between the penis and the vulva, the penis and anus, the mouth and penis, the mouth and vulva, the mouth and anus, or when the court determines from the facts of the case that there was a transmission or likelihood of transmission of blood, semen, or vaginal secretions from the offender to the victim. If consent to perform a test on an alleged offender cannot be obtained, the victim of the alleged criminal offense may petition the court to order that a test be performed on the alleged offender. If the victim is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may petition the court to order that a test be performed on the alleged offender. The petition and all proceedings therewithin shall be under seal. The court shall issue the order and the test shall be administered to the alleged

offender within ten days after the petition is filed. The result of the test shall be disclosed only to the alleged offender and to the victim of the alleged criminal offense or the victim's parent or legal guardian. When the victim or alleged offender has a positive test result, both the alleged offender and the victim shall be provided with counseling. When the offender is sentenced to imprisonment in a state corrections facility or when the offender is convicted of a misdemeanor or petty misdemeanor offense or is convicted of a felony offense that is suspended or deferred, the court's order shall direct the Department of Health to be responsible for the administration of and payment of the test and the lawful distribution of the test results. When the offender is a minor adjudicated as a delinquent child pursuant to the provision of the Children's Code and the court transfers custody of the minor to the children, youth, and families department, the court's order shall direct the children, youth, and families department to be responsible for the administration of any payment for the test and the lawful distribution of the test results. If legal custody of the minor is not transferred to the children, youth, and families department, the court's order shall direct the Department of Health to be responsible for the administration of and payment of the test and the lawful distribution of the test results. § 24-2B-5.1.

(16) Any person where there is reasonable cause to believe has a STD or has been exposed to a STD shall be tested and examined by the county or state health officer or his designee or a licensed physician. Whenever any person so suspected refuses to be examined, such person may be isolated or committed until, in the judgment of the state or county health officer, that person is no longer dangerous to public health. The cost of rooming and boarding such person, other than when confined to his/her own residence, shall be the responsibility of the state. The state health officer or county health officer shall require all persons infected with a STD to report for such treatment by the health officer or a licensed physician, and continue treatment until such disease, in the judgment of the attending physician, is no longer communicable or a source of danger to public health. When such infected persons are unable to pay the attending physician's fees and are indigent, they shall submit to treatment at state expense. Whenever, in the judgment of the state or county health officer, such a course is necessary to protect public health, a person infected with a STD may be committed or isolated for compulsory treatment and quarantine. The cost of rooming and boarding such person, other than when confined to his/her own residence, shall be the responsibility of the state. § 22-11A-18.

MISCELLANEOUS

(1) There are no implied warranties of any type governing activities involving human blood, plasma, tissue, organs, or parts thereof. The tort doctrine of strict liability shall not apply to transmission of HIV during such activities. This statute shall not be construed as affecting liability of persons accused of negligence or willful misconduct in such activities. § 24-10-5.

NEW YORK

DEFINITIONS

(1) "AIDS," "authorized agency," "capacity to consent," "confidential HIV-related information," "contact," "health care provider," "health facility," "health or social service," "HIV infection," "HIV-related illness," "HIV-related test," "insurance institution," "insurance support organization," "protected individual," and "release of confidential HIV-related information" relating to Public Health Law are defined at N.Y. Pub. Health Law § 2780.

(2) "AIDS," "confidential HIV-related information," "contact," "HIV infection," "HIV-related illness," "HIV-related test," "significant risk," and "significant risk of transmitting or contracting HIV infection" relating to Civil Service Law are defined at N.Y. Civ. Serv. Law § 83.2.

(3) "AIDS home care program" is defined at N.Y. Pub. Health Law § 3602.

(4) "AIDS service sites," "eligible institutions and facilities," and "health corps professional" are defined at N.Y. Pub. Health Law § 231.

(5) "Comprehensive HIV special needs plan" and "HIV center of excellence" are defined at N.Y. Pub. Health § 4401.

(6) "Defendant," "conviction," "sentence," and "victim" are defined at N.Y. Crim. Pro. § 390.15.

(7) "Health insurance," "health insurance costs," "household," "persons with AIDS," "poverty line," and "program" are defined at N.Y. Soc. Serv. Law § 369-k.

(8) "HIV-related test" as it relates to Insurance Law is defined at N.Y. Ins. Law § 321.

(9) "Sexually transmissible disease" is defined at N.Y. Pub. Health Law § 2.

(10) "Viatical settlement" is defined at N.Y. Ins. Law § 7801.

CRIMINAL LAW

(1) Any person who performs, or permits or procures the performance of, an HIV-related test (see Definitions (1)) in violation of the N.Y. Public Health Law (See Testing & Reporting (1)) or discloses or compels another person to disclose, or procure the disclosure of, confidential HIV-related information (see Definitions (1)) in violation of the N.Y. Public Health Law (see Social & Medical Services (10) to (15))

[NEW YORK]

shall be subject to a civil penalty not to exceed \$5,000 for each occurrence. If the violation is willful, the violator is guilty of a misdemeanor. N.Y. Pub. Health Law § 2783.

Social & Medical Services (10), (16), (25)

Testing & Reporting (4)

Miscellaneous (4)

EDUCATION

(1) Every dentist, registered nurse, licensed practical nurse, podiatrist, optometrist, dental hygienist, physician, physician assistant, and specialist assistant practicing in the state shall complete course work or training appropriate to the professional's practice regarding infection control and barrier precautions, including engineering and work practice controls to prevent the transmission of HIV in the course of professional practice. Such course work or training shall be completed every four years. The Department of Education shall provide an exemption from this requirement to anyone who requests an exemption and clearly demonstrates that there would be no need for such professional to complete the course work because of the nature of the professional's practice, or because such professional has completed equivalent course work or training. N.Y. Educ. Law § 6505-b, N.Y. Pub. Health Law § 239.

Social & Medical Services (4), (8), (9), (10), (13)

Testing & Reporting (4), (5)

EMPLOYMENT

(1) It is the policy of the Department of Civil Service that the Department of Civil Service and its officers, employees, and agents shall not discriminate against any individual by virtue of such individual having AIDS, HIV infection, or HIV-related illness (see Definitions (2)). The Department of Civil Service will take appropriate steps to make its officers, employees, and agents aware of this policy. All officers, employees, and agents of the Department of Civil Service shall act in a manner consistent with this policy when performing their official duties. N.Y. Civ. Serv. Law § 83.3.

(2) A paid employee who performs the function of an emergency medical technician or advanced emergency medical technician, where such employee is drawn from the competitive civil service lists and successfully passed a physical examination on employment, who, on or after March 17, 1996, contracts HIV (where the

[NEW YORK]

employee may have been exposed to a bodily fluid of a person under his or her car or treatment, or while the employee examined, transported or otherwise had contact with such person, in the performance of his or her duties) will be presumed to have contracted such disease as a natural and proximate result of an accidental injury received in the performance or discharge of his or her duties and not resulting from his or her willful negligence, unless the contrary be proved by competent evidence. N.Y. Gen. Mun. § 207-o.

(3) A paid member of the uniformed force of a paid correction department, where such paid employee is drawn from competitive civil service lists, who successfully passed a physical examination on entry into the service of such department, who contracts HIV (where there may have been exposure to a bodily fluid of an inmate or any person confined in an institution under the jurisdiction of the department of correction, or the department of health, or any person who has been committed to such institution by any court as a natural and proximate result of an act of any inmate or person described above to the member) will be presumed to have contracted such disease in the performance or discharge of his or her duties, unless the contrary be proved by competent evidence. N.Y. Gen. Mun. § 207-n.

(4) Any member of the uniformed personnel in institutions under the jurisdiction of the state department or correctional services, any member in the uniformed personnel in institutions under the jurisdiction of the New York city department of correction, or security hospital treatment assistant who becomes physically or mentally incapacitated for the performance of duties by, or as the natural and proximate result of an injury, sustained in the performance or discharge of his or her duties by, or as the natural and proximate result of an act of any inmate or person confined in an institution under the jurisdiction of the state department of correctional services, city department of corrections, department of health, or office of mental health, or by any person who has been committed to such institution by any court shall be paid a performance of duty disability retirement allowance. A member covered by this section who contracts HIV (where there may have been an exposure to a bodily fluid of an inmate or other confined person as a natural and proximate result of an act of any inmate or other confined person that may have involved transmission of HIV from an inmate or other confined person to the retirement system members) will be presumed to have contracted such disease in the performance or discharge of his or her duties, and will be presumed to be disabled from the performance of his or her duties, unless

the contrary be proved by competent evidence. N.Y. Retir. §§ 63-a, 507-b, 507-c, 607-a.

(5) Any member of the New York city employees' retirement system who is employed by the city of New York or by the New York city health and hospital corporation in the position of emergency medical technician or advanced emergency medical technician, who, on or after March 17, 1996, becomes physically or mentally incapacitated for the performance of duties as the natural and proximate result of an injury, sustained in the performance or discharge of his or her duties shall be paid a performance of duty disability retirement allowance equal to three-quarters of final average salary. A member covered by this section who contracts HIV (where a member may have been exposed to a bodily fluid of a person under his or her care or treatment, or while the member is examined, transported or otherwise had contact with such person, in the performance of his or her duties) will be presumed to have contracted such disease in the performance or discharge of his or her duties, unless the contrary be proved by competent evidence. N.Y. Retir. § 607-b.

Insurance (4)

Social & Medical Services (1), (2), (5), (6), (10), (15)

Testing & Reporting (2), (3)

Miscellaneous (1), (2), (3)

HOUSING

Insurance (4), (5)

Social & Medical Services (17), (18), (19), (20), (21), (22), (23),
(24)

INSURANCE

(1) No insurance company that is a member of a medical information exchange center shall maintain information about HIV-related test (see Definitions (8)) results pertaining to any individual unless such test results are included within a general code not designated solely for HIV-related test results and where no member of such medical information exchange center may request details sufficient to determine whether the code was used to maintain information about HIV-related test results. N.Y. Ins. Law § 321.

(2) Receipt of payment pursuant to a viatical settlement (see Definitions (10)) may affect eligibility for public assistance programs such as medical assistance, aid to families with dependent children, supplementary social security income, and AIDS drug assistance

[NEW YORK]

programs and may be taxable. Prior to applying for a viatical settlement, policy owners should consult with the appropriate social services agency, concerning how receipt will affect the eligibility of the recipient and the recipient's spouse or dependents, and with a qualified tax advisor. N.Y. Ins. Law § 7807.

(3) The Health Insurance Continuation Program for persons with AIDS is established within the Department of Social Services. N.Y. Soc. Serv. Law § 369-1.

(4) A social services district shall pay all or part of the health insurance costs (see Definitions (7)) on behalf of a person with AIDS (see Definitions (7)) who: is unemployed, or, if employed, currently is ineligible to participate in health insurance through his or her current employer, or such employer offers no such plan; participated in the plan of health insurance provided by a prior employer and is eligible to continue or convert participation in such plan by assuming the health insurance costs associated with such plan although no longer employed by such employer; and resides in a household (see Definitions (7)) whose household income is less than or equal to 185% of the poverty line (see Definitions (7)). N.Y. Soc. Serv. Law §§ 369-1, 369-m.

(5) Any person eligible for medical assistance benefits under title 11 of N.Y. Social Service Law or who would otherwise be eligible for such benefits shall not be eligible for payment of all or part of such person's health insurance costs under the Health Insurance Continuation Program for Persons with AIDS (see Insurance (3)). If all members of a household can establish eligibility for medical assistance benefits under the excess income program by use of paid or incurred bills, no person in that household shall be eligible for the payment of all or part of such person's health insurance costs under this program. N.Y. Soc. Serv. Law § 369-n.

(6) No insurer or its designee shall request or require an individual proposed for insurance coverage to take an HIV test without first receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection. In the event that an insurer's adverse underwriting decision is based in whole or in part on the result of an HIV test, the insurer shall notify the individual of the adverse underwriting decision and ask the individual to elect in writing whether to have the specific HIV test results disclosed directly to the individual or to a person designated by the individual. If the test subject elects to receive the test results directly, the insurer shall advise the individual that he or she may

call the Department of Health's statewide toll-free telephone number for more information about AIDS, the meaning of HIV test results, and the availability and location of HIV-related counseling services and shall advise the individual to consult with a physician about the meaning of and need for counseling as to the HIV test result. N.Y. Ins. Law § 2611.

Social & Medical Services (10), (28)

Testing & Reporting (1)

RESEARCH

(1) A research council composed of seven members shall be established within the Acquired Immune Deficiency Syndrome Institute (see Social & Medical Services (7) to (9)) for the purpose of recommending ways to develop and promote investigations into the cause, prevention, method of treatment, and cure of acquired diseases of immunosuppression. N.Y. Pub. Health Law §§ 2776, 2777.

Social & Medical Services (8), (10)

Testing & Reporting (1)

SOCIAL & MEDICAL SERVICES

(1) With the exception of the dispensing of drugs pursuant to an oncological or AIDS protocol, only a prescriber who is the owner of a pharmacy, or registered store, or who is employed by such owner, may dispense more than a seventy-two hour supply of drugs. N.Y. Educ. Law § 6807.

(2) The New York State Department of Civil Service shall implement and enforce a plan for the prevention of circumstances which could result in an employee or individual becoming exposed to blood or body fluids. Such plan shall include: training for appropriate persons on the use of protective equipment, preventative practices, and circumstances that constitute significant risk exposure (see Definitions (2)); appropriate training, counseling, and supervision of persons regarding behaviors that pose a risk for HIV transmission at the work site; use of accepted protective practices to prevent skin and mucous membrane exposure to blood, other body fluids, or other significant risk body substances; the use of accepted preventative practices while handling instruments or equipment that may cause puncture injuries; and the provision, as appropriate, of personal protective equipment. The Department of Civil Service shall implement and enforce a plan for responding to incidents of exposure at the employee's work site to blood, other body fluids, or other significant risk body substances. Such program shall include: a system

[NEW YORK]

for receiving voluntary reports of all exposures thought to represent a circumstance for significant risk; availability of services for evaluating the circumstances of such a reported exposure and providing appropriate follow-up of anyone who has not been exposed; and assurance for protection of confidentiality for those involved in reported exposures. N.Y. Civ. Serv. Law § 83.7.

(3) The Legislature recognizes that the distinct treatment needs of special populations, including persons with HIV infection, merit particular attention. It is the intent of the Legislature to promote effective interventions for such populations in need of particular attention. N.Y. Mental Hyg. Law § 19.01.

(4) The Commissioner of Public Health, in consultation with the Commissioners of Education, Correctional Services, Mental Health, Mental Retardation and Developmental Disabilities, and the President of the Civil Service Commission have the power and duty to develop criteria for the selection of students eligible for health corps scholarships or fellowships including, but not limited to, consideration of the student's academic achievement, previous work experience in their chosen health profession, and demonstrated interest in working with institutionalized populations or with persons infected with HIV or who have AIDS. N.Y. Pub. Health Law § 232.

(5) A state advisory panel for the evaluation of health care workers with HIV is established in the Department of Public Health. Such panel, composed of three to five members, shall be known as the Health Care Worker HIV/HBV Advisory Panel. The panel shall include a state or local public health officer, an infectious disease expert, an expert in infection control or epidemiology, and, upon the request of the infected health care worker, a health professional with expertise relevant to procedures performed by the health care worker and the health care worker's personal physician. N.Y. Pub. Health Law § 2760.

(6) The Health Care Worker HIV/HBV advisory panel (see Social & Medical Services (5)) shall only evaluate and advise an HIV/HBV infected health care worker who voluntarily seeks the panel's review of the risk of HIV/HBV transmission to others through practices engaged in by the infected health care worker. Prior to the panel's evaluation of the worker, the panel must fully advise the worker of the panel's authority to investigate (see Social & Medical Services (15)), to recommend practice restrictions or modifications, to advise facilities of such restrictions, and to refer cases to professional licensing, registration, and certification boards. If the health care worker is affiliated with or

employed by a licensed health facility (see Definitions (1)), the panel may evaluate and advise the worker only after such facility has completed its review of the scope of practice of the health care worker. This institutional review may be conducted through the facility's existing quality assurance program and need not require the creation of a separate health facility HIV/HBV panel. The panel shall be entitled to receive patient records and other documents or information reasonably necessary for and relevant to the panel's deliberations. Any information provided to the panel shall remain subject to limitations on disclosure. The panel may seek the advice of professionals with relevant expertise. The panel shall provide the infected health care worker with an opportunity to meet with the panel, accompanied by a union or other representative. When evidence indicates that the health care worker's practice poses a significant risk of harm to patients, the panel shall make appropriate recommendations that are least restrictive with respect to the health care worker's practice including, but not limited to, training or monitoring, or, if necessary, reassignment or practice restrictions. The panel shall evaluate an HIV-infected health care worker pursuant to comprehensive medical criteria including: a physical or mental condition that interferes with or is significantly likely to interfere with the health care worker's ability to perform assigned tasks or regular duties; lack of compliance with established guidelines to prevent transmission of disease or documentation or evidence of previous transmission of bloodborne pathogens; the appropriateness of techniques as related to performance of procedures; and any health condition that would pose a significant risk to others. When the panel recommends training, monitoring, reassignment, or any similar practice restrictions, the health care worker shall provide written assurance to the panel that such health care worker has informed the facility where the worker provides patient care of the panel's recommendations and shall identify the person or persons at the facility so informed. If the health care worker fails to inform such facility, the panel shall so notify the facility. If the health care worker fails to comply with the panel's recommendations, or compliance cannot be determined by the panel after reasonable effort, the panel shall disclose the nature of its recommendations to the professional licensing, registration, or certification boards relevant to the health care worker. The panel may periodically monitor and reevaluate the worker, with the worker's consent, at a frequency and through a mechanism determined by agreement between the worker and the panel. The information received by the panel, the record of deliberations of the panel, and the decisions of

[NEW YORK]

the panel shall not be disclosed. If the health care worker fails to comply with the panel's recommendations, the panel's deliberations and recommendations may be disclosed to and utilized by the Office of Professional Medical Conduct, the Office of Professional Discipline, and appropriate disciplinary bodies. N.Y. Pub. Health Law § 2761.

(7) The Acquired Immune Deficiency Syndrome Institute is established within the Department of Health. The Institute shall have the central responsibility for coordinating the state's policies with respect to AIDS. N.Y. Pub. Health Law § 2775.

(8) The Acquired Immune Deficiency Institute shall have the power and duty to: develop and promote scientific investigations into the cause, prevention, treatment, and cure of AIDS; develop and promote programs of professional education and training and improvements in instrumentation as necessary adjuncts to such scientific investigations; develop and maintain a clearing house within the Department of Health for information collected on AIDS, including a catalog of the existing medical literature and the results of existing epidemiological studies; develop and promote an outreach campaign directed toward targeted high risk populations to provide coordinated information regarding the treatment and counseling programs and sources of financial assistance available; and to promote the availability of supportive services for affected persons. Personal data in any investigations, reports, and information relating thereto shall be confidential. N.Y. Pub. Health Law § 2776.

(9) There shall be established within the Acquired Immune Deficiency Syndrome Institute an advisory council composed of seventeen members, who shall be representative of the public, educational, and medical institutions, local health departments, and nonprofit organizations, including organizations providing services to high risk populations. The council shall meet at least four times a year. N.Y. Pub. Health Law § 2778.

(10) No person who obtains confidential HIV-related information (see Definitions (1)) in the course of providing any health or social service (see Definitions (1)) or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose such information, except to the following: the protected individual (see Definitions (1)), or a person legally authorized to consent to health care for an individual who lacks capacity to consent (see Definitions (1)); any person to whom disclosure is authorized pursuant to a release of confidential HIV-related information (see Testing & Reporting (2)); an

agent or employee of a health facility or health care provider (see Definitions (1)) if the agent or employee is permitted to access medical records, the health facility itself is authorized to obtain the HIV-related information, and the agent or employee provides health care to the protected individual or maintains or processes medical records for billing or reimbursement; a health care provider or health facility, when knowledge of the HIV-related information is necessary to provide appropriate care or treatment to the protected individual, a child of the individual, or a contact of the protected individual or a person authorized to consent to health care for such a contact; a health facility or health care provider, in relation to the procurement, processing, distributing, or use of a human body part for use in medical education, research, therapy, or for transplantation to individuals; health facility staff committees or accreditation or oversight review organizations authorized to access medical records provided that such committees or organizations may only disclose confidential HIV related information 1) back to the facility or provider of a health or social service, 2) to carry out the monitoring, evaluation, or service review for which it was obtained, or 3) to a federal, state, county, or local health officer; to a federal, state, county, or local health officer, when such disclosure is mandated by law; an authorized agency (see Definitions (1)) in connection with foster care or adoption of a child; third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; an insurance institution (see Definitions (1)), for purposes other than third party reimbursement, provided that the insurer secures written authorization that indicated that such information may be disclosed, the nature of the information to be disclosed, the purposes for which the information is to be disclosed, signed by the protected individual; any person to whom disclosure is ordered by a court; an employee or agent of the division of parole, or an employee or agent of the division of probation and correctional alternatives or any local probation department, to the extent that such employee or agent is authorized to access records containing such information in order to carry out the division or department's functions; a medical director of a local correctional facility to the extent the medical director is authorized to access records containing such information in order to carry out the functions, powers and duties with respect to the protected individual; an employee or agent of the Commission of Corrections, to the extent the employee is authorized to access such records to carry out the Commissions functions, powers, and duties with respect to the protected individual; or a law guardian,

[NEW YORK]

appointed to represent a minor pursuant to the Social Services Law or the Family Court Act, with respect to confidential HIV-related information relating to the minor and for the purpose of representing the minor, unless the minor has capacity to consent, then the minor's consent is required. N.Y. Pub. Health Law § 2782, N.Y. Soc. Serv. § 473-e.

(11) A state, county, or local health officer may disclose confidential HIV-related information when: disclosure is specifically authorized or required by federal or state law (see Testing & Reporting (2)); disclosure is made pursuant to a release of confidential HIV-related information; disclosure is requested by a physician pursuant to the N.Y. Pub. Health Law (see Social & Medical Services (12) to (14)); or disclosure is authorized by a court order pursuant to the N.Y. Pub. Health Law (see Miscellaneous (5)). N.Y. Pub. Health Law § 2782.

(12) No person to whom confidential HIV-related information has been disclosed shall disclose the information to another person except as authorized by this section. This shall not apply to: the protected individual; a natural person who is authorized by law to consent to health care for the protected individual; a protected individual's foster parent for the purpose of providing care, treatment, or supervision to the protected individual; a prospective adoptive parent with whom a child has been placed for adoption; or a relative or other person legally responsible to whom a child who is the protected individual is to be placed or discharged for the purposes of providing care, treatment, or supervision of the protected individual. N.Y. Public Health Law § 2782.

(13) A physician may disclose confidential HIV-related information under the following conditions: disclosure is made to a contact (see Definitions (1)) or to a public health officer for the purpose of making the disclosure to a contact; the physician reasonably believes disclosure is medically appropriate and there is a significant risk of transmission of HIV to the contact; the physician has counseled the protected individual regarding the need to notify the contact; and the physician has informed the protected individual of his or her intent to make such disclosure to a contact and the physician's responsibility to report the infected individual's care, and has given the protected individual the opportunity to express a preference as to whether disclosure should be made by the physician directly or to a public health officer for the purpose of such disclosure. If the protected individual expresses a preference, the physician shall honor such preference. If a physician chooses to make a notification, he or she shall report to a municipal health commissioner or district health officer on his or her

efforts to notify the contacts of the protected individual. Such report shall be made in a manner and on forms prescribed by the commissioner and shall include the identity of the protected individual and any contacts as well as information as to whether the contacts were successfully notified. Within a reasonable time of receiving a report that a physician or his or her agent did not notify or verify notification of contacts, the health commissioner or district health officer of the municipality shall take reasonable measures to notify such contacts. When making such disclosures to a contact, the physician or public health officer shall provide or make referrals for the provision of medical advice and counseling. The physician or public health officer shall not disclose the identity of the protected individual or the identity of any other contact. Disclosure shall be made in person except where circumstances reasonably prevent doing so. A physician or public health officer shall have no obligation to identify or locate any contact. A physician may, upon the consent of a parent or guardian, disclose confidential HIV-related information to a state, county, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school. A physician may disclose confidential HIV-related information pertaining to a protected individual to a person authorized by law to consent to health care for the protected individual when the physician reasonably believes that disclosure is: medically necessary in order to provide timely care and treatment for the protected individual; and after appropriate counseling as to the need for such disclosure, the protected individual will not inform a person authorized by law to consent to health care; provided however, that the physician shall not make such disclosure if, in the judgement of the physician the disclosure would not be in the best interest of the protected individual or the protected individual is authorized pursuant to law to consent to such care and treatment. N.Y. Pub. Health Law § 2782.

(14) Anyone to whom confidential HIV-related information is disclosed pursuant to this article shall be informed in writing that such information is confidential and protected by state law and that any further disclosure without specific written consent of the person to whom it pertains is prohibited by law. Except for disclosures made to persons reviewing information or records in the course of ensuring that a health facility is in compliance with applicable quality of care standards or any other authorized program evaluation, program monitoring or service review, or to governmental agents requiring information necessary for payments to be made on behalf of patients or clients pursuant to contract

or in accordance with law, a notation of all such disclosures shall be placed in the medical record of the protected individual, who shall be informed of such disclosures upon request. N.Y. Pub. Health Law § 2782.

(15) Confidential HIV-related information pertaining to a recipient of a health or social service whose provider is supervised or monitored by a federal, state or local government agency, may be disclosed to an authorized employee or agent of a provider of such service or government agency when reasonably necessary for the supervision, monitoring, administration, or provision of such service. Confidential HIV-related information shall be recorded in the medical record of the protected individual. The provisions of this section shall not prohibit the listing of AIDS or HIV in a certificate of death, autopsy report, or related documents. Notwithstanding the foregoing, confidential HIV information obtained pursuant to criminal procedure law or the family court act by either court order or consent of the protected individual shall not be recorded in the medical record of the protected individual unless he or she consents to the recording of such information in a written statement containing the relevant information. Confidential HIV-related information shall be disclosed upon the request of the health care worker HIV/HBV advisory panel only when reasonably necessary for the evaluation of a worker who has sought the panel's review. N.Y. Pub. Health Law § 2782.

(16) There shall be no criminal sanction or civil liability on the part of, and no cause of action for damages shall arise against any physician or person employed by a physician, or health care provider or health facility with which the physician is associated, or public health officer, solely on account of: the failure to disclose confidential HIV-related information to a contact (see Social & Medical Services (13)) or person authorized by law to consent to health care for a protected individual; disclosure of confidential HIV-related information to such person in good faith and without malice; or the disclosure of confidential HIV-related information to any person, agency, or officer authorized to receive such information, when carried out in good faith and without malice. Any cause of action to recover damages based on a failure to provide information, explanations, or counseling prior to the execution of a written informed consent, or based on a lack of informed consent in the ordering or performance of an HIV-related test, shall be governed by this provision. N.Y. Pub. Health Law § 2783.

(17) The Commissioner of Health may conduct periodic inspections of facilities of providers of AIDS home care programs (see Definitions (3)) with respect to the fitness and adequacy of equipment, the personnel, rules and bylaws, standards of service and medical care, system of accounts, records, and the adequacy of financial resources and sources of future revenues. A provider of an AIDS home care program shall annually submit to the Commissioner of Health a complete description of its operation. The Commissioner of Health shall make such information available to the appropriate government agencies of the state, the counties, and the city of New York, so as to make known the availability of home care services to provide data for planning for health needs of the people of the state. This information shall be available to the public and to the health systems agencies. The State Hospital Review and Planning Council shall adopt and amend rules and regulations pertaining to AIDS home health care providers, including: the establishment of requirements for a uniform statewide system of reports and audits relating to the quality of services provided and their utilization and costs; establishment of schedules of payment, payments, reimbursements, grants, and other charges; standards and procedures relating to certificates of approval and authorization to provide AIDS home care programs; uniform standards for quality of care and services to be provided by AIDS home care programs; requirements for minimum levels of staffing; standards and procedures relating to contractual arrangements between home care services agencies; requirements for the establishment of plans for the coordination of home care services and discharge planning for former patients or residents of facilities under the regulatory jurisdiction of the Department of Health, the Department of Social Services, the Department of Mental Hygiene, the Board of Social Welfare, or the Office for the Aging; requirements for uniform review of the appropriate utilization of services; and requirements for minimum qualifications and standards of training for personnel as appropriate. N.Y. Pub. Health Law § 3612.

(18) No government agency shall purchase, pay for, or make reimbursement or grants-in-aid for services provided by an AIDS home care program unless, at the time the services were provided, the AIDS home care program possesses a valid certificate of approval or such provider has been authorized by the Commissioner of Health to provide such program. Contractual arrangements between government agencies and home care services agencies shall not be prohibited, as long as the providers of home care programs maintain full responsibility for the plan

[NEW YORK]

of treatment and the care rendered. Payments for AIDS home care programs made by government agencies shall be at rates approved by the State Director of the Budget. No provider of an AIDS home care program shall establish charges for such program in excess of those established pursuant to the provisions of this section concerning home care services or the federal Social Security Act. The Commissioner shall certify that rate schedules for payments for AIDS home care programs are reasonable and appropriate before such rates are approved. N.Y. Pub. Health Law § 3614.

(19) An AIDS home care program shall be provided only to persons who are medically eligible for placement in a hospital or residential health care facility and who are diagnosed with AIDS. Provision of AIDS home care services paid for by government funds shall be based upon an evaluation of the medical, social, and environmental needs of each applicant for such services. Continuation of such services shall be based upon a comprehensive assessment of the same factors. Such assessment shall be performed at least once every 120 days of provision of services by an AIDS home care program. Prior to the initial delivery of services, an AIDS home care program shall inform the recipient of services that services to be provided are subject to change in accordance with a change in the recipient's needs. N.Y. Pub. Health Law § 3616.

(20) Every AIDS home care program is required to establish a quality assurance program which shall objectively and systematically monitor and evaluate the quality and appropriateness of care and services provided by the program. The information required to be collected and maintained by AIDS home care programs shall be kept confidential and shall only be released to the Department of Health or to a law enforcement agency upon a court order. None of the records, documentation or committee actions or records maintained by AIDS home care programs pursuant to this section shall be subject to disclosure, except as provided by law. No person in attendance at a meeting of any such committee involved in quality assurance evaluation shall be required to testify as to what transpired at any such meeting. However, records, documentation, or committee actions or records relating to employment history and recommendations may be transmitted to any AIDS home care program required by law or regulation to obtain such information. There shall be no liability on the part of any person or other entity participating in good faith and with reasonable care in a quality assurance committee. N.Y. Pub. Health Law § 3616-a.

(21) An AIDS home care program may be provided only by an AIDS center or a provider of a long term home health care program possessing a valid operating certificate. No agency or facility shall provide an AIDS home care program without the written authorization of the Commissioner of Health. Long term health care providers seeking authorization to provide AIDS home care programs shall apply to the Commissioner of Health for approval. The Commissioner of Health shall not approve such application unless: there is a public need for the program at the time and place and under the circumstances proposed; the provider of the proposed program has satisfactory financial resources; the proposed program will be able to meet the established standards for participation as a home health agency under the federal Social Security Act; and the proposed program will be able to meet the needs of AIDS patients. The Commissioner of Health shall notify applicants in writing of their approval or disapproval. Authorization to provide an AIDS home care program may be revoked, suspended, limited, or annulled without a hearing. N.Y. Pub. Health Law § 3620.

(22) Individuals who are eligible for long term care and services provided by an AIDS home care program, are eligible for medical assistance, have been determined by the social services district pursuant to an AIDS home care program as being in need of home care services, and are able to make informed choices as to the type and quality of services delivered to them, may be eligible for a patient managed home care program. N.Y. Soc. Serv. Law § 365-f.

(23) If a person eligible to receive medical assistance desires and is able to remain in such person's own home or in the home of a responsible relative or other responsible adult if the necessary services are provided, such person shall so inform the local social services official. If an AIDS home care program is available, the AIDS patient shall be assessed to determine whether or not home care may be appropriate. If the person is determined to be eligible for home care, the official shall prepare for the AIDS patient a plan for the provision of services comparable to those that would be rendered in a hospital or residential health care facility, as appropriate for the patient. No social services district shall make payment for a person receiving an AIDS home care program while payments are being made for that person for inpatient care in a residential health care facility or hospital. The Commissioner of Health shall submit an annual report to the governor, president of the Senate, and speaker of the Senate on the implementation of this program, including the scope and status of the AIDS crisis in New York State, the

development and implementation of AIDS home care programs, the adequacy of care delivered by such programs, the extent to which such programs have affected the use of institutional care services by AIDS patients, the costs associated with such programs, the adequacy of reimbursement provided such programs, any recommendations for legislative action, and any other pertinent matters. This section shall only be effective if, and as long as, federal financial participation is available. N.Y. Soc. Serv. Law § 367-e.

(24) The Commissioners of Public Welfare and city public welfare officers responsible under the provisions of a special or local law for children shall provide respite care for children who have AIDS or HIV. Respite care refers to the provision of temporary care and supervision of children on behalf of a foster parent of a child with special needs. Such care may be provided by a foster family boarding home, an agency operated boarding home, a group home, or an institution, based on the individual circumstances of the caregiver and the needs of the child, for up to three consecutive weeks, but no more than seven weeks in a calendar year. The Department of Social Services shall establish standards for respite care and training for the providers of such care. N.Y. Soc. Serv. Law § 398.

(25) The department shall, in consultation with the office for the prevention of domestic violence and statewide organizations and community based organizations, develop a protocol for the identification and screening of victims of domestic violence who may either be a protected individual or a contact. N.Y. Pub. Health § 2137.

(26) The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes of the Human Immunodeficiency Virus title of the N.Y. Public Health Law. N.Y. Pub. Health § 2139.

(27) An additional amount may be added to a hospice's rate pursuant to the medical assistance program for purposes of enabling such hospice to provide care and services to persons with special needs, including persons with AIDS, after a determination that such care cannot be appropriately provided at the rates of payment established pursuant to federal criteria. N.Y. Pub. Health § 4012-a.

(28) No person or group of persons may operate a comprehensive HIV special needs plan (see Definitions (5)) without first obtaining a certificate of authority from the commissioner. Any person may apply for a comprehensive HIV special needs certificate of authority, provided, however, that a shared health facility shall not be eligible for

such a certificate. The requirements for an application for certification and the requirements for issuing a comprehensive needs certification are set forth in N.Y. Public Health Law § 4403-c. A comprehensive HIV special needs plan, certified pursuant to this section, shall be responsible for providing or arranging for all medical assistance services, including delivery of a comprehensive benefit package, which shall include early and periodic screening; adolescent health; diagnosis and treatment and child/teen health screenings; referrals for necessary services; linkages to HIV counseling and testing and HIV prevention and education activities. A comprehensive special needs plan provider shall be responsible for assisting enrollees in the prudent selection of such services, including but not limited to: referral, coordination, monitoring and follow-up with regard to other medical services providers; methods of assuring enrollees' access to specialty services outside the comprehensive HIV special needs plan's network or panel when the plan does not have a provider with the appropriate training and experience; the establishment of appropriate utilization and referral requirements for medical services; the creation of mechanisms to ensure the participation of HIV centers of excellence (see Definitions (5)) and community-based HIV care providers; implementation of procedures for managing the care of all participants; development of appropriate methods of managing the HIV care needs of vulnerable populations, who are enrolled in the comprehensive HIV special needs plan; provision of all early periodic screening, diagnosis and treatment services, as well as periodic screening and referral, to each participant under the age of twenty-one, at regular intervals and as medically appropriate; direct provision or arrangement for the provision of comprehensive prenatal care services to all pregnant participants; implementation of procedures for written agreements to ensure access to the full continuum of services needed by HIV infected persons; and permit the use of standing referrals to specialists and subspecialist for participants who require the care of practitioners on a regular basis. Enrollment in a certified comprehensive HIV special needs plan shall limit enrollment to HIV positive persons and children under age nineteen related to HIV positive persons regardless of their HIV status. Enrollment in a comprehensive HIV special needs plan is voluntary, unless federal action under the federal social security act requires automatic enrollment provided that the person automatically enrolled shall have the opportunity to withdrawal. The comprehensive HIV special needs plans shall not request disenrollment of an enrollee based on any diagnosis, condition, or perceived diagnosis or condition, or an

[NEW YORK]

enrollee's efforts to exercise his or her rights under a grievance process. The department shall be responsible for establishing a comprehensive quality assurance program for comprehensive HIV special needs plan. The department shall monitor the performance, quality and utilization of such plans on at least an annual basis. The commissioner shall have access to patient specific medical information and enrollee medical records maintained by a comprehensive HIV special needs plan for the purpose of quality assurance and oversight. The commissioner may revoke, limit, or annul a comprehensive HIV special needs certificate of authority. Any enrollee information maintained by a comprehensive HIV special needs plan shall be kept confidential. Each enrollee and prospective enrollee prior to enrollment in a comprehensive HIV special needs plan shall be provided with written disclosure information related to enrollee benefits, right, and obligations. N.Y. Pub. Health § 4403-c.

(29) No person except a citizen or an alien who has been duly naturalized shall be eligible for additional state payments for aged, blind and disabled persons, family assistance, safety net assistance, services funded under the social security act, or medical assistance except: the following persons, if otherwise eligible, shall be eligible for safety net assistance and medical assistance, except that medical assistance shall be limited to care and services necessary for the treatment of an emergency medical condition unless and until federal financial participation is available for the costs of providing medical assistance provided, however, that any such person, who on August 4, 1997 was diagnosed as having AIDS and was receipt of medical assistance authorization based on a finding that he or she was a person permanently residing in the United States under color of law shall be eligible for medical assistance. N.Y. Soc. Serv. § 122.

Criminal Law (1)

Education (1)

Employment (2), (3), (4), (5)

Insurance (1), (2), (3), (4), (5), (6)

Testing & Reporting (1), (2), (3), (4), (5)

Miscellaneous (4), (8)

TESTING & REPORTING

(1) Unless otherwise specifically authorized or required by state or federal law, no person shall order the performance of an HIV test without first receiving the written informed consent of the subject of the test or a person legally authorized to consent to health care for the subject.

[NEW YORK]

A physician or other person authorized to order the performance of an HIV test shall certify that informed consent has been received prior to the ordering of such test. Informed consent shall consist of a statement signed by the test subject or legally authorized person which includes at least the following: an explanation of the test, including its purpose, the meaning of its results, and the benefits of early diagnosis and medical intervention; an explanation of the procedures to be followed, including that the test is voluntary and consent may be withdrawn at any time, and a statement advising the subject that anonymous testing is available; and an explanation of the confidentiality protections afforded confidential HIV-related information (see Definitions (1)), including the circumstances under which any classes of persons to whom disclosure of such information may be required, authorized, or permitted. Prior to the execution of a written informed consent, a person ordering the performance of an HIV test shall provide to the subject of the test the following information: an explanation of the nature of AIDS and HIV; information about discrimination problems that disclosure of the test result could cause and legal protections against such discrimination; and information about behavior known to pose risks for transmission and contraction of HIV infection. A person authorized to order an HIV test shall provide to the person seeking such test an opportunity to remain anonymous and to provide written, informed consent through use of a coded system with no linking of individual identity to the test request or results. Health care providers who are not authorized to provide anonymous HIV testing shall refer a person who requests an anonymous test to an anonymous testing site. These provisions shall not apply to the ordering of an HIV test on an individual proposed for insurance coverage. At the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV test shall provide the subject of the test or person authorized to consent for the subject with counseling or referrals for counseling. These provisions shall not apply to the performance of an HIV test: by a health care provider (see Definitions (1)) or health facility (see Definitions (1)) in relation to the procuring, processing, distributing, or other use of a human body part for medical research or therapy, or for transplantation to individuals, provided that where the test results are communicated to the subject, post-test counseling shall be required; for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or on a deceased

person, when such test is conducted to determine the cause of death or for epidemiological purposes. N.Y. Pub. Health Law § 2781.

(2) The Commissioner of Health shall promulgate rules and regulations concerning implementation of statutory provisions regarding HIV and AIDS-related information for health facilities, health care providers, and others to whom such provisions are applicable. The Commissioner of Health shall also develop forms to be used for informed consent for HIV testing and for the release of confidential HIV-related information and materials for pre-test and post-test counseling as required by § 2781. Persons, health facilities, and health care providers may use forms for informed consent for HIV testing and for the release of confidential HIV-related information other than those forms developed pursuant to this section, provided that the person, health facility, or health care provider doing so receives prior authorization from the Commissioner of Health. All informed consent forms authorized or developed by the Commissioner of Health shall be written in a clear and coherent manner, using words with common, everyday meanings. The Commissioner of Health, in consultation with the AIDS Institute Advisory Council, shall promulgate regulations to identify those circumstances which create a significant risk of contracting or transmitting HIV infection. Each state agency authorized to obtain confidential HIV-related information shall, in consultation with the Department of Health, promulgate regulations: to provide safeguards for the prevention of discrimination, abuse, or other adverse actions directed against protected individuals; to prohibit the disclosure of such information except where authorized by law; to seek to protect individuals in contact (see Definitions (1)) with the protected individual when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids; and to establish criteria for determining when it is reasonably necessary for a provider of a health or social service or a state or local government agency to have or use confidential HIV-related information for supervision, monitoring, investigation, or administration, and for determining which employees and agents may, in the ordinary course of business of the agency or provider, be authorized to access confidential HIV-related information. N.Y. Pub. Health Law § 2786.

(3) The Acquired Immune Deficiency Syndrome Institute (see Social & Medical Services (7)), in conjunction with the Department of Social Services, the Office of Mental Health, and persons with expertise in serving HIV-infected children and families, including

[NEW YORK]

representatives of relevant labor organizations, service providers, and advocacy agencies, shall produce a report on HIV/AIDS orphans in the state. Such report shall include: an estimate of the extent of the problem; an estimate of the needs of HIV/AIDS orphans; a review of current services directed to HIV/AIDS orphans; a review of current regulations and laws that impact on the health and well-being of HIV/AIDS orphans; and recommendations for implementing legislation. Such report shall be submitted to the Governor and the Health and Children and Families Committees of the Senate and Assembly and the Senate Finance and the Assembly Ways and Means Committees. 1995 N.Y. Laws 83.

(4) In any case where a defendant is convicted of (see Definitions (6)) or found to have committed a felony offense where an act of “sexual intercourse” or “deviate sexual intercourse” is required as an essential element for the commission thereof, the court must, upon the request of the victim (see Definitions (6)), order that the defendant submit to HIV related testing. The test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order, but such tests results need not be completed prior to the imposition of the sentence. If the victim is an infant or incompetent person, the application for an HIV testing order may be made by a representative. The application must state that: (a) the applicant was the victim of the offense of which the defendant stands convicted; (b) the applicant has been offered counseling by a public health officer and been advised of the limitations of the information obtained through an HIV test on the proposed subject, the current scientific assessments of the risk of transmission of HIV from the exposure he or she may have experienced, and the need for the applicant to undergo HIV testing to determine his or her HIV status. The court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense of which the defendant was convicted. The court ordered test must be performed within fifteen days of the date on which the court ordered the test. Test results shall be disclosed only as necessary to fulfill the purpose for which the order is granted. Disclosure shall be limited to the person making the application. Rediscovery shall be permitted only to the victim, the victim’s immediate family, guardian, physicians, attorneys, medical or mental health providers, and to his or her past and future contacts to whom there is a reasonable risk of HIV transmission and shall not be permitted to any other person or the court. Any failure to comply with the disclosure provision of this section shall not impair or affect the validity of any sentence, order, or disposition imposed by the court. No

[NEW YORK]

information obtained as a result of a consent, hearing or court order for testing imposed pursuant to this provision nor any other information derived therefrom may be used as evidence in any criminal or civil proceedings against the defendant which relates to events that were the basis for the defendant's conviction, except for prosecutions of witnesses testifying in any court hearing held pursuant to his provision for perjury. N.Y. Crim. Pro. § 390.15, N.Y. Fam. Ct. § 347.1.

(5) In order to improve the health outcomes of newborns, and to improve access to care and treatment of newborns infected with or exposed to HIV and their mothers, the commissioner shall establish a comprehensive program for the testing of newborns for the presence of HIV or its antibodies. The commissioner shall promulgate rules and regulations governing the implementation of the program, including the administration of testing, counseling, tracking, disclosure of test results, follow-up reviews, and educational activities relating to such testing. N.Y. Pub. Health § 2500-f.

(6) Disclosure of medical information obtained in accordance with the Human Immunodeficiency Virus title of the N.Y. Public Health Law, including a diagnosis of HIV infection may be made only to 1) the protected individual (see Definitions (1)); 2) the municipal health commissioner or district health officer, if such commissioner or officer is not the examining physician; and 3) without specifically revealing the identity of the protected individual, contacts (see Definitions (1)). N.Y. Pub. Health § 2134.

(7) All reports or information secured by the department, municipal health commissioner or district health officer under the Human Immunodeficiency Virus title of the N.Y. Public Health Law shall be confidential except in so far as necessary to carry out the Act. N.Y. Pub. Health § 2135.

(8) Nothing in the Control of Acute Communicable Diseases article of the N.Y. Public Health Law shall be interpreted to eliminate the option of anonymous testing. N.Y. Pub. Health § 2138.

(9) If any contact (see Definitions (1)) resides in a county or district other than the one where the protected individual is found, the health officer receiving an HIV report shall refer the contact report to the health officer in the county or district where the contact resides, who shall then make a good faith effort to notify such contact and otherwise comply with the N.Y. Public Health Law. N.Y. Pub. Health § 2131.

(10) If a coroner, pathologist, medical examiner, or other person qualified to conduct an examination of a deceased person

discovers that at the time of death the individual was afflicted with AIDS, HIV related illness or HIV infection, he or she shall report the case promptly to the commissioner as if the diagnosis had been established prior to death. N.Y. Pub. Health § 2132.

(11) Every physician or other person authorized by law to order diagnostic tests to make a medical diagnosis, or any laboratory performing such tests shall immediately (a) upon initial determination that a person is infected with HIV or (b) upon initial diagnosis that a person is afflicted with AIDS, or (c) upon initial diagnosis that a person is afflicted with HIV related illness, report such care to the commissioner. The commissioner shall promptly forward such report to the health commissioner of the municipality where such disease, illness or infection occurred. When cases of such disease, illness or infection occur in a municipality not having a health commissioner, such reports shall be forwarded directly to the district health officer. Such report shall contain such information concerning the case as shall be required by the commissioner. Such report shall include information identifying the protected individual as well as the names, if available, of any contacts of the protected individual (see Definitions (1)) known to the physician or provided to the physician by the infected person. N.Y. Pub. Health § 2130.

(12) Every municipal health commissioner or the department's district health officer, upon determination that such reported case or, any other known case of HIV infection merits contact (see Definition (1)) tracing in order to protect the public health, shall personally or through their qualified representatives notify the known contacts of the protected individual. Such contact shall also be informed of (a) the nature of HIV, (b) the known routes of transmission of the virus, (c) as circumstances may require, the risks of prenatal and perinatal transmission, (d) actions he or she can take to limit further transmission of the virus, (e) other facilities or community based organizations which are accessible to the person that provide counseling, medical care and treatment, further information or other appropriate services for persons infected with HIV. In notifying any contact identified in the course of any investigation conducted pursuant to this provision, the physician or public health officer shall not disclose the identity of the protected individual or the identity of any other contact. A physician or public health officer making a notification to a contact, pursuant to this provision shall make such notification in person except where circumstances reasonably prevent doing so. N.Y. Pub. Health § 2133.

[NEW YORK]

Criminal Law (1)
Insurance (1), (6)
Social & Medical Services (2), (8), (15), (16), (23), (25)
Miscellaneous (4), (7)

MISCELLANEOUS

(1) It is the responsibility and the intent of the New York State Department of Civil Service (Department) to adopt regulations pursuant to the HIV and AIDS Related Information Act. All officers, employees, and agents of the Department shall at all times maintain the confidentiality of any HIV-related information (see Definitions (2)) in their possession, in accordance with the requirements of the Act. N.Y. Civ. Serv. Law § 83.1.

(2) Employees or agents of the Department are not to have access to confidential HIV-related information maintained by the Department, except as part of their official duties. Agents of the Department may be authorized to have access to confidential HIV-related information (see Definitions (2)) maintained by the Department only when reasonably necessary to perform the specific activities for which they have been designated as agents of the Department. N.Y. Civ. Serv. Law § 83.4.

(3) No person who obtains confidential HIV-related information (see Definitions (2)) in the course of performing duties as an employee or agent of the Department of Civil Service may disclose such information except in accordance with the provisions of the HIV and AIDS Related Information Act (N.Y. Pub. Health Law §§ 2780 to 2790) and the provisions of this section. Any disclosure, except disclosures to employees or agents of the Department where reasonably necessary to carry out their official duties and to any person to whom disclosure is mandated by a court, must be accompanied by a written statement prohibiting further disclosure. All disclosures, except reasonable disclosures to employees and agents, are to be appropriately documented in the case folder of the protected individual, who shall be informed of such disclosure upon request. No flags on case folders, lists on walls, or other similar displays shall be used to indicate clients with HIV infection. Confidential HIV-related information shall not be disclosed in response to a request under the New York Freedom of Information Law or in response to a subpoena. The Department will take appropriate steps to make all employees and agents aware of the provisions of the HIV and AIDS Related Information Act concerning confidentiality of HIV-related

[NEW YORK]

information and the Department's rules regarding confidentiality of records. All authorized officers, employees, and agents of the Department shall at all times maintain the confidentiality of any confidential HIV-related information in their possession. N.Y. Civ. Serv. Law §§ 83.5, 83.6.

(4) No court shall issue an order for the disclosure of confidential HIV-related information, except in accordance with the provisions of this section. A court may grant an order for disclosure of confidential HIV-related information upon application showing: a compelling need for disclosure of the information for the adjudication of a criminal or civil proceeding; a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact (see Definitions (1)) with the individual to whom the information pertains; upon application of a state, county, or local health officer, a clear and imminent danger to the public health; or that the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of the AIDS Related Information Act (N.Y. Pub. Health Law §§ 2780 to 2790). An order authorizing disclosure of confidential HIV-related information (see Definitions (1)) shall limit disclosure to that information which is necessary to fulfill the purpose for which the order was granted and to those persons whose need for the information is the basis for the order. N.Y. Pub. Health Law § 2785. A state, county or local public health officer to whom an order or a consent for an HIV test is addressed or sent in accordance with the Criminal Procedure Law or Family Court Act must cause HIV related testing to be administered to the subject named therein and, if the test is pursuant to court order, must immediately provide to the court that issued the order a written report specifying the date on which such test was completed. Such report shall not disclose the results of the test. Such officer must disclose the results of such test to the victim indicated in the order or consent and must also disclose the results to the person being tested, unless the person tested has been asked but declines to authorize such disclosure to himself or herself. At the time of communicating such test results, such public health officer shall directly provide the victim and the person tested with counseling or referrals for counseling, counseling with regard to HIV disease and HIV testing, and appropriate health care and support services or referrals to such available services. If at the time of communicating the test results, the person tested is in the custody of the department of correctional services, division for youth, office of mental health or a local correctional institution, the counseling and services required by this provision may be

provided by a public health officer associated with the county or facility within which the person tested is confined. Unless inconsistent with this provision, the law regarding confidentiality and disclosure of HIV related information apply. N.Y. Pub. Health § 2785-a.

(5) The Commissioner of Health shall promulgate a list of sexually transmissible diseases. In determining the diseases to be included on this list, the Commissioner of Health shall consider those conditions principally transmitted by sexual contact and the impact of particular diseases on individual morbidity and the health of newborns. N.Y. Pub. Health Law § 2311.⁵²

(6) Any cause of action for an injury or death against a proprietary manufacturer of blood products for damages involving the infusion of such blood products which resulted in the contraction of HIV and/or AIDS which is barred as of December 1, 1997 because the statute of limitations has expired is hereby revived, and an action thereon may be commenced and prosecuted providing such action is commenced within two years of December 1, 1997. This section does not apply to any civil action governed by the statute of limitations of another jurisdiction. N.Y. Civil Practice Law and Rules § 214-e.

(7) Good faith reporting or disclosure pursuant to the Human Immuno Deficiency Virus title of the N.Y. Public Health Law shall not constitute libel or slander or a violation of the right of privacy or privileged communications. Any person who in good faith complies with this title shall be immune from civil and criminal liability for any action taken in compliance with this title. No criminal or civil liability shall arise against any protected individual solely due to his or her failure to cooperate in contract tracing. N.Y. Pub. Health § 2136.

(8) Funds shall be reserved and accumulated from year to year by the commissioner from the health care incentive pool for 1997, 1998, and 1999 for deposit by the commissioner, within amounts appropriated, and the state comptroller is hereby authorized and directed to receive for deposit to, to the credit of the department of health's special revenue fund - 339 maternal and child HIV services account, for purposes of a special program for HIV services for infants and pregnant women, up to five million dollars on an annualized basis including such amounts as may be available from prior year pool reserves. Funds shall also be reserved and accumulated from year to year by the commissioner and

52. *New York State Soc. of Surgeons v. Axelrod*, 572 N.E.2d 605 (N.Y. 1991) (Commissioner of Health is not required to add HIV infection to lists of communicable and sexually transmissible diseases).

shall be available, including income from invested funds, for transfer to and allocation for services and expenses for the payment of benefits to recipients of drugs under the AIDS drug assistance program (ADAP) - HIV uninsured care program as administered by Health Research Incorporated from the respective health care initiatives pool established for 1997, 1998, and 1999. N.Y. Pub. Health § 2897-1.

(9) It is not a material defect or fact relating to property offered for sale or lease, including residential property regardless of the number of units contained therein, that an owner or occupant of the property is, or was at any time suspected to be infected with HIV or diagnosed with AIDS, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through occupancy of a dwelling place. However, if such information is important to the decision of the buyer to purchase or lease the property, the buyer may, when negotiating or making a bona fide offer, submit a written inquiry for such information. The seller may choose whether or not to respond to such inquiry. N.Y. Real Prop. § 443-a.

(10) The state comptroller is hereby authorized and directed to loan money in accordance with the state finance law to the Maternal and child HIV services account. N.Y. Legis. 57 (1998).

NORTH CAROLINA

All citations are to "N.C. Gen. Stat." unless otherwise noted.

DEFINITIONS

CRIMINAL LAW

Testing & Reporting (1), (2)

Miscellaneous (1)

EDUCATION

(1) The State Board of Education, as part of its development of a comprehensive school health education program, shall develop and instruct public school pupils from kindergarten through the ninth grade in the prevention of sexually transmitted diseases, including AIDS. The instruction will include emphasis on the importance of parental involvement and abstinence from sex until marriage and avoiding intravenous drugs. Any program developed will present techniques to deal with peer pressure and offer positive reinforcement and teach the reasons for and ways to remain abstinent. Pupils will be instructed that abstinence is the only means of avoiding diseases contracted through sexual contact, such as AIDS. In cases where homosexual acts are a significant means of transmission, the instruction shall include the current legal status of those acts. Each local school administrative unit shall provide a comprehensive health education program that meets the objectives of the State Board of Education. Provisions are made for disclosure and public hearings before the adoption of the program and for a parental consent mechanism. § 115C-81.

Social & Medical Services (3)

EMPLOYMENT

(1) In determining suitability for continued employment, it shall be unlawful to discriminate against any person having HIV, and AIDS testing shall not be required. Nothing in this section shall prohibit an employer from: requiring job applicants to be tested for AIDS as part of pre-employment medical examinations; denying employment to a job applicant based solely on a confirmed positive AIDS test; including an AIDS test as part of an annual medical examination routinely required of all employees; reassigning or terminating an employee who has AIDS if continuation of the employee would pose a significant risk to the health of

[NORTH CAROLINA]

that employee, coworkers, or the public, or if the employee is unable to perform the normally assigned duties of the job. Any person aggrieved hereunder may bring a civil action. § 130A-148.⁵³

Social & Medical Services (4)

HOUSING

(1) AIDS testing shall not be required in order to determine suitability for housing or use of public accommodations. Any person aggrieved hereunder may institute a civil suit under the state Fair Housing Act. § 130A-148.

INSURANCE

Testing & Reporting (7)

RESEARCH

(1) Specimens may be tested for AIDS infection for research or epidemiological purposes without the consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing. § 130A-148.

Testing & Reporting (5)

Miscellaneous (2)

SOCIAL & MEDICAL SERVICES

(1) Local health directors shall ensure that measures have been implemented to prevent the spread of all reportable communicable conditions or communicable conditions that represent a significant threat to the public health. Local health departments shall provide, at no cost to patients, examination and treatment for sexually transmitted diseases. § 130A-144.

(2) The Public Health Study Commission shall examine the need for improvement in the statewide public health delivery system through local communities and the need for additional legislation to deal with AIDS and shall develop legislation to address those needs. 1989 N.C. Ch. 802.

(3) Prior to obtaining consent for donation of blood, semen, tissue, or organs, a facility seeking to obtain these materials for transfusion, transplantation, implantation, or administration shall provide

53. *Burgess v. Your House of Raleigh*, 388 S.E.2d 134 (N.C. 1990) (provision provides protection for HIV positive persons but was not in effect at time of plaintiff's dismissal).

the potential donor with information about transmission of AIDS and who should not donate. § 130A-148.

(4) It is not unlawful for a licensed health care provider or facility to treat a person who has AIDS or HIV differently from persons who do not have that infection when such treatment is appropriate to protect the health care provider or employees of the provider or facility while providing appropriate care for the person with AIDS or HIV. A licensed health care provider or facility may refer a person with AIDS or HIV to another licensed health care provider or facility when such referral is for the purpose of providing more appropriate treatment for the person with AIDS or HIV. § 130A-148.

(5) Within the Department of Environment, Health and Natural Resources the Office of Women's Health shall be established. The Office shall study the feasibility of establishing initiatives for early intervention services for women infected with HIV and outreach, treatment, and follow-up services to women at high risk for contracting sexually transmitted diseases. §130A-131

Employment (1)

Testing & Reporting (4), (5), (7), (8)

Miscellaneous (1), (2), (3)

TESTING & REPORTING

(1) If, in an initial appearance hearing, a judicial official finds probable cause that an individual was exposed to a defendant in a manner that poses a significant risk of transmission of the AIDS virus by the defendant, the judicial official shall order the defendant to be detained for a period not to exceed twenty-four hours for investigation and AIDS testing, if required by public health officials. § 15A-534.3.

(2) After a finding of probable cause or after an indictment for an offense involving nonconsensual vaginal, anal, or oral intercourse with a child sixteen years old or less, the victim or parent or guardian of a minor victim may request that the defendant be tested for sexually transmitted infections, including HIV. § 15A-615.

(3) The Public Health Study Commission requires physicians to report communicable conditions including HIV infection. A physician who has reason to suspect that a person about whom the physician has been consulted professionally has HIV shall report the infection to the local health director. § 130A-135.

(4) The Public Health Study Commission may authorize or require AIDS testing as necessary to protect the public health. An AIDS

test may also be performed upon any person solely by order of a physician who is rendering medical services to the person when, in the reasonable medical judgment of the physician, the test is necessary for appropriate treatment of the person. The person shall be informed that an AIDS test is to be conducted and shall be given a clear opportunity to refuse to submit to the test. If informed consent is not obtained, the test may not be performed. If testing is necessary for the appropriate care of a person who is incompetent or incapable of providing such consent and others authorized to give consent for the person are not available, a physician may order AIDS testing without the informed consent of the person tested. An unemancipated minor may be tested for AIDS without the consent of a parent or legal guardian when the parent or guardian has refused to consent to such testing and there is reason to believe that the minor has the AIDS virus or that the child has been sexually abused. § 130A-148.

(5) The Public Health Study Commission shall adopt rules establishing standards for the certification of laboratories to perform AIDS tests. The rules shall not apply to testing performed solely for research purposes under the approval of an institutional review board. § 130A-148.

(6) No blood or semen may be transfused or administered without first testing the donor's blood for AIDS or if the donor has tested positive for AIDS using a standard laboratory test. No tissue or organs may be transplanted or implanted without first testing the donor's blood for AIDS, or, if the donor has tested positive for AIDS using a standard laboratory test, unless the recipient or the recipient's guardian or responsible relative consents. § 130A-148.

(7) Persons tested for AIDS shall be notified of the test results and counseled appropriately, except in cases involving entities governed under the Insurance Information and Privacy Protection Act, provided that such entities comply with the notice requirements stated therein. § 130A-148.

(8) A licensed physician attending to any person who dies and is known to have been infected with HIV shall provide written notice to all individuals handling the body, blood, and body fluids of the deceased person of the proper precautions to be taken in order to prevent infection. This written notification shall be provided to funeral services personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When a patient dies in a location other

than a health care facility, the attending physician may verbally notify the funeral services personnel of the necessary precautions. § 130A-395.

Employment (1)

Housing (1)

Research (1)

Miscellaneous (1), (2), (4)

MISCELLANEOUS

(1) Any facility that obtains, transfuses, implants, transplants, or administers blood, tissue, semen, or organs shall be immune from civil or criminal liability for transmission of AIDS if the required testing provisions are followed (see Testing & Reporting (4) to (6)). § 130A-148.

(2) All information and records, whether publicly or privately maintained, that identify a person who has AIDS shall be strictly confidential. This information shall not be released or made public except under the following circumstances: release is made of specific medical or epidemiological information for statistical purposes in a way that does not identify the person; release is made of all or part of the medical record with the written consent of the person identified or their guardian; release is made to health care personnel providing medical care to the patient; release is necessary to protect the public health and is made as provided by the Public Health Study Commission in its rules regarding control measures for communicable diseases and conditions; release is made pursuant to subpoena or court order (see Testing & Reporting (1)); release is made by the Department of Health or a local health department to a court or a law enforcement officer for law enforcement purposes; release is made by the Department of Health or a local health department to another state or local health agency for the purpose of preventing or controlling the spread of a communicable disease; or release is made by the Department of Health for bona fide research purposes. § 130A-143.⁵⁴

(3) Anyone who assists in an inquiry or investigation conducted by the state health director for the purpose of evaluating the risk of transmission of HIV from an infected health care worker to patients, or who serves on an expert panel established by the state health director for that purpose, shall be immune from civil liability for any acts

54. *Weston v. Carolina Medicorp, Inc.*, 402 S.E.2d 653 (N.C. Ct. App. 1990) (statute does not give physician absolute discretion to decide whether to divulge HIV test result); *Act-Up Triangle v. Commission for Health Serv.*, 483 S.E.2d 388 (N.C. 1997) (elimination of anonymous HIV testing in favor of confidential testing did not violate constitutional privacy rights).

or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful and wanton misconduct, or intentional wrongdoing. § 130A-144.

(4) An AIDS test shall not be required, performed, or used, unless otherwise provided to determine suitability for continued employment, housing or public services or for places of public accommodation or public transportation. It is unlawful to discriminate against any person with AIDS or HIV in determining suitability for continued employment, housing or public services or for places of public accommodation public services or public transportation. Any person aggrieved by an act prohibited by this subsection may bring a civil action. Nothing in this section shall be construed so as to prohibit an employer from: requiring a test for AIDS virus infection for job applicants in preemployment medical examinations required by the employer; denying employment to a job applicant based solely on a confirmed positive test for AIDS; including a test for AIDS performed in the course of an annual medical examination routinely required of all employees by the employer; or taking the appropriate employment action, including reassignment or termination of employment, if the continuation by the employee who has AIDS or HIV of his work tasks would pose a significant risk to the health of the employee, coworkers, or the public, or if the employee is unable to perform the normally assigned duties of the job. It shall not be unlawful for a licensed health care provider or facility to: treat a person who has AIDS or HIV differently from persons who do not have the infection when such treatment is appropriate to protect the health care provider or its employees while providing appropriate care for the person who has AIDS or HIV; or refer a person who has AIDS or HIV to another licensed health care provider or facility when such referral is for the purpose of providing appropriate treatment for the person. §130A-148.

NORTH DAKOTA

All citations are to "N.D. Cent. Code" unless otherwise noted.

DEFINITIONS

(1) "Emergency medical services provider," "health care provider," "human immunodeficiency virus," "HIV infection," "informed consent form," "significant exposure" and "universal precautions" are defined at § 23-07.5-01.

(2) "Infraction" is defined at § 12.1-32-01.

CRIMINAL LAW

(1) It is a class A felony for an HIV-infected person to knowingly transfer semen, vaginal secretion, or blood by genital, oral, or anal contact or by shared hypodermic needle use. An affirmative defense to a violation by sexual contact is that the activity occurred between consenting adults after full disclosure of the risk and with the use of a prophylactic device. § 12.1-20-17.

(2) Failure of a health facility to designate an official in the State Department of Health to whom reports about individuals with HIV and AIDS shall be made, is an infraction. § 23-07-02.1.

(3) A person who, knowing that he or she is infected with a sexually transmitted disease, willfully exposes another person to infection is guilty of an infraction (see Definitions (2)). § 23-07-21.

(4) A person who releases or makes public confidential information or otherwise breaches the confidentiality as to HIV infection (see Definitions (1)) (see Testing & Reporting (2)) is guilty of a Class C felony. § 23-07-21.

(5) The State Health Officer shall use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning prostitutes who are infected with HIV (see Testing & Reporting (8)). § 23-07-07.

Testing & Reporting (2), (3), (6), (8)

Miscellaneous (1)

EDUCATION

EMPLOYMENT

HOUSING

INSURANCE

(1) The Department of Human Services may pay health insurance premiums, copayments, and deductibles for a person with HIV or for any person maintaining a health insurance policy covering a person with HIV, if such payment is determined to be a cost-effective alternative to the payment of future medical and economic assistance and the department determines that the person is otherwise unable to afford the cost of the premiums, copayments, and deductibles. § 50-06-06.9.

RESEARCH

Testing & Reporting (5)

SOCIAL & MEDICAL SERVICES

(1) Any person, fourteen years or older, may contract for and receive examination, care, or treatment for a sexually transmitted disease without permission, authority, or consent of a parent or guardian. § 14-10-17.

Insurance (1)

Testing & Reporting (2), (5), (7), (8)

TESTING & REPORTING

(1) The State Department of Health (Department) shall designate the diseases or conditions that must be reported. Such diseases may include contagious, infectious, sexually transmitted, or chronic diseases. § 23-07-01.

(2) Attending physicians and others treating a person known to be HIV positive in public or private institutions, including penal institutions, shall report the patient's identity to the Department. § 23-07-02.1. Such reports are confidential except for anonymous statistical purposes, public health purposes, or for the protection of the health of any individual. § 23-07-02.2.

(3) The following persons must be tested for HIV infection: those convicted of a crime and imprisoned for more than fifteen days; those convicted of certain sexual offenses; and those convicted of controlled substance violations involving use of hypodermic needle paraphernalia. Positive HIV test results must be reported to the Department. §§ 23-07-07.5, 23-07-08.

(4) Unless required by law, health care providers, blood banks, blood centers, or plasma centers may not subject a person to a HIV test unless informed consent for testing and disclosure is given by the test subject, or the parent or legal guardian of minor test subjects or incapacitated subjects. Consent is not required for HIV tests performed on the blood of a patient when health care providers, emergency medical service providers, or persons rendering aid who provide care to the patient and who has had significant exposure to the patient. If a person has been significantly exposed to HIV, such person may request two HIV tests. The first test may be requested within ten days after a significant exposure. The second test may be requested not earlier than five months nor later than six months after the exposure. The tested person must provide a sample within twenty-four hours after the first request and seventy-two hours after the second request. § 23-07.5-02.

(5) Informed consent to testing, and consent to disclosure of test results, must be in writing (see Definitions (1)). Test results are confidential and may be disclosed only by court order or by the test subject's authorization. Exceptions include: adoption and foster parent situations; the subject's health care providers (see Definitions (1)), specifically handlers of body fluids or tissues; blood or tissue donation situations; public health functions pertaining to control of communicable disease; embalmers; health care service review functions; and research situations where no further disclosure will occur. §§ 23-07.5-01 to 08.

(6) Victims of alleged sexual offenses may petition the court for testing of a defendant or juvenile for sexually transmitted diseases (STDs), including HIV. If the court determines, without a hearing, that probable cause exists to believe that a possible transmission of an STD occurred, the court shall order the testing of the defendant, the results of which are confidential and inadmissible in evidence and shall be reported only to the test subject, the requesting victim, and the Department. §§ 23-07.7-01, 23-07.7-02.

(7) No anatomical parts of human bodies, including blood and blood products, semen, body tissue, and organs may be used for injection, transfusion, or transplantation into a human body unless the

anatomical parts or the donor have been tested for HIV with a negative test result. Testing is not required in a medical emergency when testing is not available and the life of a potential anatomical part recipient is threatened. § 23-06.2-11.1.

(8) A state health officer shall, when necessary for the public health, examine any person reasonably believed to be infected with or to have been exposed to HIV. The state health officer may require the person suspected to be infected with HIV: to be tested for HIV; to report to a qualified physician or health care worker for counseling on the disease and for information on how to avoid infecting others; and to cease and desist from conduct that endangers the health of others, if the official has determined that clear and convincing evidence exists to believe that the person who is infected with HIV has continued to demonstrate behavior that endangers the health of others in spite of an order from the official to report for counseling. Orders or restrictive measures directed to a person with HIV must be used as the last resort when other measures to protect the public health have failed and must be applied with the least intrusive measures used first. When such procedures have been exhausted and a state health officer has reason to believe that a person is infected with HIV and that the person continues to engage in behavior that presents an imminent danger to the public health, the state health officer or designee may bring an action in the district court to enjoin the person from engaging in such behavior. In addition to issuance of an injunction, the court may issue an order to take the person into custody for up to ninety days and place the person in a facility designated or approved by the state health officer. Any hearing conducted in accordance with these guidelines must be closed, and all information pertaining to actions taken is confidential. §§ 23-07-07, 23-07.4-01 to 03.

(9) If there is a case of sexually transmitted disease in a hospital, dispensary, or charitable or penal institution, then an official from that institution must report such cases to a health officer with jurisdiction. § 23-07-03.

(10) A health care provider who subject's a patient to a significant exposure to HIV must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employee guidelines. § 23-07.5-02.

Criminal Law (2), (4)

MISCELLANEOUS

(1) The prison authorities of any state, county, or city prison shall make available to the health officer such portion of the prison as may be necessary for the isolation and treatment of prisoners who are infected with a sexually transmitted disease (STD), persons who are suffering from an STD at the time of the expiration of their term of imprisonment, or persons isolated or quarantined by the health officer when no other suitable place for isolation or quarantine is available. § 23-07-09.

(2) An advertisement of a food, drug, device, or cosmetic is false if it is false or misleading in any particular manner. The advertisement of a drug or device representing it to have any effect on STDs is considered false unless disseminated only to those in the medical industry or for educational purposes by noncommercially interested persons. The department shall by rule authorize the advertisement of drugs having curative or therapeutic effect for STDs, subject to the restrictions and conditions as the department may deem necessary in the interest of public health. § 19-02.1-19.

OHIO

All citations are to "Ohio Rev. Code Ann." unless otherwise noted.

DEFINITIONS

(1) "Age," "because of sex," "controlled substance," "common use areas," "dwelling unit," "handicap," "handicapped person," "handicapped tenant," "familial status," and "public use areas" are defined at § 4112.01.

(2) "AIDS," "AIDS-related condition," "anonymous test," "confidential test," "emergency medical services worker," "health care facility," "health care provider," "HIV," "HIV test," and "significant exposure to body fluids" are defined at § 3701.24.

(3) "Caregiver" and "community alternative home" and "supervision" are defined at § 3724.01.

(4) "Contagious or infectious disease" and "significant exposure" are defined at § 3701.248.

(5) "Insurer," "group policy," "individual policy," and "positive result" pertaining to insurance are defined at § 3901.45.

(6) "Membership organization" relating to insurance is defined at § 3901.46.

(7) "Physical or mental impairment" includes HIV among the listed diseases and conditions. § 4112.01.

(8) "Qualifying event" means a medical condition that, in the absence of extensive or extraordinary medical care or treatment, would drastically reduce the potential life span of a person who is insured. AIDS is a qualifying event. § 3915.21.

CRIMINAL LAW

(1) Persons who know that they are carriers of AIDS shall neither sell nor donate their own blood, plasma, or blood product if they know or should know that the blood, plasma, or blood product is being used for the purpose of transfusion to another individual. Anyone violating this section is guilty of selling or donating contaminated blood, a felony in the fourth degree. § 2927.13.

(2) No person, with knowledge that they have tested positive for HIV or AIDS shall, in the context of loitering, beckon to, stop, or attempt to stop another; engage or attempt to engage another in conversation; stop or attempt to stop the operator of a vehicle or approach a stationary vehicle; if the offender is the operator of a vehicle or passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon

[OHIO]

to or entice another to approach or enter the vehicle of which the offender is the operator or the passenger; or interfere with the free passage of another. § 2907.241.

(3) No person, with knowledge that the person has tested positive for HIV or AIDS shall solicit another to engage in sexual activity with them for hire. Any person found guilty of this provision is guilty of engaging in solicitation after a positive HIV test. If committed before July 1, 1996 then the crime is a felony in the second degree, if committed after that date then it is a felony of the third degree. § 2907.24.

(4) No person confined in a detention facility with knowledge that they are HIV positive or have AIDS shall cause or attempt to cause another person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. Whoever violated this section is guilty of harassment which is a felony in the third degree. This section does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the department of mental health or the department of mental retardation and developmental disabilities. § 2921.38.

(5) No person with knowledge that they have tested HIV positive shall engage in sexual activity for hire. Whoever violates this section is guilty of engaging in prostitution after a positive HIV test. This is a felony of the second degree if committed before July 1, 1996 and is a felony of the third degree if committed after that date. § 2907.25.

Testing & Reporting (2), (5), (8), (10), (19), (20)

EDUCATION

Housing (1)

Social & Medical Services (3)

EMPLOYMENT

(1) The employer of a person with HIV is immune from liability to any person in a civil action for damages for injury, death, or loss to person or property on a claim arising out of the transmission of HIV from the infected employee to another employee or to any other person, unless the transmission occurs as a result of the reckless conduct of the employer. An employer is immune from liability to an employee on a claim in a civil action for damages for injury, death, or loss of person or property if the claim arises from an illness or injury that is stress-related and results from the employee being required to work with an

[OHIO]

individual who has received a positive test result on an HIV test or has been diagnosed with AIDS or AIDS-related condition. § 3701.244.

Testing & Reporting (1), (7), (11), (12)

HOUSING

(1) An application for a license to operate a community alternative home (see Definitions (3)) shall be made to the Director of Health. After investigating the application and inspecting the home, the Director of Health shall issue the license if it is determined that all the requirements have been met. Among other things, the Director of Health shall require that the operator develop policies for infection control and for educating caregivers about AIDS. § 3724.03.

(2) The owner or agent of a building in which a person resides who has a disease dangerous to the public health or in which the remains of a person who died of such a disease are found, or the head of a household in which a person has such a disease or has died of such a disease, shall give notice thereof to the Health Commissioner. § 3707.06.

Miscellaneous (1)

INSURANCE

(1) In processing an application for an individual policy (see Definitions (5)), or in determining insurability, insurers (see Definitions (5)) shall neither take an applicant's sexual orientation into consideration, nor make an inquiry toward determining an applicant's sexual orientation, nor make a decision adverse to the applicant based on information showing the applicant has sought an HIV test (see Definitions (2)) or a consultation or counseling regarding the possibility of developing AIDS, unless the applicant has been diagnosed with AIDS or HIV, has tested positive for AIDS or HIV, or has been treated for either. § 3901.45.

(2) Insurers shall not ask questions designed to ascertain the sexual orientation of an applicant for insurance, nor use factors such as marital status, living arrangements, occupation, gender, medical history, beneficiary designation, zip code, or other geographic designation to aid in ascertaining the applicant's sexual orientation. An insurer may ask an applicant whether the applicant ever received a positive result (see Definitions (5)) on an HIV test but shall not ask whether the applicant has ever taken an HIV test. § 3901.45.

(3) No insurer shall cancel or refuse to renew a policy that is renewable at the option of the insurer based solely on the fact that after the effective date of the policy the policyholder is diagnosed as having

[OHIO]

AIDS or HIV. An insurer may cancel the policy during a contestability period, if the applicant has made a false statement as to whether that applicant was diagnosed with HIV or AIDS. Such contestability period must be provided in the policy. § 3901.45.

(4) An insurer shall not issue a policy that limits coverage in the event that the insured develops AIDS or HIV after the effective date of the policy. § 3901.45.

(5) In underwriting an individual or group insurance policy for a membership organization (see Definitions (6)), the insurer may require that the applicant submit to an HIV test only in conjunction with tests for other health conditions. No applicant shall be required to submit to an HIV test on the basis of sexual orientation or other factors (see Insurance (2)) that are used to ascertain sexual orientation. An insurer who requests that an applicant take an HIV test shall obtain the applicant's written consent (see Testing & Reporting (15)) and shall inform the applicant of the purpose of the test. The consent form shall include information about the test, the confidentiality of the results, procedures for notifying the applicant of the results, and a general interpretation of the test results. An insurer may inform only the following persons of a positive result (see Definitions (5)): the applicant; the applicant or insured's physician or health care provider, if the applicant or insured provides prior written consent; another person that the applicant or insured designates in writing; or a confidential medical information exchange for insurers which uses general codes to designate the diseases. § 3901.46.

RESEARCH

Testing & Reporting (19)

SOCIAL & MEDICAL SERVICES

(1) The Task Force on the Transmission of Blood Borne Pathogens shall study the transmission of HIV between health care professionals and their patients and develop guidelines to prevent such transmission, consistent with the recommendations of the Centers for Disease Control (CDC). The Task Force shall also establish guidelines for determining whether a procedure is an exposure-prone invasive procedure, consistent with CDC guidelines. § 3701.2410.

(2) The Department of Human Services shall provide for the licensure of crisis nurseries as either type A or type B. A type A crisis nursery shall provide temporary shelter and other care for not more than

[OHIO]

twenty children, each under the age of six, who are either drug-exposed, HIV-infected, or referred by a public children services agency. A license shall not be granted to a crisis nursery if the conditions of any of its facilities would jeopardize the health or safety of the children to whom it provides care. No child shall receive shelter or other care from a type A crisis nursery for a period exceeding sixty days. § 5103.031.

(3) The Director of Health shall develop and administer the following programs: a surveillance system to determine the number of cases of AIDS and the HIV infection rate in various population groups; counseling for groups at risk of HIV infection, including counseling training programs for health care providers and development of counseling guidelines; a confidential partner notification system to alert and counsel sexual contacts of individuals with HIV infection; risk reduction and education programs for groups at risk of HIV infection; pilot programs for long term care of individuals with AIDS or AIDS-related condition, including care in nursing homes and alternative settings; expansion of programs for regional outpatient treatment of individuals with AIDS or AIDS-related condition (see Definitions (2)); and assistance to communities, including communities of less than one hundred thousand in population, in establishing AIDS task forces and support groups. The Director of Health shall prepare a list of counseling services and administer funds received under Title XXVI of the Public Health Services Act, for programs to improve the quality and availability of care for individuals with AIDS, AIDS-related condition, and HIV infection. The Director of Health may contract with the Department of Human Services to establish a reimbursement program for drugs used for treatment and care of individuals with AIDS, AIDS-related condition, or HIV infection. Information obtained under the partner notification system is not a public record and may only be released in accordance with law (see Testing & Reporting (8)). § 3701.241.

(4) The Department of Human Services shall establish a methodology for calculating the costs of nursing facilities and units of nursing facilities that serve residents who have end-stage AIDS. § 5111.257.

(5) The Department of Health and the Department of Human Services shall report jointly to the Legislative Committee on Medicaid Oversight of the Legislative Service Commission on matters related to the medical assistance program. The report may examine the effects that the costs of providing care to recipients requiring care for AIDS, AIDS-

related complex, or AIDS-related condition have on the medical assistance program as a whole. § 3701.347.

Criminal Law (1)

Housing (1)

Insurance (5)

Testing & Reporting (1), (2), (4), (5), (7), (11), (17), (19), (20)

Miscellaneous (1)

TESTING & REPORTING

(1) An emergency medical services worker (see Definitions (2)), funeral director, or embalmer believed to have suffered significant exposure (see Definitions (4)) through contact with a patient or deceased person may submit a written request to be notified of the results of any test performed on a patient or deceased person to determine the presence of a contagious or infectious disease (see Definitions (4)) to the health care facility or coroner that received the patient. The notification shall not include the name of the patient or deceased person. The health care facility or coroner shall give an oral notification of a positive result to the emergency medical services worker, funeral director, or embalmer within two days after the result is determined. A written notification shall follow the oral notification within three days. If the information is not available from the facility to which the request was made because the patient has been transferred, the facility shall assist in locating the patient and securing the requested information. Each health care facility and coroner shall develop written procedures to assure that the required notification is given. A health care facility or coroner may take additional measures beyond those required as long as confidentiality of the information is maintained. § 3701.248.

(2) AIDS and HIV programs administered by the Director of Health (Director) shall promptly report every case of AIDS, every AIDS-related condition (see Definitions (2)), and every confirmed positive HIV test (see Definitions (2)) to the Department of Health on forms and in a manner prescribed by the Director. In each county, the Director shall designate a health commissioner in a health district in the county to receive the reports. The reports shall be confidential and may be released only with the written consent of the test subject except: as necessary to ensure accuracy of the information; to provide treatment to the test subject; or pursuant to a court order, a search warrant, or a subpoena in connection with a criminal investigation or prosecution. Information that

does not identify an individual may be released in summary, statistical, or other form. § 3701.24.

(3) The Director shall develop and administer testing programs for groups at risk of HIV infection, including procedures for both confidential and anonymous tests (see Definitions (2)). The Director shall approve a test or tests to be used to determine whether an individual has HIV infection, define a confirmed positive test result, define guidelines for interpreting test results, establish sites for confidential and anonymous HIV testing, prepare a list of sites where an individual may obtain an anonymous test, and make available a copy of the list of anonymous testing sites to anyone who requests it. The Director shall require the director or administrator of each site where anonymous or confidential tests are administered to submit a report every three months evaluating the effectiveness of the HIV testing program at that site. Each year the Director shall submit a report evaluating the effectiveness of anonymous and confidential testing programs throughout the state to the Speaker of the House of Representatives, the President of the Senate, and the public. § 3701.241.

(4) Public agencies or private nonprofit corporations receiving state or local government funds shall not refuse to admit a patient or provide services to any individual solely because of the individual's refusal to consent to an HIV test or disclose HIV test results. A physician or a dentist may refer an individual to an appropriate health care provider or facility if the dentist or physician has reason to believe the individual may have AIDS or AIDS-related condition. Such referral must be based on reasonable professional judgment and must not be based solely on the individual's refusal to consent to an HIV test or disclose the result of an HIV test. § 3701.245.

(5) The Director of the Department of Rehabilitation and Corrections shall develop a policy for dealing with the problems related to infection with HIV for persons committed to the control, care, and custody of the Department of Rehabilitation and Correction. The policy shall include methods of identifying, counseling, and testing individuals committed to the custody of the Department of Rehabilitation and Correction who are at high risk of HIV infection. § 5120.16.

(6) Each physician or person called to attend to a patient suffering from a disease dangerous to the public health shall report the name, age, sex, race, and place where the patient can be found to the health commissioner within whose jurisdiction the patient is found. § 3707.06.

(7) Persons who believe that they may have been exposed to HIV infection while rendering health or emergency care to another person or peace officers who believe they may have been exposed to HIV infection in the performance of their duties may bring an action in probate court for an order compelling the other person to undergo HIV testing. The complaint shall be accompanied by an affidavit attesting to all of the following: the plaintiff sustained a significant exposure while rendering health or emergency care or in the performance of job duties; the plaintiff has reason to believe the defendant may have an infection; the plaintiff made a reasonable attempt to have the defendant submit to HIV testing and notified the defendant that plaintiff would bring an action upon the defendant's refusal or failure to be tested, but the defendant still has not been tested; and within seven days after exposure, the plaintiff took an HIV test and also has received counseling. Pursuant to a court order to restrict use of the defendant's name, the defendant shall be identified by a pseudonym in the complaint, and defendant's name shall be confidentially communicated to the court. Unless the defendant agrees to a hearing in open court, proceedings shall be conducted in chambers. The court shall hold the hearing at the earliest possible time but no later than three business days after the day the defendant is served with the complaint. The court shall enter judgment on the day the hearing is concluded. The court may order the defendant to undergo HIV testing if it finds by clear and convincing evidence that the plaintiff has proved the matters attested to in the affidavit, has demonstrated a compelling need for the results of the tests, and no other means exist to accommodate the need. If granted, the order shall specify the persons and governmental entities that may have access to the results and shall limit any further disclosure. The court shall require that the defendant be given the test results and the appropriate counseling. § 3701.247.

(8) Any person or government agency may seek access to or authority to disclose the HIV test records of an individual. In order to obtain access to test records, the person or government agency shall bring an action in a court of common pleas requesting disclosure of or authority to disclose the results of an HIV test of a specific individual who shall be identified in a complaint by a pseudonym but whose name shall be communicated to the court confidentially, pursuant to a court order restricting the use of the name. The court shall provide the individual with notice and an opportunity to participate in the proceedings if the individual is not named as a party. Proceedings shall be conducted in chambers unless the individual agrees to a hearing in open court. The

court may issue an order granting the plaintiff access to the test results only if the court finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for disclosure of the information that cannot be accommodated by any other means. If the court issues an order, it shall specify the persons who may have access to the information and the purposes for which the information shall be used. The court shall also prohibit future disclosure. A person or government agency that considers it necessary to disclose the results of an HIV test of a specific individual in an action in which it is a party may seek authority for the disclosure by filing an in camera motion. Except in the case of an order issued in a criminal prosecution or an order brought by a person or government agency in the court of common pleas granting disclosure of a test result, a court shall not compel a blood bank, hospital blood center, or blood collection facility to disclose the result of HIV tests performed on the blood of voluntary donors in a way that reveals the identity of the donor. In a civil action in which the plaintiff seeks to recover damages from an individual defendant based on an allegation that the plaintiff contracted HIV from the actions of the defendant, results of any HIV test given to the defendant or any diagnosis that the defendant has AIDS are not barred from discovery. Nothing prohibits introduction of evidence concerning an HIV test of a specific person in a criminal proceeding. Any disclosure shall be in writing and accompanied by a written statement limiting disclosure to that specific instance. § 3701.243.⁵⁵

(9) Any human body part donated for transplantation, including an organ, tissue, eye, bone, artery, or other body part, and any body fluid donated for transfusion or injection into another person, including blood, plasma, a blood product, semen, or other fluid, shall be given an HIV test before being transplanted, transfused, or injected, to determine that the body part or body fluid is not infected with HIV. In an emergency, testing is not required if the recipient of the donation or the recipient's guardian, after consultation with the recipient's physician, consents to a waiver of the testing requirement. § 3701.246.

(10) No person or government agency that acquires information while providing health care services or while in the employ of a health care provider shall disclose or compel another to disclose any of the following: the identity of an individual on whom an HIV test is performed; the results of an HIV test in a form that identifies the

55. *Arnold v. American National Red Cross*, 639 N.E.2d 484 (Ohio Ct. App. 1994) (court abused discretion in ordering disclosure because appellee failed to demonstrate by clear and convincing evidence a need for information).

individual tested; or the identity of an individual diagnosed with AIDS. The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed with AIDS may be disclosed only to the following: the subject of the test or the subject's legal guardian; a person to whom disclosure is authorized by a written release executed by the subject; the subject's physician; the Department of Health or a health commissioner; a health care facility or health care provider that procures, possesses, uses, or distributes a body part from a deceased individual and needs medical information about the deceased to insure that the body part is medically acceptable for its intended purpose; health care facility staff committees or accreditation or oversight review organizations conducting program monitoring, evaluation, or service reviews; a health care provider, emergency medical services worker, or peace officer who has sustained a significant exposure to the body fluids (see Definitions (2)) of another individual, if that individual was tested, except that the identity of the individual tested shall not be revealed; or to law enforcement authorities pursuant to a search warrant or a subpoena issued at the request of a grand jury, a prosecuting attorney, a city director of law or similar chief legal officer of a municipal corporation, or village solicitor in connection with a criminal investigation or prosecution. Any disclosure shall be in writing and accompanied by a written statement limiting disclosure to that specific instance. § 3701.243.

(11) The results or the diagnosis may be disclosed to any health care provider, agent, or employee who has a medical need to know the information and is participating in the diagnosis, care or treatment of the person on whom the test was performed, or who has been diagnosed with AIDS or AIDS-related condition. Any disclosure shall be in writing and accompanied by a written statement limiting disclosure to that specific instance. Such disclosure shall not be made in order to refuse treatment to an individual who has a positive test result or who has been diagnosed with AIDS. Referral of an individual to another health care provider based on reasonable professional judgment does not constitute refusal to treat the individual. § 3701.243.

(12) A person employed by or affiliated with a health care facility who makes a disclosure in accordance with the protocol established by the facility is immune from liability to any person in a civil action for damages for injury, death, or loss to person or property resulting from such disclosure. § 3701.243.

(13) An individual receiving a positive HIV test result or diagnosed with AIDS shall disclose this information to any other person

with whom the individual intends to make common use of a hypodermic needle or engage in sexual conduct. Any disclosure shall be in writing and accompanied by a written statement limiting disclosure to that specific instance. § 3701.243.

(14) The results of an HIV test or the identity of an individual on whom an HIV test has been performed or who is diagnosed with AIDS may be disclosed to a federal, state, or local government agency for the purposes of medical assistance programs such as the Medicare program. Any disclosure shall be in writing and accompanied by a written statement limiting disclosure to that specific instance. § 3701.243.

(15) Prior to HIV testing, the person or state or local agency ordering or performing the test must obtain informed consent. The individual to be tested may give informed consent either orally or in writing, after the person or agency performing or ordering the test has given the individual the following information: an oral or written explanation of the test, testing procedures, purposes and limitations of the test and the meaning of its results; an oral or written explanation that the test is voluntary, the individual may elect to have an anonymous test, and consent may be withdrawn at any time before the individual leaves the premises where the blood is drawn, or, if the test is taken on an inpatient basis, within one hour after blood is drawn for the test; and an oral or written explanation of behaviors known to pose risks for transmission of HIV. Once these requirements are met, the consent shall be presumed to be valid and effective. No evidence shall be admissible in a civil action to impeach, modify, or limit the consent. § 3701.242.⁵⁶

(16) A minor may consent to an HIV test. A minor's consent is not subject to disaffirmance because of minority. The parents or guardian of a minor giving consent to HIV testing without parental consent are not liable for payment for such test. § 3701.242.

(17) Any person or government agency ordering HIV tests shall provide counseling for the test subjects at the time they are informed of the test result or diagnosed with AIDS. The individual shall be given an oral or written explanation of the nature of AIDS and AIDS-related conditions, the relationship between the HIV test and those diseases, and a list of resources for further counseling or support. If necessary, the

56. *Doe v. Ohio State University Hospitals and Clinics*, No. 94API11-1625, 1995 Ohio App. LEXIS 4087 (Ohio App. Sept. 19, 1995). Nurse, intending to alert health care providers of patient's HIV status, inadvertently wrote words "HIV positive" on the "other tests" section of a requisition form resulting in an HIV test without informed consent. Court found no violation of the statute since it required that such violation be "knowing."

individual shall be referred to further counseling to help cope with the emotional consequences of learning the test result. § 3701.242.

(18) Any individual seeking an HIV test shall have the right to an anonymous test. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where one is available. § 3701.242.

(19) The rules on counseling, informed consent, and anonymous testing do not apply in any of the following circumstances: when the test is performed in a medical emergency by a nurse or physician and the results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested as long as counseling is given to the individual as soon as the emergency is over; for the purposes of research when the researcher does not know and cannot determine the identity of the individual tested; when the test is performed to ensure that a donated human body part is acceptable for its intended use; if the head of a correctional institution has determined, based on good cause, that a test performed on an incarcerated person is necessary; when the test is performed on the order of a physician who determines that the test is necessary for providing diagnosis or treatment to an individual if the individual or a parent or guardian has given consent to the medical treatment; or when a health care provider, emergency medical services worker, or peace officer sustains a significant exposure to an individual's body fluids while rendering health or emergency services, and the individual has refused to give consent for testing. When an HIV test is ordered by a court in connection with a criminal investigation, consent of the individual to be tested is not required and the individual or guardian may not elect to have an anonymous test. § 3701.242.

(20) If a person is charged with rape, sexual battery, corruption of a minor, solicitation, or prostitution, the arresting authorities or the court shall require the accused to be examined by a physician to determine if the accused is suffering from a venereal disease. If the accused is found to be suffering from a venereal disease in an infectious stage, the accused shall be required to submit to medical treatment for that disease. The rules on counseling, informed consent and anonymous testing shall not apply to persons charged with such crimes. The court shall require the accused to be examined by a physician who shall perform or order the performance of an HIV test on the accused. The results of the test shall be communicated in confidence to the court, and the court shall inform the victim of the crime that the test was performed

and that the victim has a right to receive the results on request. If the accused tests positive for HIV, the test results shall be reported to the Department of Health, the Sheriff, the head of the state correctional institution, or other person in charge of any jail or prison in which the accused is incarcerated. No other disclosure of the test results or the fact that the test was performed shall be made. If the test result is negative and the charge has not been dismissed, or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court shall order that the test be repeated not earlier than three months nor later than six months after the original test. Neither the fact that the test was given nor the results shall be admitted in evidence. § 2907.27.

(21) Any person sentenced to a community residential sanction, confined in a city workhouse, confined in multi-county correctional center or a municipal county or a multi-county municipal correctional center, sentenced to a minimum security jail, sentenced to a prison or station house, if a sheriff receives into custody a convicted or accused offender, if a county receives a prisoner for confinement in its jail, or if deemed appropriate by the director of the department of rehabilitation and correction then the person in charge of the facility where the person is being held may require that the offender be tested for HIV. If the offender refuses to be tested or treated then the offender may be tested and treated involuntarily. § 2929.16, §2301.56, § 2947.19, § 753.16, § 341.23, § 5120.163, § 753.04, § 307.93, § 753.21, § 341.34, §753.02, § 341.21, §341.14, and § 341.19.

(22) Health and Human Services departments shall report to the legislative committee matters related to the medical assistance program including the effects that the costs of providing care under the program for those with AIDS, AIDS related complex, AIDS related condition have on the medical assistance program. § 5111.77.

(23) The Ohio Athletic Commission shall adopt and amend rules prescribing the conditions under which prize fights, public boxing, or wrestling matches or exhibitions may be conducted. The rules may require that an applicant for a contestant's license to participate in a public boxing matching or exhibition take an HIV test before being issued a license or participating in a public boxing match or exhibition. § 37773.34.

Employment (1)

Housing (2)

Insurance (1), (2), (5)

Miscellaneous (2)

MISCELLANEOUS

(1) Persons knowing or having reasonable cause to believe they are suffering from a dangerous contagious disease (see Definitions (4)) shall not knowingly fail to take reasonable measures to prevent exposing themselves to other persons except when seeking medical aid. Persons having the charge or care of a person they know or have reason to believe is suffering from a dangerous contagious disease shall not recklessly fail to take reasonable measures to protect others from exposure to the contagion and to inform health authorities of the existence of the contagion. Persons having the charge of a public conveyance or place of public accommodation, amusement, resort, or trade and knowing or having reason to believe that persons using such conveyance or place have been or are being exposed to a dangerous contagious disease shall not negligently fail to take reasonable measures to protect the public from exposure to the contagion and inform health authorities of the existence of the contagion. § 3701.81.

(2) Civil liability shall not be imposed for the disclosure of an HIV test result, a diagnosed case of AIDS, or a diagnosed AIDS-related condition in accordance with the reporting requirement of the Department of Health (see Testing & Reporting (2), (6)) or any federal agency. Individuals with knowledge that a person other than the individual has or may have AIDS or has tested positive for HIV shall not be held liable for failing to disclose that information to any person unless disclosure is expressly required by law. § 3701.244.

(3) The employer of a person with HIV infection is immune from liability to any person in a civil action for damages for injury, death, or loss to person or property on a claim arising out of transmission of HIV from the infected employee to another employee or to any other person, unless the transmission occurs as a result of the reckless conduct of the employer. An employer is immune from liability to an employee on a claim asserted under any provision of the Revised Code or in a civil action for damages for injury, death, or loss to person or property if the claim arises from an illness or injury to the employee that is stress-related and results from the employee being required to work with an individual who has received a positive result on an HIV test or has been diagnosed as having AIDS or an AIDS related condition. § 3701.24.9.

OKLAHOMA

All citations are to "Okla. Stat. tit." unless otherwise noted.

DEFINITIONS

(1) "Body fluids," "health care worker," and "emergency care worker" are defined at 63, § 1-502.3.

(2) "Genetic information" and "genetic test" are defined at 36, §§ 3614.1 and 3614.2. These terms do not include the results of HIV tests or testing for HIV. 36, §§ 3614.1 and 3614.2

(3) "State Plan," as it pertains to sexually transmitted diseases, refers to the State Plan for Coordination of Efforts for Prevention of Adolescent Pregnancy and Sexually Transmitted Diseases. 63, § 1-236.

(4) "Venereal disease," "infected person" and "dealer" are defined at 63, § 1-517.

(5) "Written consent," as it pertains to disease prevention and control, is defined at 63, § 1-502.2.

CRIMINAL LAW

(1) Persons who engage in prostitution with knowledge that they are infected with HIV shall be guilty of a felony. 21, § 1031.

(2) Any person with AIDS or HIV who engages in conduct reasonably likely to result in the transfer of the person's blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids, shall be guilty of a felony if the person with AIDS or HIV engages in such conduct with intent to infect another person and the other person did not give informed consent to the transfer. 21, § 1192.1.

(3) Any person who negligently, knowingly or intentionally discloses confidential medical or epidemiological information shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars, imprisonment in the county jail for not more than thirty days, or both. 63, § 1-502.2.

(4) It is unlawful for physicians and other persons to issue certificates of freedom from venereal disease (see Definitions (3)) except as authorized by law and the rules and regulations of the State Board of Health. 63, § 1-531. Any physician who, after having knowledge or information that any person is or may be infected with a venereal disease, sells, gives, or furnishes a discharge from treatment, or a written

[OKLAHOMA]

statement pronouncing such infected person cured to the infected person (see Definitions (3)) or to any other person for such infected person, before such infected person is actually cured of such venereal disease, shall be guilty of a misdemeanor. 63, § 1-520.

(5) Any laboratory, hospital, clinic, pathologist, physician, or other facility providing laboratory services to test for HIV which is not licensed (see Testing & Reporting (7)) by the State Department of Health shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars for each offense. Each test performed by an unlicensed laboratory shall constitute a separate offense. 63, § 2550.

(6) It is a felony for any person, after becoming infected with a venereal disease and before being discharged and pronounced cured in writing by a physician, to marry another person or to expose any other person by the act of sexual intercourse to such venereal disease or to place another person at risk of contracting the disease. 63, § 1-519.

(7) It is unlawful for any person who is not a physician to undertake to treat or cure any infected person for pay, whether in money, property, or obligation of any kind, unless acting under the direction and control of a physician. 63, § 1-521.

(8) It shall be unlawful for any dealer (see Definitions (3)) to treat or offer to treat venereal disease in any infected person or to sell, furnish, or give any infected person, or any other person, any medicines of any kind that may be advertised or used for treatment of venereal disease, before requiring the person to produce and file with the dealer a proper prescription for such medicine, issued and signed by a physician, which prescription shall be kept by the dealer on file for a period of one year from the date of receipt by the dealer, and subject, at all reasonable hours, to the inspection of the State Commissioner of Health or local health officer. 63, § 1-522.

Social & Medical Services (2)

Testing & Reporting (2), (3), (4), (5), (8), (9)

EDUCATION

(1) The State Department of Health may convene a confidential meeting of a multidisciplinary team for recommendations on school placement of a student who is infected with HIV. Each member of the team and each member of the local school board having jurisdiction over the student shall be responsible for protecting the student's confidentiality. 63, § 1-502.2.

(2) AIDS prevention shall be taught in the public schools of the State. AIDS prevention education shall be limited to discussion of the disease and its spread and prevention. Students shall receive AIDS prevention education, at a minimum: once during the period from grades five through six; once during the period from grades seven through nine; and once during the period from grades ten through twelve. The State Department of Education, in conjunction with the State Department of Health, shall develop curriculum and materials for AIDS prevention education. A school district may also develop its own curriculum and materials, subject to approval for medical accuracy by the State Department of Health. School districts shall make the curriculum and materials used for AIDS prevention education available for inspection by the parents and guardians of the students and conduct, during weekend or evening hours, a presentation of the curriculum and materials for parents and guardians. No student shall be required to participate in AIDS prevention education if a parent or guardian objects in writing to such participation. AIDS prevention education shall teach students the following: that engaging in homosexual activity, intravenous drug use, or contact with contaminated blood products is known to be primarily responsible for spread of the AIDS virus; that avoiding such activities is the only method of preventing the spread of the virus; that sexual intercourse without condoms with any person infected with HIV places that individual in a high risk category for developing AIDS; that abstinence from sexual activity is the only certain means of prevention of the spread or contraction of the AIDS virus; and that artificial means of birth control are not a foolproof means of preventing the spread of the AIDS virus and that reliance on such methods puts one at risk of exposure to the disease. As medical facts are newly discovered, the State Department of Health and the State Department of Education shall update AIDS education curriculum and materials. 70, § 11-103.3.

Social & Medical Services (3), (4), (5)

EMPLOYMENT

Social & Medical Services (1)
Testing & Reporting (2), (3), (7)

HOUSING

(1) The fact that an occupant of real estate is or was at any time suspected to be infected with HIV or diagnosed with AIDS is not a material fact that must be disclosed in a real estate transaction. No cause

[OKLAHOMA]

of action shall arise against an owner of real estate or any lessee assisting the owner for the failure to disclose such information to the purchaser or lessee of such real estate or any licensee assisting the purchaser or lessee. In the event that a purchaser or lessee, who is in the process of making a bona fide offer, advises the licensee assisting the owner in writing that knowledge of such factor is important to a decision to purchase or lease the property, the licensee shall make an inquiry of the owner and report any findings to the purchaser or lessee with the consent of the owner, subject to applicable laws of privacy. If the owner refuses to disclose, the licensee assisting the owner shall so advise the purchaser or lessee. 59, § 858-513.

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) The Department of Health may convene a confidential meeting of a multidisciplinary advisory committee to make recommendations regarding the practice of health care workers (see Definitions (1)) infected with HIV who may perform exposure-prone procedures. The committee shall include, but is not limited to the following: the Commissioner of Health or designee; legal counsel to the Commissioner of Health; the state epidemiologist or a designee; an infectious disease specialist; and two practicing health care workers from the same discipline as the HIV-infected health care worker. The infected health care worker, an advocate for the health care worker, and the health care worker's physician shall be invited to the committee meeting. In discussing the case, the committee shall not use the health care worker's name. The committee shall be responsible for protecting the confidentiality of the HIV-infected health care worker. The Commissioner of Health or a designee may notify an appropriate official at the health care facility where the infected health care worker practices that the health care worker tested positive for HIV. Notification shall be made only when necessary to monitor the ability of the worker to perform his or her duties and comply with universal precautions and appropriate infection control practices. 63, § 1-502.2.

(2) Any person with AIDS who is confined in the county jail for the crime of knowingly engaging in conduct reasonably likely to

transfer HIV, whether convicted or pending trial, may be transferred to the custody of the State Department of Corrections for extended medical care. The Department of Corrections may accept the person as long as: the person's right to a speedy trial is not delayed by the transfer to a state facility; the person's right to confer with legal counsel is not restricted by the transfer; the county agrees to a mutual exchange of inmates; the medical care or custody of the person is necessary to preserve the health and safety of the public, the inmates of the county jail, or the person being transferred; the person being transferred may be adequately treated in the state facility; and the state facility has medical bed space available for the person. 57, § 51.1.

(3) The Joint Legislative Committee for Review of Coordination of Efforts for Prevention of Adolescent Pregnancy and Sexually Transmitted Diseases shall: meet with the Coordinating Council and other state officials and employees responsible for providing services related to prevention of sexually transmitted diseases (STDs); recommend changes in proposed interagency agreements and the State Plan (see Definitions (2)); hold hearings; monitor implementation of these provisions; and recommend legislation to correct statutory provisions that interfere with interagency agreements or coordination or delivery of services, or that are otherwise necessary for the implementation of these provisions. The Governor shall appoint an Interagency Coordinating Council for Coordination of Efforts for Prevention of Adolescent Pregnancy and Sexually Transmitted Diseases, composed of thirty-one members, including two representatives from the HIV/STD Division of the State Department of Health. The Coordinating Council shall complete the State Plan and monitor and evaluate its implementation. The State Plan shall include but not necessarily be limited to the following: a public awareness campaign; identification of prevention strategies, resources, and sources of revenue; development and replication of effective model programs; empowerment of communities in developing prevention strategies; development of recommendations for local prevention efforts; delineation of service responsibilities and coordination of delivery of services; evaluation of prevention strategies and programs; distribution of information on prevention programs and strategies; and a funding and implementation plan. 63, §§ 1-235 to 238.

(4) The State Department of Health shall be the lead agency for the coordination of programs and services related to HIV. The State Department of Health, in conjunction with the Department of Human Services, the Department of Education, the Department of Mental Health

and Substance Abuse Services, and other appropriate public and private agencies and organizations, shall be responsible for the State Plan for the Prevention and Treatment of AIDS. On or before October 1st of each year the State Department of Health shall prepare a report to the State government and to the public of the annual review, including any modifications to the State Plan. The State Plan for the Prevention and Treatment of AIDS shall include but not be limited to: coordinated or joint recommendations for funding, legislation, and other appropriate action for the prevention and control of the spread of HIV and AIDS, the provision of treatment and services to persons with the virus, and protection of the human and civil rights and the health of the citizens of the state; education and information programs about HIV and AIDS; HIV testing and counseling programs and services; HIV prevalence surveillance and monitoring activities, including notification of contacts; testing and education programs and services designed to prevent and control the spread of HIV and AIDS among intravenous chemical substance users; and case management and other programs that ensure access to needed health care and reduce the cost of treating persons with AIDS. 63, § 1-534.1 to 2.

(5) Every approved facility in the state which treats drug-dependent persons shall provide HIV infection education sessions to drug-dependent persons in the facility, their spouses or other sexual partners. 43A, §§ 3-425.1, 3-425.1.

(6) The State Board of Health shall make all rules and regulations for the prevention and cure of venereal disease (see Definitions (3)). 63, § 1-526.

(7) It is the duty of every physician who examines or treats a person with a venereal disease to instruct such person in measures for preventing the spread of the disease and of the necessity for treatment. If an attending physician knows or has good reason to suspect that a person having a venereal disease is conducting themselves so as to expose other persons to infection, the physician shall notify the local health officer of the name and address of the diseased person and the essential facts of the case. 63, § 1-528.

(8) All local health officers shall use every means available to ascertain the existence, and investigate all cases, of venereal disease within their respective jurisdictions, and to ascertain the source of such infections, making examination of any person reported two or more times as a suspected source of venereal disease. 63, § 1-529.

(9) Upon receipt of a report of a case of venereal disease, a local health officer shall institute measures, which may include quarantine or protection of other persons from infection. The State Board of Health shall adopt rules and regulations for the quarantine of persons infected with a venereal disease. Boards of county commissioners and governing boards of all incorporated towns and cities may provide suitable places for the detention of persons who may be subject to quarantine. 63, § 1-530.

Criminal Law (3), (4), (5), (6), (7), (8)

Testing & Reporting (1), (2), (3), (4), (5), (6), (7), (8), (9), (11),

(12)

Miscellaneous (1), (2)

TESTING & REPORTING

(1) Every approved treatment facility in the state shall refer all drug-dependent persons in its program for HIV infection testing and counseling. The treatment facility may contract with a public or private organization for the provision of testing or counseling services at the treatment facility site. The results of individual tests shall be maintained in a confidential manner, as required by state or federal law. 43A, § 3-425.1.

(2) Withdrawal or testing of blood shall be performed according to generally accepted clinical practice. The person, employer, or facility performing the withdrawal or blood test shall be presented with: a written statement by the test subject or a written statement from a health care or emergency care worker (see Definitions (1)) verifying that the health care or emergency care worker has been exposed to the bodily fluids (see Definitions (1)) of the test subject in an occupational setting and that the exposure placed the health care or emergency worker at risk; or a court order authorizing such testing. When presented with such a statement or court order, the person authorized to withdraw the blood, the employer and the hospital or other health care facility shall not be liable in any action alleging lack of consent. No person who withdraws or tests blood, no employer of such person, or hospital or other health care facility performing withdrawal or testing shall incur civil or criminal liability for: providing HIV test results to the person whose blood was tested, the person incurring the exposure, or the State Department of Health or a designated agency; not providing HIV test results to any other person; or failing to diagnose the presence of HIV where the procedure was

performed according to generally accepted medical practice. 63, § 1-502.3.

(3) Any and all correctional institutions in the state shall make and preserve for a period of at least one year a record showing the name, age, sex, race, nationality, and place of residence of any inmates known to be infected with venereal diseases. Such record shall be made available to the Commissioner of Health or local health officer. All such institutions shall furnish a physician and all proper medicines, instruments and apparatus for the proper treatment of such infected inmates (see Definitions (3)). Each correctional institution shall notify its correctional officers, probation and parole officers, and any jailer, other employee, or any employee of the Pardon and Parole Board who has or will have direct contact with an inmate who is infected with HIV or has AIDS. If a person comes into contact with the bodily fluids of an inmate in a state correction facility, and there are no prior records of the existence of HIV or AIDS in the inmate, the inmate must be tested for HIV or AIDS. The results shall be communicated in writing to the person exposed and the exposee shall be referred to support services. 63, § 1-523.

(4) The keeper of any prison or penal institution shall have every inmate examined for venereal diseases. A licensed physician shall examine persons who are arrested for first or second degree rape, forcible sodomy, or the intentional infection or attempt to intentionally infect a person with HIV to determine if they are infected with a venereal disease (see Definitions (3)) or a communicable disease, including HIV. The court shall issue an order for this examination upon the initial appearance of the arrested person. The order requiring the testing shall not include the name and address of the alleged victim but shall provide that the alleged victim shall be notified of the test results. A licensed physician may examine persons arrested for prostitution or other sex crime to determine if they are infected with a venereal disease or a communicable disease, including HIV. Examination shall be made subsequent to arrest and, if the examination is for HIV, upon court order issued at the initial appearance of the arrested person. Arrested persons shall submit to the examination and shall permit specimens to be taken for laboratory examinations. Such persons may be detained until the results of the examination are known. A determination as to whether or not the person is infected shall not be based on any prior examination. 63, § 1-524.

(5) Prescriptions and records shall not be exposed to any person other than the State Commissioner of Health or local health officer or when properly ordered by a court of competent jurisdiction to be used

as evidence. Records of diagnosis and treatment may be transmitted to physicians and to health authorities in this and other states upon written request of the person about whom the information is disclosed. Results of examinations conducted on persons arrested for first or second degree rape, forcible sodomy, or intentional infection or attempted intentional infection of a person with HIV shall be provided to the alleged victim of the crime upon request of the victim, the parent of a minor victim, or a legal guardian or custodian of the victim. The name of the arrested and examined person shall not be disclosed in the transmitted record. The State Department of Health shall provide the victims with any positive test results and shall provide free testing to the alleged victim for any venereal or communicable diseases for which the arrestee tests positive, as indicated in the transmitted record of diagnosis. Such testing shall be accompanied by pretest and post-test counseling. The State Board of Health shall promulgate rules and regulations for examinations, release of records containing examination results, and procedural guidelines that respect the rights of the alleged offender and the victim of the alleged offense. 63, § 1-525.

(6) No human sperm, tissue, or organ shall be procured for donation purposes from any person who tests positive for HIV. Every donor, donor candidate, or tissue or organ to be donated shall be tested for HIV immediately prior to the donation. If such test has not been conducted immediately prior to the donation, then it shall be conducted immediately prior to the implantation of the donor organ or tissue. If the donor is living, the donor shall be notified of the test results. Notification shall be consistent with donor confidentiality and with the requirements of state and federal law. The hospital or other facility responsible for the sperm, tissue, or organ donation shall provide directly or otherwise make available appropriate information and counseling services to sperm donors and to living tissue or organ donors. 63, § 2151.1.

(7) No laboratory, hospital, clinic, pathologist, physician, or other facility providing laboratory services to test for HIV shall operate unless licensed by the State Department of Health to perform such tests. The State Department of Health shall promulgate rules and regulations necessary for such licensure, including license revocation, suspension, and nonrenewal. The rules and regulations shall cover but not be limited to quality control, the number and qualification of personnel, proficiency tests, number of tests, and record keeping. 63, § 2550.

(8) It is unlawful for any infected person (see Definitions (3)) to refuse, fail, or neglect to report such fact to and submit to examination and treatment by a physician. 63, § 1-518.

(9) Any physician who makes a diagnosis or treats a case of venereal disease and every superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease shall report such case immediately, in writing, to the State Commissioner of Health or the local health officer. 63, § 1-527.

(10) All information and reports concerning persons infected with venereal disease shall be inaccessible to the public, except insofar as publicity may attend the performance of duties imposed by the laws of the State. 63, § 1-532.

(11) The State Board of Health (Board) shall make such rules and regulations pertaining to tests for venereal disease as indicated under medically accepted practice. The Board is authorized to make such testing mandatory if sufficient evidence exists that the public has been negligent in accepting such practice and if the Board considers it in the public interest to do so. The Board is authorized to set up laboratory facilities and use existing facilities for the performance of examinations and tests for the detection of venereal diseases for a reasonable charge, provided that no child shall be denied laboratory work or tests because of the inability of a parent or guardian to pay for such work. Parents may object to such laboratory work on the grounds that such examination conflicts with their religious tenets and practices. The Board may also approve other laboratories for the performance of such tests. 63, § 1-534.

(12) All information and records that identify any person who has or may have any communicable or venereal disease, which is required to be reported, and that are held or maintained by any state agency, health care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director, third party payor, or any other agency, person, or organization in the State shall be confidential. Any information subject to release shall be released in such a way that no person can be identified, unless otherwise provided by law. Such information shall only be released under the following circumstances: upon court order; with written consent of the person whose information is being kept confidential or with the written consent (see Definitions (4)) of a legal guardian, custodian, or parent, if such person is a minor; as determined by the State Department of Health to protect the health and well-being of the general public; to health care and emergency care workers who have had risk exposure; to health professionals, state

agencies, or district courts to enforce communicable and venereal disease prevention and control rules; for statistical purposes, in such a way that no person can be identified; or when release is otherwise authorized by this section, within the continuum of care for the diagnosis and treatment of the person whose information is released. Any person who has or may have any communicable or venereal disease which is required to be reported, and any person who negligently, knowingly, or intentionally fails to protect medical or epidemiological information classified as confidential shall be civilly liable to the person who is the subject of the disclosure for court costs, attorney's fees, and exemplary and actual damages. 63, §1-502.2.

Criminal Law (5)

Social & Medical Services (1), (4), (7), (8), (9)

MISCELLANEOUS

(1) Any person, regardless of age, has the capacity to consent to examination and treatment by a licensed physician for any venereal disease. 63, § 1-532.1.

(2) The advertisement of a drug or device as having an effect on venereal disease shall be deemed to be false if the advertisement is false or misleading in any particular. Whenever the State Commissioner of Health determines that an advance in medical science has made any type of self-medication safe as to the treatment of venereal diseases, the State Board of Health shall, by regulation, authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board and the Commissioner may deem necessary in the interests of public health. 63, § 1-1412.

OREGON

All citations are to "Or. Rev. Stat." unless otherwise noted.

DEFINITIONS

(1) "Health care facility," "health care provider," "licensed health care provider," "local public health administrator," "local public health officer," "occupational exposure," "source person," "substantial exposure," and "worker" are defined at § 433.060.

(2) "HIV test" is defined at §§ 135.139, 433.045, and 433.060.

(3) "Positive reaction," "sexual act" and "transmission of body fluids" are defined at § 135.139.

(4) "Person," as it pertains to HIV testing, refers to one acting in an employment, occupational, or professional capacity. § 433.045.

(5) "Severely disabled person" includes a person with HIV. § 240.391.

CRIMINAL LAW

Testing & Reporting (1), (2), (6)

EDUCATION

(1) Any district school board may establish a course of education in sexually transmitted diseases (STDs). Teachers holding endorsement for health education shall be used where available. No teacher shall be disciplined or removed for teaching or refusing to teach a course on STDs. § 336.035.

(2) Course material and instruction on human sexuality shall include information about responsible sexual behaviors and hygienic practices that eliminate or reduce the risks of exposure to HIV or STDs and shall be designed to allay fears concerning risks which are scientifically groundless. The course material and instruction shall also stress that STDs are serious possible hazards of sexual contact. Instructors shall provide the latest medical statistics regarding the efficacy of contraceptives in preventing HIV infection and other STDs. Any human sexuality or HIV education course in any public elementary and secondary school shall emphasize that abstinence from sexual contact is the only 100 percent effective method against STDs and HIV when transmitted sexually. § 336.455.

[OREGON]

(3) Each school district shall inform parents or guardians in advance of any instruction on human sexuality or HIV and give them a chance to review instruction materials. Parents or guardians shall be informed that no student is required to participate in such instruction if the student's parent or guardian, after reviewing the instruction materials, submits a written objection to the school district. Refusal to participate in any class, course, assembly, or school-sponsored activity on human sexuality or HIV shall not be reason for harassment, suspension, or expulsion of the student. § 336.465.

(4) Based on the data in the school district's annual assurance reports, the Department of Education shall report to the Legislative Assembly at each regular session on the implementation of courses in family life, HIV, and human sexuality. § 336.475.

(5) The Health Division of the Department of Human Resources shall contract with an appropriate education agency to prepare a curriculum regarding AIDS, HIV, and the prevention of the spread of AIDS for all school districts and offer workshops to prepare teachers and parents to implement the curriculum. The Health Division shall award incentive grants to school districts to encourage use of the curriculum in the schools. § 433.055.

Social & Medical Services (3)

Testing & Reporting (3), (4)

EMPLOYMENT

Testing & Reporting (4)

HOUSING

(1) There is no known risk or transmission of HIV or AIDS by casual contact. The fact that an occupant or owner of real property is infected with or died from HIV or AIDS is not a material fact to a real property transaction and need not be disclosed. No cause of action arises against an owner of real property, an agent of the owner, or an agent of the transferee for failure to disclose such a fact. § 93.275.

(2) In the sale, lease, or rental of real estate, no person shall disclose to any person that an occupant or owner of real property is infected with or died from AIDS or HIV. § 659.033.

INSURANCE

(1) A life insurance policy or a rider to a life insurance policy may provide for the acceleration of death benefits as part of life insurance coverage. Accelerated death benefits are benefits that: are payable to the policy holder or certificate holder during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions; reduce the death benefit otherwise payable under the life insurance policy; and are payable on the occurrence of a single qualifying event. A medical condition which will result in a drastically limited life span, such as AIDS, constitutes a qualifying event for the purposes of acceleration of death benefits. § 743.154.

Social & Medical Services (2)

RESEARCH

Testing & Reporting (7)

SOCIAL & MEDICAL SERVICES

(1) The State declares the reduction of the incidence of serious health problems including AIDS to be an objective. 1991 Ore. Laws 565.

(2) The State shall require and approve agreements between prepaid health plans and publicly funded providers for authorization of payment for point of contact services for sexually transmitted diseases and HIV and AIDS prevention. § 414.153.

(3) The Adult and Family Services Division of the Department of Human Resources shall establish an AIDS program to provide education and prevention services for its clientele to provide education and prevention services. The Health Division shall establish an AIDS program to provide education and prevention services to the public. Programs authorized by this section may be operated by either division directly or under contract with public and private agencies. § 431.830.

Testing & Reporting (1)

TESTING & REPORTING

(1) A circuit court judge on a criminal charge shall inform every person arrested and charged with a crime in which transmission of body fluids, or in which a sexual act (see Definitions (3)) may have been involved, of the availability of HIV testing and counseling through the local health department. The judge shall cause the alleged victim of such

[OREGON]

a crime or a parent or guardian of the victim, if any, to be notified that HIV testing and counseling is available. Upon conviction for such crimes, the court shall seek the consent of the convicted person to submit to an HIV test. In the absence of such consent or the failure to submit to the HIV test (see Definitions (2)), the court shall order the convicted person to submit to the HIV test if the victim of the crime or the parent or guardian of the victim requests the court to make such an order. If an HIV test is ordered, the victim of the crime or a parent or guardian of the victim shall designate an attending physician to receive the results on behalf of the victim. If the test result is negative, the court may order the convicted person to submit to another HIV test six months after the first test was administered. The result of such tests are not public records and shall be available only to the victim, the parent or guardian of a minor or incapacitated victim, the attending physician, the Health Division, and the person tested. A violation of this confidentiality requirement is a Class C misdemeanor. If the HIV test result is positive, the test subject shall receive post-test counseling. Counseling and referral for appropriate health care, testing, and support services shall be provided to the victim at the victim's request or at the request of the victim's parent or guardian. When a court orders a convicted person to submit to an HIV test, the withdrawal of blood may be performed only by a licensed physician or health care provider (see Definitions (1)) acting within the provider's licensed scope of practice or acting under the supervision of a licensed physician. No person authorized to withdraw blood or assisting in the performance of the HIV test or any medical care facility where blood is withdrawn or tested by court order shall be liable in any civil or criminal action when the act is performed in a reasonable manner, according to generally accepted medical practices. The costs of the testing and counseling provided under this section shall be paid through the compensation for crime victims program. Restitution to the state for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution. § 135.139.

(2) Whenever a youth has committed an act which may have involved the transmission of body fluids from one person to another or a sexual act, the court shall order the youth to submit to HIV testing if the victim or parent or guardian of the victim so requests. The court may also order the youth or the parent or guardian of the youth to reimburse the appropriate agency for the cost of the test. § 419C.475.

(3) No person shall subject the blood of an individual to an HIV test without first obtaining the informed consent of the individual. In order to obtain informed consent, a physician shall explain: the procedure in general terms; that there may be alternative procedures or methods of treatment, if any; and that there are risks, if any, to the procedure or treatment. The physician shall ask the subject if the subject wants a more detailed explanation and shall provide one unless to do so would be materially detrimental to the subject. Any other persons shall obtain informed consent through the use of such forms, procedures, and educational materials as the Health Division shall specify. No person shall disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed or the results of such a test in a manner which permits identification of the test subject except as required or permitted by law or as permitted by the test subject. Any person who complies with the requirements of this section shall not be subject to an action for civil damages. §§ 433.045, 677.097.

(4) The Health Division shall prescribe procedures whereby: a worker (see Definitions (1)) who has experienced an occupational exposure (see Definitions (1)) may request the source person's (see Definitions (1)) voluntary informed consent to an HIV test; a person (see Definitions (4)) who, while receiving health care, has experienced a substantial exposure (see Definitions (1)) from a worker shall be given notice of such exposure and be given an opportunity to request or cause to be requested the worker's voluntary informed consent to be tested for HIV; and, a person who has experienced a substantial exposure shall be offered information about HIV infection, methods of preventing HIV infection, and HIV tests. Where the source person is not known to be under the care of a health care facility or provider or cannot be located, the participation and intervention of the local public health care administrator may be required. §§ 433.065, 433.070. The Health Division may declare that mandatory testing of source persons could help a defined class of workers from being infected or infecting others with HIV. When a source person has been requested to consent to testing but has refused or failed to submit to the requested test, except when the exposed person already has received a positive HIV test, the exposed person may seek mandatory testing of the source person by filing a petition with the circuit court for the county in which the exposure has occurred. Upon the filing of the petition, the court shall issue a citation to the respondent, and a hearing shall take place within three days of the service of the citation. § 433.080. Informed consent shall be necessary

for voluntary or involuntary testing. When a source person is deceased, consent shall come from the next of kin. When a voluntary or involuntary HIV test is performed, the exposed person requesting the test or that person's employer shall be responsible for the cost of the testing. Where an employer provides a program of prevention, education, and testing for HIV exposure for its employees which is approved by the Health Division, the employee being tested shall comply with the procedures provided by such program. When an involuntary HIV test is performed, the results shall be reported confidentially to the person who suffered the substantial exposure giving rise to the test. Anyone who complies with this subsection shall not be subject to an action for damages. § 433.075.

(5) Any person having information as to the location of a source person shall provide that information, when requested, for the purposes of obtaining the source person's informed consent to HIV testing. § 433.070.

(6) The Health Division shall conduct studies of the prevalence of HIV infection in the State, and the findings shall be reported to the Public Health Advisory Board, the Conference of Local Health Officials, the Emergency Board, and other interested bodies, at regular intervals. The Health Division may study the prevalence of HIV in persons sentenced to the Department of Corrections. § 433.055.

(7) Prior informed consent to HIV antibody testing need not be obtained from an individual if the test is for the purpose of research authorized by the Health Division, and if the testing is performed in such a way that the identity of the test subject is not known and may not be retrieved by the researcher. § 433.055.

(8) The written consent form utilized to obtain disclosure of medical records, including HIV/AIDS-related records is found at § 192.525.

Education (4)

MISCELLANEOUS

(1) The Legislative Assembly finds that there is no known risk of transmission of HIV or AIDS through casual contact. § 93.273.

PENNSYLVANIA

All citations are to: "Pa. Stat. Ann. tit." unless otherwise noted.

DEFINITIONS

(1) "AIDS," "available blood," "confidential HIV-related information," "contact," "first responder," "HIV," "HIV-related test," "home care agency," "individual health care provider," "institutional health care provider," "significant exposure," "source patient," and "substitute decisionmaker" are defined at 35, § 7603.

(2) "HIV-related test" is defined at 35, § 521.2.

CRIMINAL LAW

(1) It is a felony of the third degree for a person to engage in prostitution, knowing he or she is HIV positive, to promote prostitution of another who is known to be HIV positive, or for a person, knowing he or she is HIV positive, to patronize a prostitute. 18, § 5902.

Testing & Reporting (12)

EDUCATION**EMPLOYMENT**

Testing & Reporting (8)

Miscellaneous (1)

HOUSING

(1) The Pennsylvania Housing Advisory Committee and each regional housing advisory committee shall include at least one representative of a social service organization who is knowledgeable about persons with HIV/AIDS. 35, § 1691.4-5.

Testing & Reporting (8)

INSURANCE

(1) Written informed consent by the subject is required prior to HIV-related testing (see Definitions (1)) performed for insurers. Before receiving consent, there must be written disclosure to the subject of: the effects of the test result on approval of an insurance application or risk classification of the subject; a description of the insurer's confidentiality standards; a statement that the subject may wish to obtain

[PENNSYLVANIA]

counseling before undergoing the tests; and information concerning the availability of alternative HIV-related testing and counseling provided by the Department of Health and local health departments. If the subject's test result is negative, the insurer is required to disclose the result only if the subject requests notification. The insurer shall not disclose a positive test result to the subject. On the informed consent form, the subject shall designate a person to whom the insurer shall disclose a positive test result. The subject shall have the choice between disclosure to a physician, the Health Department, a local health department, or a community-based organization from a list prepared by the Health Department. 35, § 7605.

Testing & Reporting (6), (8)

RESEARCH

Testing & Reporting (5), (6)

SOCIAL & MEDICAL SERVICES

Housing (1)

Insurance (1)

Testing & Reporting (1), (3), (4), (6), (7), (8), (9), (10), (11), (12)

Miscellaneous (2)

TESTING & REPORTING

(1) In order to control the increasing incidence of Acquired Immune Deficiency Syndrome, the Commonwealth shall provide testing and counseling, on an informed and voluntary basis, for those who are at risk and for those who have HIV. Testing and counseling are promoted by establishing confidentiality requirements. This is accomplished through the Confidentiality of HIV-Related Information Act (35, §§ 7601 to 7612). 35, § 7602.

(2) Except with respect to involuntary testing of a source patient (see Definitions (1)), written informed consent is required prior to the performance of an HIV-related test (see Definitions (1)). Informed consent requires an explanation of the test, including its purpose, potential uses, limitations and the meaning of its results. 35, § 7605.

(3) No HIV-related test results shall be determined to be positive or revealed to the subject without first confirming the result according to generally accepted medical standards. The physician who orders the test or the physician's designee or successor shall make a good

faith effort to inform the subject of a positive or negative result. 35, § 7605.

(4) An HIV-related test may not be performed without pretest counseling that provides information regarding measures for the prevention of exposure to and the transmission of HIV. No positive or negative test result shall be revealed to the subject without face to face post-test counseling explaining the significance of the test results, preventative measures, and the benefits and ways of locating any individual who may have exposed the subject to HIV. No positive test result shall be revealed to the subject without, in addition, providing an opportunity for individual face-to face counseling on health care, psychiatric and social support services. 35, § 7605.

(5) Blinded HIV-related testing, in which the identity of the subject is not known and may not be retrieved, is prohibited to researchers unless the use of the testing is reviewed and approved by the institutional review board. The Department of Health shall make a good faith effort to maintain records on blinded testing. Results of blinded HIV tests performed in the State shall be forwarded to the appropriate committees of the General Assembly. 35, § 7605.

(6) Informed consent, confirmatory testing, notice, and pretest and post-test counseling regulations do not apply in the following situations: HIV testing performed on a cadaver; approved medical research involving blinded testing; and testing for insurance or underwriting purposes. Informed consent, pretest counseling and confirmatory testing regulations do not apply in a medical emergency where the subject is unable to either grant or withhold consent. Notice and post-test counseling regulations do not apply when the test yields a negative result and the purpose of the test is to satisfy a requirement for donating a human body or human body parts or for donating tissue or semen for use in medical research, therapy, transfusion, or transplantation. However, if the subject requests notification of a negative test result, the result shall be provided according to the rules governing notice. 35, § 7605.

(7) When an individual health care provider or first responder (see Definitions (1)) experiences an exposure to a patient's blood or body fluids while rendering health care services, that individual may request an evaluation of the exposure by a physician in order to determine if there was a significant exposure (see Definitions (1)). The request must be made within seventy-two hours of the exposure. The physician shall certify the significance of the exposure within seventy-two hours of the

request. If the physician determines that the health care provider or first responder has experienced a significant exposure, the physician shall offer the exposed individual the opportunity to undergo testing. Before testing can be performed on a source patient (see Definitions (1)), the health care provider or first responder must be certified as having experienced a significant exposure and must undergo testing. Before a physician tests the source patient's available blood, the certifying physician must present a copy of the certification to the source patient's physician or institutional health care provider in possession of the available blood. In addition, the source patient's physician or institutional health care provider (see Definitions (1)) must make a good faith effort to notify the source patient or substitute decisionmaker (see Definitions (1)) of the significant exposure, seek the source patient's voluntary prior written informed consent, and provide counseling. The source patient's physician or institutional health care provider shall begin to comply with the testing request within twenty-four hours. If the source patient or substitute decisionmaker refuses to consent or cannot be found, there shall be an entry in the source patient's medical record indicating that consent could not be obtained. If these procedures are followed, then HIV-related tests shall be performed on the source patient's available blood. The health care provider or first responder shall receive notification of a negative test result. No further disclosure of the test results is allowed unless specifically authorized by statute (see Testing & Reporting (8)). 35, § 7606. A physician who certifies that a significant exposure has occurred shall not incur civil liability for the exposure evaluation as long as the physician acted in good faith and with the reasonable belief that the certification was appropriate. 35, § 7609.

(8) Persons, employees or agents who obtain confidential HIV-related information while providing health or social services may disclose the information only to the following persons: the subject; a person specifically designated in a written consent form; an agent, employee, or medical staff member caring for or treating the subject; a peer-review organization; individual health care providers (see Definitions (1)), as necessary to provide the subject with emergency care, diagnosis, or treatment; an insurer, as necessary to reimburse health care providers or to pay out a claim; the Health Department, local health departments, and persons authorized to work with vital statistics or under the Disease Prevention and Control Law of 1955; persons allowed access by court order; a funeral director; entities receiving or contemplating receiving the subject for residential placement if they are authorized to

receive medical information, responsible for the subject's health care, and demonstrate a need to know. Segregation of confidential HIV-related information from a subject's medical record is not required. No person to whom confidential information has been disclosed may disclose it to another except as authorized above, notwithstanding the provisions of the Vital Statistics Law of 1953. An institutional health care provider who has access to or maintains confidential HIV-related information shall establish written procedures for maintaining confidentiality in accordance with the above procedures. 35, § 7607.⁵⁷

(9) Written consent to disclosure shall include: the name of the person permitted to make the disclosure; the name or title of the individual receiving the disclosed information; the name of the subject; the purpose of the disclosure; how much and what kind of information is to be disclosed; the subject's signature; the date signed; a statement that revocation is possible at any time except to the extent the person who is to make the disclosure has already acted in reliance on it; and an expiration date. A disclosure may not be made on the basis of consent which has expired, is known to have been revoked, fails to conform to the requirements, or is known by the person holding the information to be materially false. Each disclosure shall be accompanied by a written disclosure notice that tells the receiver that the information is protected and that any further disclosure is prohibited. An institutional health care provider who has access to or maintains confidential HIV-related information shall establish written procedures for disclosure in accordance with these procedures. 35, § 7607.

(10) A physician may disclose confidential HIV-related information if all of the following conditions are met: disclosure is made to a known contact (see Definitions (1)) of the subject; the physician reasonably believes that disclosure is medically appropriate and there is a significant risk of future infection to the person in contact with the subject; the physician has counseled the subject regarding the need to notify the contact, and the physician believes the subject will not notify or inform the contact or abstain from activity which poses a significant risk of infection to the contact; and the physician informs the subject of the intent to notify the contact. The physician shall not reveal the identity of

57. *Doe v. Township of Robinson*, 635 A.2d 764 (Pa. Commw. Ct. 1994). Police officer was exposed to blood of an HIV-infected individual. Police Chief posted a written memorandum detailing the incident and alerting police personnel to the importance of following safety procedures during high risk situations. Police officer sued for violation of the Confidentiality of HIV-Related Information Act. Court held that the Police Chief was not an "individual health care provider" and, therefore, not covered by the Act.

the subject and shall notify the contact in person unless circumstances reasonably prevent doing so. A physician has no duty to identify, locate, or notify contacts. 35, § 7609.

(11) On application, a court may issue an order to allow access to confidential HIV-related information only if the person seeking the information or the person seeking to disclose the information demonstrates a compelling need which cannot be accommodated by any other means. A court may order HIV-related testing and allow access to the result only if all of the following conditions are fulfilled: informed consent and pretest counseling procedures were followed and the subject refused to consent; medical and epidemiological data support a determination that the applicant experienced significant exposure to HIV from contact with the subject's body fluid (see Testing & Reporting (7)); and the applicant has a compelling need to ascertain the test result of the source individual. The court shall assess whether a compelling need exists by weighing the need for disclosure against the privacy interest of the individual. Pleadings shall substitute a pseudonym for the true name of the subject. The true name of the subject shall be communicated to the applicant in confidential documents not filed with the court. Before granting an order for testing or disclosure, the court shall provide the individual whose test result is sought with notice and a reasonable opportunity to participate in the proceeding if the individual is not already a party. The proceedings shall be in camera unless the subject agrees to a public hearing or the court determines that a public hearing is necessary for proper administration of justice. If the applicant requests, the court shall provide for an expedited proceeding within five days of notice to the individual whose test result is sought. The application for an expedited hearing must include a verified statement that: the applicant has been exposed to a body fluid that poses a risk of HIV infection; the exposure occurred within six weeks of the filing of the application; and the exposure involved a needle stick or percutaneous injury by another sharp object, contact with the applicant's eyes, mouth or other mucous membranes, contact with chafed or abraded skin or prolonged contact with the applicant's skin. The court shall impose appropriate safeguards against unauthorized disclosure. In order to discourage unauthorized disclosure, the court shall specify the following: that the information disclosed is essential to accommodate the needs of the party seeking disclosure; who may have access to the information; the purposes for

which the information will be used; and appropriate prohibitions on future disclosure (see Testing & Reporting (9)). 35, § 7608.⁵⁸

(12) When an individual has been convicted or adjudicated delinquent of rape, statutory rape, involuntary deviate sexual intercourse, spousal sexual assault, incest or corruption of minors where there is sexual intercourse, the victim may request that an HIV-related test (see Definitions (2)) be performed on the convicted individual. If the request is made within six weeks of conviction, the convicted individual shall be deemed to have consented to the test and the release of the results to the victim. Otherwise, the results of the test are confidential. The Department of Health, local board or local health department shall make provisions for: administration of the HIV-related test to the convicted individual; notification of the results to the victim; HIV-related testing to and counseling of the victim at no cost to the victim; and referral of the victim to appropriate health care and support services. 35, § 521.11a.

Insurance (1)

Miscellaneous (2), (3)

MISCELLANEOUS

(1) Wherever regulations by the Occupational Safety and Health Administration do not govern persons and institutions with respect to protective measures and equipment, the Department of Health shall require the use of protective measures and equipment. The Department shall develop regulations pursuant to the Center for Disease Control's guidelines. 35, § 7604.

(2) Any person aggrieved by a violation of the Confidentiality of HIV-related Information Act (35, §§ 7601 to 7612) shall have a cause of action against the person who committed such a violation and may recover compensatory damages. In the event of a violation of the procedures required for certification of significant exposure by a physician or a physician's employee, an aggrieved person may recover reasonable attorney's fees and costs. 35, § 7610. Each disclosure in violation of the Confidentiality of HIV-related Information Act or each test conducted in violation of the Act shall be considered separately for the purposes of civil liability. 35, § 7611.

(3) If the provisions of the Disease Prevention and Control Law of 1955 (35, §§ 521.1 to 521.21) are inconsistent with the

58. *In re* Application of the Milton S. Hershey Medical Center, 634 A.2d 159 (Pa. 1993) (compelling need for partial disclosure of HIV status of a doctor to other doctors and patients shown).

Confidentiality of HIV-related Information Act, the latter shall apply. 35, § 7612.

PUERTO RICO

All citations are to "P.R. Laws Ann. tit." unless otherwise noted.

DEFINITIONS

(1) "Epidemiology technician" and "medical officer" are defined at 24, § 571.

(2) "Sexually transmitted disease" (STD) includes AIDS. 24, § 571.

CRIMINAL LAW

(1) Any violation of Chapter 34 dealing with Sexually Transmitted Diseases (STDs) (see Definitions (2)) (24, §§ 571 to 583) is a misdemeanor. In particular, every person who has an STD and who is summoned by an epidemiology technician (see Definitions (1)) shall be required to submit to examination or treatment at an STD clinic established by the Department of Health within ten days following the notice or shall be sanctioned according to this provision (see Social & Medical Services (1)). 24, §§ 578, 583.

(2) Persons imprisoned in a penal or juvenile institution who have been diagnosed with terminal AIDS shall be released from the penal or juvenile institution if they meet the following criteria: the person is diagnosed by a competent medical panel as having AIDS in its terminal stage; the person voluntarily requests release; relatives truly want to take charge of the person and have the means to do so; the person has demonstrated good conduct in the institution for a reasonable period of time; and, in the best judgment of the Corrections or Juvenile Institutions Administration, the person is not a danger to the community. Prisoners or inmates who are addicted to narcotics and have not been rehabilitated shall be released to a facility for treatment for addiction or where their consumption of drugs can be controlled while they receive the medical treatment needed as terminal patients. Prisoners who are not addicted and have no home to return to may be placed in shelters or other residential facilities that agree to take proper care of them. Prisoners released due to terminal AIDS shall be granted an extended pass. 4, §§ 1601, 1603, and 1604. Before being released from a penal or juvenile institution, the prisoner or inmate shall be informed about AIDS. Relatives shall be counseled on protective measures to be taken to prevent transmission. 4, § 1602. The Corrections Administration, in close coordination with medical officials of the Administration of Mental Health and Addiction Services in cases of drug addicts, shall be responsible for drawing up

[PUERTO RICO]

norms and procedures for the release of prisoners who are AIDS patients. For juvenile prisoners or inmates with terminal AIDS, the Juvenile Administration, the Multidisciplinary Board, and the Administration of Mental Health and Addiction Services shall draw up the norms for release. 4, § 1605. Inmates who violate any of the conditions for release shall have their passes canceled and shall return to serve their sentence, although the time the inmate was out on release shall be credited to the inmate's sentence. 4, § 1606. The corrections administration shall follow up on the care received by released inmates, ensuring that they receive medical treatment and other related services, including home visits by trained medical-social personnel. 4, § 1607.

(3) A person who goes to give blood at a clinical analysis laboratory, plasmapheresis center, serapheresis center or blood bank, has a duty to inform the facility if he or she has any knowledge of having or having had any infectious disease transmitted by blood. The facility that will receive the donation shall be responsible for establishing the mechanisms whereby the donor is properly advised on the infectious disease and shall insure the potential donor's right to privacy and the confidentiality of the information given. Violations of this law are considered a misdemeanor. 1996 PR ALS 158.

Miscellaneous (5)

Social & Medical Services (1)

Testing & Reporting (1), (5)

EDUCATION

Miscellaneous (2)

EMPLOYMENT

(1) Persons infected with AIDS should be entitled to a medical evaluation prior to any decision which would adversely affect their employment. Const. Art. II, § 1.

HOUSING

Criminal Law (2)

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) An epidemiology technician (see Definitions (1)) shall summon, orient, interview, and investigate any person who has or is suspected of having a sexually transmitted disease (STD) (see Definitions (2)). The epidemiology technician is relieved from civil liability when such services are offered to minors or retarded or mentally disabled persons without prior consent of their parents or legal guardians. The epidemiologist, in coordination with the Center of Help to Rape Victims, shall summon, interview, and notify every rape, incest, or sodomy victim whose attacker has been found to be HIV positive and shall orient them to examinations and treatment. 24, § 578.

(2) The Department of Health may establish clinics for the examination and treatment of STDs throughout Puerto Rico and will provide medical assistance to any person regardless of economic condition, race, color, origin, or political or religious beliefs. These services shall be rendered in accordance with generally accepted standards in the medical profession. 24, § 579.

Criminal Law (1), (2)

Employment (1)

Testing & Reporting (1), (2), (3), (4), (5)

Miscellaneous (1), (3), (4)

TESTING & REPORTING

(1) Medical officers (see Definitions (1)) will use all available means to determine the existence and sources of sexually transmitted diseases (STDs) (see Definitions (2)). A medical officer who has reasonable grounds to believe that a person is suffering from or has been infected with an STD and could infect another person shall require that said person submit to a medical examination. Specimens of blood or other bodily secretions shall be taken for any testing that may be necessary to establish the presence or absence of such disease or infection. The medical officer or licensed physician who performs the examination shall report on the examination to the medical officer of the Department of Health but shall not issue a certificate of immunity from STDs to or for the person examined. The suspected person may request

an order from a magistrate to restrain such examination, and no examination shall then be performed except by order of the magistrate. Before submitting any suspected person to such an examination, the suspected person shall be informed of the right to refuse to submit to the examination. The medical officer has the right to petition the court to order the person to go to any of the clinics of the Sexually Transmitted Disease Control Program to receive treatment. The Department of Health shall offer medical assistance to any medically indigent person who suffers from an STD. In every case of rape, incest, or sodomy, the magistrate shall direct the convicted person to submit to HIV testing (see Testing & Reporting (5)). 24, § 576.

(2) Laboratories associated with blood banks shall keep a record of the diseases suffered by a donor and of HIV testing performed on a donor. 24, § 91c-1.

(3) Every person in charge of a laboratory where STD tests are performed or processed for the purpose of diagnosis or confirmation shall report all positive results to the Sexually Transmitted Diseases Program (Program) within five days following the test. The report shall be written on forms specially provided by the Department of Health and shall include the name, age, sex, and residential address of the patient, as well as the name and address of the physician who recommended the test. The report shall be placed in an envelope marked confidential, kept in the files of the laboratory, and identified by serial number or code. Only the nature of the analysis and the results shall be sent to the Program under the serial number affixed thereto. 24, § 572. Every person in charge of a laboratory that processes tests for the diagnosis or confirmation of STDs shall submit weekly reports of positive or negative cases to the Program (see Miscellaneous (3)). 24, § 573.

(4) Every doctor that diagnoses a case of STD shall submit a report to the Program within five days indicating the name, age, sex, residential address, and type of disease. This information shall be deemed confidential and shall be marked as such in the Program. 24, § 574.

(5) The identity and information offered by patients and their sexual contacts shall be confidential and may not be revealed by the Program, except when the patient or sexual contact authorizes it or when dealing with a person convicted of rape, incest, or sodomy who is diagnosed with AIDS, in which case the victim shall be notified of the test results. 24, § 575a.

(6) Tests to diagnose or detect the presence of HIV must be performed on all victims of rape, conjugal sexual assault, incest, sodomy,

or lewd or indecent acts who voluntarily submit to such a test. Before performing the HIV virus test, the victim shall be offered a complete orientation about AIDS. If necessary, this orientation shall be extended to the victim's family. Persons convicted of the aforementioned crimes must be submitted to HIV testing. A medical health officer who has reasonable grounds to believe that any person is suffering from, or has been infected with any sexually transmitted disease (STD) that could infect, or be the source of infection of any other person must require such person to submit to medical examination, and that such specimens of blood or other bodily secretions be taken for the laboratory examinations necessary to establish the presence or absence of such disease or infection. The examination shall be performed by the medical health officer or, if the person being examined requests. The physician shall render a report to the medical health officer, but shall not issue a certificate of immunity from STDs to or for the person examined. The suspected person may plead to a magistrate for an order restraining such examination. Before submitting to such examination, the suspected person shall be informed of his right to refuse to submit to medical examination. The Department of Health shall offer medical assistance to any medically-indigent person that suffers from an STD. The identity and information offered by patients and their sexual contacts shall be of a confidential nature and may not be revealed unless the patient or sexual contact authorizes it or, when it be a convict or minor, whose diagnosis is positive or reactive to AIDS, in which case the victim shall be notified of the test results. 1993 PR ALS 31.

MISCELLANEOUS

(1) The Secretary of Health shall have the authority to promulgate rules and regulations necessary for implementation of Sexually Transmitted Disease (STD) (see Definitions (2)) control provisions. 24, § 582.

(2) Projectors and movie screens used exclusively and permanently for the diffusion of educational public health propaganda that are acquired by AIDS prevention organizations shall be exempted from excise tax. A petition must be filed with the Secretary of Health in order to obtain such an exemption. 13, § 7105.

(3) The doctor as well as the person in charge of a laboratory will be relieved of civil liability upon remitting to the Sexually Transmitted Disease Control Program (Program) (see Testing & Reporting (3)) the requested confidential information on the forms

provided for such purpose by the Department of Health. 24, § 575. The testimony and any documents of the Program that could identify patients and their several partners shall be inadmissible as evidence except in those cases in which the patient or sexual contact authorizes it. § 24, § 575b.

(4) Any doctor who examines or treats a minor or a retarded or mentally disabled person who has or is suspected of having an STD, without first obtaining the consent of a parent or legal guardian, is immune from civil liability. The clinics and hospitals which render such services are likewise immune from liability. 24, § 577.

(5) It is the public policy of the Commonwealth of Puerto Rico to ensure every person that they shall not be discriminated against because they have been diagnosed as HIV positive or because they suffer from AIDS. In the case of judicial persons or family groups, they shall not be discriminated against because they have in their registry or among their clients persons who are HIV positive or who suffer from AIDS. Such discrimination is prohibited in organized programs or activities sponsored, operated, managed, or directed by public or private institutions; transfers of leaseholds or acquisition of ownership or control, of for the financing of such transactions on real or personal property; acquisitions of goods and services; educational institutions. Violators of this law shall incur civil liability. In the case of discrimination in transactions on real or personal property, transportation, goods and services, or educational institutions, violators are guilty of a misdemeanor. 1995 PR ALS 52.

RHODE ISLAND

All citations are to "R.I. Gen. Laws" unless otherwise noted.

DEFINITIONS

- (1) "AIDS," "AIDS test" and "AIDS testing and notification form" are defined at § 23-6-11.
- (2) "Infectious and communicable disease" includes AIDS. § 23-5-9.
- (3) "Psychologically impacted" is defined at § 5-20.8-6.
- (4) "Sexually transmitted disease" is defined at § 23-11-1.

CRIMINAL LAW

(1) Any person suspected of sexually transmitted disease (STD) (see Definitions (4)) infection, who refuses to submit to an examination, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of \$50 or imprisonment for thirty days or both. § 23-11-12.

(2) Any person who violates the health and safety provisions pertaining to STDs (see Social & Medical Services (2)) shall, upon conviction, be punished by a fine not to exceed \$100 or imprisonment for not more than thirty days or both. § 23-11-16.

(3) Any person who either administers or participates in a needle exchange pilot program (see Social & Medical Services (1)) shall be immune from criminal prosecution for violating the provisions pertaining to such programs unless the individual is found to possess hypodermic needles and syringes that are not part of the exchange program. § 23-11-19.

(4) Any person who knowingly divulges the name or gives information relating to any person suffering or suspected to be suffering from an STD (see Testing & Reporting (15)) shall be imprisoned for not more than six months or fined not more than \$250. § 23-11-9.

(5) Any person who shall neglect to report a case of an STD (see Testing & Reporting (15)) for a period of ten days shall be fined not more than \$100. § 23-11-7.

Testing & Reporting (3), (9), (10), (13), (15), (17)

EDUCATION

(1) The Department of Elementary and Secondary Education shall establish as a basic requirement comprehensive AIDS instruction

[RHODE ISLAND]

which shall address AIDS transmission and prevention, noting that abstinence from sexual activity is the preferred means of prevention. § 16-22-17. Every secondary school course in family life or sex education shall include, as part of the course instruction, a section on prevention of sexually transmitted diseases (see Definitions (4)), noting that abstinence from sexual activity is the preferred method of prevention. § 16-22-18.

Social & Medical Services (1), (8)
Testing & Reporting (13)

EMPLOYMENT

(1) The Division of Occupational Safety of the Department of Labor shall adopt the latest regulations of the Federal Occupational Safety and Health Administration pertaining to HIV and shall provide for the enforcement of such regulations for appropriate public sector employees. § 28-20-4.1.

(2) No person, agency, organization, or corporate body may discriminate against a person on the basis of a positive AIDS test result, or perception of the same, in employment, nor shall an AIDS test be required as a condition of employment, except where nondiscrimination can be shown on the testimony of competent medical authorities, and the test subject, in carrying out work responsibilities, would pose a clear and present danger of AIDS virus transmission to others. § 23-6-22. Persons who believe that they have been unlawfully discriminated against in employment on the basis of a positive AIDS test, or perception of the same, may bring action for administrative relief before the Rhode Island Human Rights Commission. § 23-6-23.

Testing & Reporting (3)

HOUSING

(1) The fact that real property may be or is psychologically impacted (see Definitions (3)) shall not be a material fact that must be disclosed in a real estate transaction. No cause of action shall arise against the seller of real property or the seller's agent for failure to disclose to the buyer that the property was psychologically impacted. § 5-20.8-6.

(2) No person, agency, organization, or corporate body may discriminate against a person on the basis of a positive AIDS test result, or perception of the same, in housing, the granting of credit, public accommodation, or delivery of services. § 23-6-22. Persons who believe

[RHODE ISLAND]

that they have been unlawfully discriminated against in housing, the granting of credit, public accommodations, or delivery of services on the basis of a positive AIDS test, or perception of the same, may bring action for administrative relief before the Rhode Island Human Rights Commission. § 23-6-23.

INSURANCE

(1) The laws of testing and reporting for AIDS shall not apply to the offering or sale of life insurance provided that any insurance company offering or selling life insurance in Rhode Island that requires an individual to be tested for AIDS for the purposes of determining insurability shall give the individual prior written notice of those requirements and proceed with the testing only upon the written authorization of the individual or the individual's parent or guardian. Life insurance companies offering or selling life insurance in Rhode Island may otherwise obtain or disclose HIV test results as specifically permitted by state statute (see Testing & Reporting (5)). Insurance companies may collect data for statistical purposes as long as the insured is not identified. Insurance companies shall not be permitted to cancel or refuse to renew a life insurance policy, which by its terms has not lapsed, on the basis of a positive AIDS test result. § 23-6-24.

(2) A commission shall be established to develop and recommend to the Legislature a risk pool plan under which all insurers shall participate and share a proportion of the risk and cost of insuring people with AIDS. Two representatives to the commission shall be from the Rhode Island Project AIDS. § 23-6-24.

Social & Medical Services (5)

RESEARCH

Testing & Reporting (8)

SOCIAL & MEDICAL SERVICES

(1) The Special Legislative Commission to study the feasibility of implementing a needle exchange program strongly recommends passage of a law enabling the Department of Health to implement a pilot needle exchange program for the prevention of HIV transmission among intravenous drug users. § 23-11-18. The Director of the Department of Health shall establish a pilot program offering free exchange of new hypodermic needles and syringes for used ones.

Intravenous drug users eighteen years of age or older may participate. Any site used in the pilot program shall make available educational materials, HIV counseling and testing, and referral services targeted to the education of AIDS transmission. Any individual who either administers or participates in the program shall be immune from criminal prosecution, unless the individual to have in his/her possession hypodermic needles and syringes that are not a part of the exchange program. § 23-11-19. The Director of Health may issue a certificate to participants in any pilot program for the exchange of hypodermic needles and syringes established by the Department of Health, for the purpose of reducing the transmission of HIV. § 21-28-4.04.

(2) The Department of Health may require persons with a sexually transmitted disease (STD) (see Definitions (4)) in an infectious state to report for treatment and to continue treatment until cured of the infectious condition. Any person suffering from an STD in an infectious and contagious state who refuses to report for treatment shall be isolated and treated until such person has been pronounced by a licensed physician to be noninfectious and no longer a danger to the public health. § 23-11-3.

(3) In all suspected cases of STD, the Department of Health may take appropriate measures to determine whether the person suspected of being infected is suffering from any STD. When an STD is found to exist, the Department of Health shall attempt to ascertain the source of such infection. In such investigations, the Department of Health is vested with full powers of inspection, examination, and treatment. § 23-11-10. Persons examined because of suspected STD infection shall have the right to have their own physician present at the examination, paid for at the person's own expense. § 23-11-11.

(4) Persons under eighteen years of age may give legal consent for examination and treatment for any STD. Physical examination and treatment by a licensed physician or a designated representative upon the person of a minor shall not constitute an assault or an assault and battery upon such person. § 23-11-11.

(5) Comprehensive medical services to prevent and control the spread of STDs shall be provided through a payor of last resort program established under the Director of Health to cover the cost of outpatient health services for men and women ineligible for Medicaid, who lack health insurance coverage, and whose family income is between 100 and 185 percent of the federal poverty level. § 23-13-21.

(6) When a person who has been diagnosed as having an infectious and communicable disease (see Definitions (2)) dies in a hospital or other health care facility or outside of a hospital or health care facility, the attending physician, other responsible officer, or family member or other person making arrangements for the disposition of the body shall prepare a written notification describing the disease to accompany the body when it is picked up for disposition. Any person who picks up or transports a dead body for disposition shall present any notification accompanying the dead body to an embalmer, funeral director, or other person taking possession of the dead body. Information regarding a deceased's infectious or communicable disease contained in a notification shall be confidential. Any person who knowingly refuses or omits to perform such notification shall be subject to a fine of \$300 for a first offense, \$500 for a second offense, and \$1000 for a third and subsequent offense within any calendar year. § 23-5-9.

(7) The Director of Health shall promulgate guidelines for the prevention of transmission of HIV, particularly in cases of sperm collection or donation where the Director shall require testing for HIV. § 23-1-38.

(8) The Director of Health shall prepare and submit to the clerk's office of each city and town a packet containing all appropriate information relating to STDs for distribution to all persons applying for a marriage license. The packet shall include an AIDS testing and notification form (see Definitions (1)) that clearly states that the Department of Health provides confidential HIV tests at no cost and also provides pretest and post-test educational materials and post-test counseling for HIV positive persons. § 23-1-36.1.

Criminal Law (1), (3)

Testing & Reporting (1), (3), (4), (5), (7), (9), (10), (11), (12), (13), (14), (15), (16)

Miscellaneous (2)

TESTING & REPORTING

(1) The AIDS testing and notification form (see Definitions (1)) shall be developed by the Department of Health (Department) and shall contain the following information: the public health rationale for AIDS testing; the availability and cost of AIDS testing and counseling; a list of exceptions to confidentiality of test results; that the test is voluntary and that an informed consent form must be signed before testing; and that

by signing this form the person is only acknowledging that AIDS testing (see Definitions (1)) and counseling have been offered. § 23-6-11.

(2) No person may be tested for AIDS where the test result can be identified with a specific individual unless the individual has given informed consent by signing a written informed consent form specifically relating to such test after discussing the implications of the test with qualified personnel. The signature of a parent, guardian, or agent may be substituted for that of the individual being tested. § 23-6-12. The written informed consent form shall include at least the name and signature of the parties seeking and consenting to the AIDS test, the name and nature of the test, the reasons for conducting the test, the fact that the test results shall remain confidential except as required by law, and an explanation of how the test results will affect the tested person's ability to obtain services from the party requesting the test or the party for whom the service is acting. § 23-6-13.

(3) A physician, or any other healthcare provider, may draw blood and secure an AIDS test without informed consent under the following conditions: when the test subject is under one year old; when the test subject is between the ages of one and thirteen and appears to be symptomatic for AIDS; when the person to be tested is a minor under the care and authority of the Rhode Island Department of Children and Their Families and the Director of that Department certifies that an AIDS test is necessary to secure health or human services for that person; when a complainant can document significant exposure to blood or other bodily fluids of the test subject during the complainant's occupation, provided the complainant completes an incident report within forty-eight hours of the exposure, submits to a baseline AIDS test, and tests negative for the presence of the AIDS virus; when a health care provider has a significant exposure to the blood or body fluids of a patient and the patient or the patient's guardian refuses to grant informed consent to AIDS testing; in an emergency where it is impossible to obtain consent from either the patient or the patient's parent, guardian or agent; as permitted under the provisions pertaining to sperm collection or reportable communicable diseases; or mandatory testing for convicted offenders in a correctional institution and persons convicted of prostitution, lewdness, or possession of a hypodermic needle associated with intravenous drug use. § 23-6-14. No involuntary test for AIDS shall take place under any of the above exceptions to the informed consent provisions until reasonable efforts have been made to secure voluntary informed consent. § 23-6-15.

(4) The results of an AIDS test may be disclosed without the prior written consent of the test subject only under the following circumstances: to a patient's licensed physician or other medical personnel directly involved in the care of the patient who requested the test; to the Director of the Department of Health; in the records of a physician; to persons exposed to the blood or other body fluids of a person who tests positive; to the Director of the Department for Children and Their Families; to a contact of the AIDS patient who may be in danger of HIV infection; as permitted under the Confidentiality of Health Care Information Act, the Mental Health Act or as otherwise provided by law; or to appropriate persons entitled to receive notification of persons with infectious and communicable diseases (see Definitions (2)). § 23-6-17.

(5) Health care providers, public health officials, and any other person who maintains records containing information on AIDS test results of individuals shall be responsible for maintaining full confidentiality of this data and shall take appropriate steps for its protection including: keeping records secure at all times and establishing adequate confidentiality for records that are electronically stored; establishing and enforcing reasonable rules limiting access to records; and training persons who handle records in security objectives and techniques. § 23-6-18.

(6) An AIDS test subject shall be notified of a disclosure of test results to a third party other than a person involved in the treatment of the subject or as permitted by statute (see Testing & Reporting (4)). The person disclosing shall make reasonable efforts to inform the test subject in advance of the nature and purpose of the disclosure, the date of the disclosure, and the recipient of the disclosed information. § 23-6-20.

(7) The Department shall maintain alternative sites for providing free, voluntary, and anonymous HIV testing, counseling, and referral on a continuing basis and at such sites as may be designated by the Director of the Department. § 23-6-25.

(8) All biological samples taken from Rhode Island residents for the purpose of performing laboratory analysis for HIV under order of any physician shall be sent to the Rhode Island Department of Health laboratory for analysis, unless the test is for the sole purpose of assuring the safety of the blood supply or for research purposes. HIV tests may also be performed in a hospital laboratory. No physician or laboratory providing samples for HIV testing to the Department shall include the

name of the test subject or any other information that would identify the test subject. § 23-6-26.

(9) Any person convicted of prostitution or lewdness shall be required to be tested for HIV. Consent for such testing is not required. The Department shall be responsible for reasonable costs associated with performing and reporting the results of the HIV tests, including the cost of pretest and post-test counseling. All persons tested under this section shall be provided pretest and post-test counseling in accordance with regulations adopted by the department of health, provided however, that the counseling shall be in accordance with acceptable medical standards. All persons tested who are determined to be intravenous drug users shall be referred to appropriate sources of drug treatment. Persons who test positive for HIV shall be given priority for state sponsored outpatient programs. Such persons who test negative shall be referred to the appropriate division in the department of health for earliest possible evaluation and treatment. § 11-34-10.

(10) Any person convicted of possession of a hypodermic instrument associated with intravenous drug use shall be required to be tested for HIV. No consent to such testing is required. The Department shall be responsible for reasonable costs associated with performing and reporting the results of HIV tests including pretest and post-test counseling. Persons who test positive for HIV shall be given priority for state sponsored outpatient programs. § 21-28-4.20. Every physician or health care provider attending to a person at a facility for intravenous drug users shall offer HIV testing unless such offer of testing is deemed inappropriate by the physician. The identity of the test subject shall be maintained only at the test site where the sample is drawn and shall not be released except as otherwise provided by statute. An AIDS testing notification form (see Testing & Reporting (1)) shall accompany the offer for AIDS testing, and the person to whom the testing is offered shall sign and date the form. The Department shall be responsible for reasonable costs associated with performing and reporting the results of HIV tests, including pretest and post-test counseling. § 40.1-24-20.

(11) The physician or health care provider attending any person for a suspected STD, prenatal care, family planning services, or attending any hospital patient, shall offer testing for HIV unless the test is deemed inappropriate by the physician and so noted in the person's medical record. The identity of individuals tested shall be maintained only at the site where the sample is drawn and shall not be released except as otherwise provided by statute (see Testing & Reporting (4)). An AIDS

testing notification form (see Testing & Reporting (1)) shall accompany the offer for AIDS testing, and the person offered the testing shall sign and date the form. The Department shall be responsible for reasonable costs associated with performing and reporting the results of HIV tests including pretest and post-test counseling. §§ 23-11-17, 23-13-19, 23-17-31.

(12) Prior to any organ, tissue, or part of a human body being transplanted into any human being, the donor shall be tested for AIDS. Testing shall be waived if there is a documentable bona fide medical emergency which endangers the life of the recipient. If the AIDS test is positive, the organ, tissue, or body part shall not be used. § 23-18.6-12.

(13) Every person committed to an adult correctional institution shall be required to be tested for HIV. No consent shall be required for such testing nor shall such test be subject to waiver. In addition, periodic testing for HIV, including testing at the time of release, shall be required. Inmates shall be provided appropriate pretest and post-test counseling. Inmates who develop AIDS or AIDS related complex shall be entitled to all reasonable medical treatment available for their illness. No inmate shall be punished, segregated or denied recreational privileges solely on the basis of a positive HIV test. The Department of Corrections shall take steps to protect the confidentiality of the HIV test results and to prevent HIV positive inmates from infecting other inmates and correctional staff. If any person, including an employee is assaulted or comes into contact with bodily fluid of another, the physician will determine whether the incident places the exposed at risk for HIV, this may include testing for HIV. The physician will immediately inform the exposed person of the medical assessment of risk and provide emergency medical care. The Department of Corrections shall institute a comprehensive AIDS education and drug treatment program for inmates and staff at all of its facilities. The Department of Corrections shall make easily accessible personal protective equipment for correctional personnel to use if administering cardiac or respiratory resuscitation. § 42-56-37.

(14) The Department shall provide or make arrangements for STD testing and clinical treatment and is authorized to establish a reasonable fee structure for such tests and treatments. § 23-11-4.

(15) The superintendent or other officer of a public or private institution such as a hospital, other licensed health care facility, dispensary, clinic, home, asylum, charitable and correctional institution, laboratory, or any physician who diagnoses and treats STDs shall promptly report the identity of any person suffering from an STD. §§ 23-

11-5, 23-11-6, 23-11-14. All information and reports in connection with persons suffering from or suspected of suffering from an STD shall be kept absolutely confidential by any person whose duty it is to obtain, make, transmit, and receive such reports. § 23-11-9. Such a report made by a physician shall not be deemed a violation of the physician-patient relationship or otherwise contrary to the ethics of the medical profession. § 23-11-15.

(16) When any physician or nurse practitioner has cause to suspect that a child brought for examination, care, or treatment is suffering from an STD, the physician or nurse practitioner shall report the incident to the Department. § 40-11-6.

(17) Any person who has admitted to being, has been convicted of being, or has been adjudicated wayward or delinquent by reason of having committed any sexual offense involving sexual penetration shall be ordered by the court, upon petition of the victim, immediate family members of the victim or legal guardian of the victim, to submit to a blood test for the presence of an STD including HIV. Notwithstanding other statutory requirements (see Testing & Reporting (2)), no consent shall be required. Further, notwithstanding other statutory provisions on confidentiality (see Testing & Reporting (4)), the results shall be reported to the court and the court shall disclose the results to any victim who requests them. Review, disclosure and any records shall be confidential. The results shall also be disclosed to the person tested. Upon the victim's request, the Department shall help provide HIV testing and counseling to assist the victim. § 11-37-17.

(18) Every physician or health care provider attending any person for any service offered at a facility for intravenous drug users, shall offer testing for HIV unless deemed inappropriate by the physician. All testing pursuant to this section shall be performed in accordance with the law, except where federal confidentiality laws may supersede. The identity of the individuals tested under this section shall be maintained only at the site where the sample is drawn, and shall not be released except as otherwise provided by the statute. Each person who is offered a test and counseling shall be provided with an "AIDS testing and notification form" which he or she shall sign and date in acknowledgement of the offer. The department of health shall be responsible for reasonable costs associated with performing and reporting the results of HIV tests, including the cost of pre test and post test counseling. All persons tested shall be provided pretest and post test

counseling, provided that the counseling is in accordance with acceptable medical standard. § 23-17-31.1.

Criminal Law (5)

Employment (2)

Housing (2)

Insurance (1)

Social & Medical Services (1), (7), (8)

MISCELLANEOUS

(1) The General Assembly shall annually appropriate such sum as it may deem necessary for carrying out the provisions pertaining to sexually transmitted diseases (see Definitions (4)). § 23-11-13.

(2) The Director of Health shall promulgate rules and regulations providing minimum requirements to be met by any person (see Definitions (1)) performing tattooing upon any individual, placing emphasis on disease prevention including transmission of HIV. § 23-1-39.

(3) The purpose of the provisions dealing with prevention and suppression of contagious diseases (§§ 23-6-10 to 23-6-24) is to protect the public against AIDS transmission and to protect persons who are infected with AIDS from discrimination. § 23-6-10.

SOUTH CAROLINA

All citations are to “ S.C. Code Ann.” unless otherwise noted.

DEFINITIONS

(1) “Bloodborne diseases,” as defined at § 44-29-230, includes HIV and AIDS among the enumerated diseases. “Emergency response employee,” “health care professional,” “health care worker,” and “significant risk” are defined at § 44-29-230.

(2) “Handicapped person” is defined at § 2-7-35. An Attorney General Opinion recommends amendment of the definition to clarify whether the term, “handicapped person,” includes persons infected with HIV. “Handicap” and “handicapped” are defined at § 43-33-560.

(3) “Health care professional” is defined at § 44-30-20.

(4) “Sexual battery” is defined at § 16-3-651. “Sexual conduct” is defined at § 16-3-800.

(5) “Sexually transmitted disease” (STD) includes all venereal diseases, as defined at § 44-29-60.

(6) A “solicitor” is a governmental official. *See* § 1-1-110.

CRIMINAL LAW

(1) It is unlawful for anyone infected with a sexually transmitted disease (STD) (see Definitions (5)) to knowingly expose another to the infection. § 44-29-145.

(2) It is a felony for a person infected with HIV to knowingly: engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of the infection; commit an act of prostitution; sell or donate blood, blood products, semen, tissue, organs, or other body fluids; forcibly engage in sexual intercourse, vaginal, anal, or oral, without the consent of the other person, including one’s spouse; or knowingly share a hypodermic needle, syringe, or both with another person without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV. § 44-29-145.

(3) If any person suffering from an STD is released before the STD is completely cured, the Department of Health and Environmental Control shall direct the person where to report for further treatment. Failure to report as directed constitutes a misdemeanor punishable by a fine of not more than \$200 or imprisonment for not more than thirty days. § 44-29-110.

(4) It is a felony for an inmate to throw, or attempt to throw, bodily fluids including, but not limited to, urine, blood, feces, vomit,

[SOUTH CAROLINA]

saliva, or semen on an employee of a state or local correction facility. Upon conviction, a sentence of not more than fifteen years in prison will be imposed. A sentence under this provision must be served consecutively to any other sentence the inmate is serving. This section shall not prohibit the prosecution of an inmate for a more serious offense if the inmate is determined to be HIV-positive or has another disease that may be transmitted through bodily fluids. § 24-13-470.

(5) Sexually transmitted diseases (STDs) (see Definitions (5)) which are included in the annual Department of Health and Environmental Control List of Reportable Diseases are declared to be contagious, infectious, communicable, and dangerous to public health. STDs include all venereal diseases. It is unlawful for anyone with these diseases to knowingly expose another to infection. § 44-29-60.

Social & Medical Services (3), (4)

Testing & Reporting (1), (2), (3), (6)

EDUCATION

(1) The board of education, through the department, shall select or develop an instructional unit with separate components addressing the subjects of reproductive health education, family life education, pregnancy prevention education, and sexually transmitted diseases (STDs) (see Definitions (5)) and make the instructional unit available to local school districts. The board, through the department, also shall make available information about other programs developed by other states upon request of a local school district. § 59-32-20.

(2) Each local school board shall implement a program of instruction for grades kindergarten through five in health education. Sexually transmitted diseases (STDs) (see Definitions (5)) shall be excluded from the instruction on prevention and control of diseases and disorders. For grades six through eight, instruction in comprehensive health shall cover STDs. Any course or instruction in STDs must be taught within the reproductive health, family life, or pregnancy prevention education components or presented as a separate component. § 59-32-30. Public school principals shall notify students' parents of the content of the instructional materials concerning reproductive health, family life, pregnancy prevention, and STDs, giving parents the option to exempt their child from this instruction. § 59-32-50.

Testing & Reporting (5)

EMPLOYMENT

Testing & Reporting (8)

HOUSING

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) The Department of Health and Environmental Control shall promulgate regulations concerning sexually transmitted diseases (STDs) (see Definitions (5)). § 44-29-130.⁵⁹

(2) State, district, county, and municipal health officers shall make examinations of persons infected or suspected of being infected with an STD when they determine it is necessary to do so. Health officers shall require infected persons to report for appropriate treatment provided at public expense and shall request disclosure of the identity of persons with whom the infected person has had sexual contact, intravenous drug use contact, or both. The identity of the person infected shall not be revealed. The health officer may isolate persons infected or reasonably suspected of being infected with an STD. Public monies appropriated for the treatment of STDs must be expended in accordance with priorities established by the Department of Health and Environmental Control, taking into account cost effectiveness, curative capacity of the treatment, and the public health benefit. § 44-29-90.

(3) Any person confined in a state, county, or city prison may be examined and treated for an STD by health authorities or their deputies. Persons who are confined and who have an STD at the expiration of their terms of imprisonment must be isolated and treated at public expense until, in the judgment of the local health officer, the prisoner may be medically discharged. In lieu of isolation, the confined person, at the discretion of the Board of Health, may be required to report for treatment to a licensed physician or submit for treatment provided at public expense by the Department of Health and Environmental Control. § 44-29-100.

59. *Evans v. Rite Aid Corp.*, 452 S.E.2d 9 (S.C. Ct. App. 1994) (no regulation places a reporting obligation on pharmacists filling prescriptions for STD medication).

(4) No person suffering from an STD may be discharged from confinement unless the person is pronounced cured of the disease by a state, county, or municipal health officer. If no cure is available, the infected person may be released on the recommendation of the Department of Health and Environmental Control. If any person is released before the STD is completely cured, the Department shall direct the person where to report for further treatment. § 44-29-110.

Criminal Law (3)

Testing & Reporting (3), (4), (7), (8)

Miscellaneous (1)

TESTING & REPORTING

(1) Within fifteen days of the conviction of any person for a crime involving sexual battery or sexual conduct (see Definitions (4)), if the conduct results in the exposure of the victim to blood, vaginal or seminal fluids of the convicted offender, the solicitor (see Definitions (6)) shall require that the convicted offender be tested for HIV. The test must be administered by the local public health authority or the medical professional at the prison where the convicted offender is confined. The results of the test must be reported to the South Carolina Department of Health and Environmental Control and to the solicitor who ordered the test. The solicitor shall notify the victim and the convicted sexual offender of the test results. The convicted offender, if not indigent, shall pay for the test; otherwise the cost of the test must be paid by the state. § 16-3-740.

(2) An offender convicted of a crime of prostitution, buggery, or committing or attempting to commit a lewd act on a child under the age of fourteen, shall be tested for HIV if the crime results in exposure of the victim to the blood or vaginal or seminal fluids of the offender. The test must be administered by the local public health authority or the medical professional at the prison where the convicted offender is imprisoned. The results of the test must be reported to the Department of Health and Environmental Control, to the convicted offender, and to any person who may have been exposed as a direct result of an act leading to the conviction. The convicted offender shall pay for the test, unless the offender is indigent, in which case the cost of the test must be paid by the state. § 16-15-255.

(3) Any physician or other person who treats or makes a diagnosis of a case of a sexually transmitted disease (STD) (see Definitions (5)), and any superintendent or manager of a hospital,

[SOUTH CAROLINA]

dispensary, health care related facility, or charitable or penal institution in which there is a case of an STD, shall report it to the health authorities. § 44-29-70.⁶⁰

(4) Laboratories shall report all positive STD test results and cooperate in preventing the spread of STDs. § 44-29-80.

(5) All information and records held by the Department of Health and Environmental Control and its agents relating to a known or suspected case of an STD are strictly confidential except in the following situations: release of medical or epidemiological information for statistical purposes in a manner which does not identify the individual; release of medical or epidemiological information with the consent of all persons identified therein; release of medical or epidemiological information to the extent necessary to enforce regulations concerning control and treatment of STDs (see Social & Medical Services (2), (3), and (4)); or release of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of any person. In cases involving a minor, the name of the minor and medical information concerning the minor must be reported to the appropriate agents if a report is required by the Child Protection Act of 1977. If a minor has AIDS or is infected with HIV and is attending public schools, the superintendent of the school district and the nurse or other health professional assigned to the school attended by the minor must be notified. § 44-29-135.⁶¹

(6) Upon a finding by the court that a request for disclosure of medical records containing STD test results is valid and that there is a compelling need for disclosure of the test results, a portion of a person's STD test results shall be disclosed to a solicitor or state criminal law enforcement agency. No court may issue a disclosure order solely on the basis of anonymous tips. Pleadings pertaining to disclosure of test results must substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name must be communicated in documents sealed by the court. Court proceedings must be conducted in camera unless the subject of the test requests a hearing in open court. All files relating to the proceeding must be sealed unless waived by the subject of the test. The court may impose appropriate safeguards against the unauthorized disclosure of information including, but not limited to, specifying who may have access to the information, the

60. *Evans v. Rite Aid Corp.*, 452 S.E.2d at 11.

61. *See id.* (this section does not give rise to a duty of confidentiality by a pharmacist filling a prescription for STD medication).

purposes for which the information may be used, and prohibitions against further disclosure of the information. § 44-29-136.

(7) While working with a patient's blood or body fluids, if a health care worker (see Definitions (1)) is or may have been exposed to HIV, a health care professional (see Definitions (1)) may require the patient to be tested. The health care professional must have probable cause to believe the incident may have caused infection. The test results must be given to the professional who shall report the results to the worker and patient. § 44-29-230.

(8) If, while working with a person or a person's blood or body fluids, a health care worker or emergency response employee (see Definitions (1)) is involved in an incident resulting in possible exposure to bloodborne disease (see Definitions (1)), a health care professional may require the patient, health care worker, or emergency response employee to be tested without consent. The decision to test must be based on a reasonable medical judgment that the incident may pose a significant risk (see Definitions (1)) to the health care worker or emergency response employee. § 44-29-230.

(9) A person, upon whom an invasive, exposure-prone procedure is scheduled to be performed, is encouraged to know his HIV antibody, HBsAG, and HBeAg status and disclose the status to the health care professionals rendering care so that precautionary measures may be taken. If such person does not know his status, he is encouraged to have his blood tested for the presence of HIV or HBV so as to protect the health care professionals rendering care. § 44-29-240.

(10) A person who collects and anonymously submits a sample of his person's own bodily fluid or tissue for HIV testing is not required to report a positive test result, and the test results are confidential. However, the person or laboratory performing the test on an anonymous sample shall report to the Department of Health and Environmental Control a positive HIV-infection test result, as well as certification that counseling options, including community-based resources, and referrals to appropriate medical providers have been made or offered to the positive subjects. This report must not contain any information identifying the subject of the report or any information that may lead to the identification of the subject of the report. § 44-29-250.

Miscellaneous (1)

MISCELLANEOUS

(1) A physician or state agency identifying and notifying a spouse or known contact of a person having HIV infection or AIDS is not liable for damages resulting from the disclosure. § 44-29-146.

Criminal Law (5)

SOUTH DAKOTA

All citations are to “S.D. Codified Laws” unless otherwise noted.

DEFINITIONS

(1) “Blood-borne pathogens” is defined at § 23A-35B-1 and includes HIV transmitted in human blood. “Crime of violence” and “HIV” are defined at § 23A-35B-1.

CRIMINAL LAW

Testing & Reporting (1)

EDUCATION

(1) Marriage license applicants shall be provided educational materials by the Department of Health including information relating to sexually transmitted diseases, HIV (see Definitions (1)) transmission, prenatal care, and locations of counseling and testing services before the license is issued. § 25-1-28.1.

EMPLOYMENT

HOUSING

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

Education (1)
Testing & Reporting (1)
Miscellaneous (1)

TESTING & REPORTING

(1) A victim of sexual assault, of a crime of violence (see Definitions (1)), or of a motor vehicle accident involving DWI, or a law enforcement officer potentially exposed to blood or other bodily fluids, may request counseling, testing for infection by blood-borne pathogens (see Definitions (1)) including HIV (see Definitions (1)), and referral for

[SOUTH DAKOTA]

health care and support services from the Department of Health. The Department of Health is not required to provide such services. A victim, or such a law enforcement officer, may make a written request for HIV testing of a defendant or juvenile. The court must hold a hearing and, if it finds probable cause to believe the offense was committed and that blood, semen, or other bodily fluid was exchanged, may order a search warrant for blood to be tested. The Department of Health must notify the victim or the law enforcement officer within forty-eight hours of receipt of results. Confidentiality of the victim and defendant shall be protected, and the test results may not be used to determine guilt or innocence of the charge. §§ 23A-35B-1 to -6.

Education (1)

Miscellaneous (1)

MISCELLANEOUS

(1) In a contract of sale for blood, blood components, tissue or organs from a blood bank or other reservoir, the implied warranty of merchantability and fitness shall not apply to infectious disease transmission including HIV (see Definitions (1)) transmission when the disease cannot be detected by standard testing. These items shall be considered medical services and not commodities for sale. § 57A-2-315.1.

TENNESSEE

All citations are to "Tenn. Code Ann." unless otherwise noted.

DEFINITIONS

- (1) "Bloodborne pathogen" is defined at § 41-51-102.
- (2) "Emergency response employees" is defined at § 68-140-520.
- (3) "Health care facility" is defined at § 68-11-210.
- (4) "HIV" is defined at §§ 39-13-521, 39-13-109 and 39-13-516.
- (5) "HIV test" is defined at § 39-13-521.
- (6) "Intimate contact with another" and "intravenous or intramuscular drug paraphernalia" are defined at § 39-13-109.
- (7) "Residential HIV supportive living facility," "residential hospice," and "HIV resident" are defined at § 68-11-201.
- (8) "Sexually transmitted disease" and "test," as it pertains to sexually transmitted disease, are defined at § 68-10-112.

CRIMINAL LAW

(1) Exposure of another to HIV (see Definitions (4)) is a criminal offense. A person commits the offense when the person is infected with HIV and knowingly engages in the following activities: intimate contact with another (see Definitions (6)); transfer, donation, or provision of blood, semen, organs, or other potentially infectious body fluids or body parts for transfusion, transplantation, insemination, or other administration to another in any manner; or dispensing, delivery, exchange, sale or transfer to another of any nonsterile intravenous or intramuscular drug paraphernalia (see Definitions (6)). It is an affirmative defense that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with such knowledge. The defense must be proven by a preponderance of the evidence. Actual transmission of HIV is not required in order for a person to have committed the offense. Criminal exposure of another to HIV is a class C felony. § 39-13-109.

(2) A person commits aggravated prostitution when the person, knowing themselves to be infected with HIV, engages in sexual activity as a business, is an inmate in a house of prostitution, or loiters in a public place for the purpose of being hired to engage in sexual activity.

[TENNESSEE]

Infection with HIV is not required in order for the offense to occur. Aggravated prostitution is a class C felony. § 39-13-516.

(3) Any person infected with a sexually transmitted disease (STD) (see Definitions (8)) who exposes another to infection violates the Health, Safety and Environmental Protection Code. § 68-10-107. This violation is a Class C felony. § 68-10-111.

(4) Health officers or any other persons who fail to perform their duty under the provisions of the Health, Safety and Environmental Protection Code regarding STDs are guilty of a class C felony. Each violation is a separate offense. § 68-10-111.

(5) Any person quarantined or isolated (see Social & Medical Services (1), (2), (7), (8)) for continuing to pose a direct threat of significant risk to the health and safety of the public regarding the transmission of HIV who intentionally escapes commits a class E felony. § 39-13-108.

(6) It is unlawful for a person to be or attempt to be a blood donor (see Testing & Reporting (9)), except when deemed necessary for medical research, if the person has knowingly received a confirmed positive result from a human t lymphotropic virus type III (HTLV-III) antibody test or is suffering from a confirmed case of AIDS. § 68-32-104.

(7) It is the duty of the warden of the Tennessee State Penitentiary upon reception of any convict to have the convict undergo HIV testing (see Definitions (5)), with or without the inmates' consent, through a licensed medical laboratory, unless the inmate has been tested before reception. If the inmate has not undergone testing before reception, he or she shall also undergo a confirmatory test and be referred to appropriate counseling when necessary. The results of any HIV test ordered is not a public record and is available only to the person tested, the attending physician of the person tested, the Department of Health, and the Department of Correction. This provision only applies of inmates who are less than twenty-one years of age. § 41-21-107.

(8) Correctional institutions must inform employees, contract employees, or visitors of the infectious disease status of an inmate, including an inmate's HIV status, if such person has potentially been exposed to an infectious disease by the inmate. After the report of an exposure incident, a superintendent, director, or warden of a correction institution, county or municipal jail, or workhouse shall test the inmate or inmates, with or without the inmate's consent, to determine the bloodborne pathogen infectivity (see Definitions (1)). The results of the

test shall be disclosed to each correctional employee, law enforcement officer, or visitor who was involved in the exposure incident and who reasonably believes that that person may have been exposed to a serious or life-threatening disease or pathogen. This law does not authorize the release of confidential information to members of the public. Any person informed of the results of any inmate's test shall treat the information received as confidential. § 41-51-102.

Social & Medical Services (4), (7), (8), (9)

Testing & Reporting (1), (4), (6), (7), (11)

EDUCATION

(1) All material, including information pertaining to the prevention of AIDS or other sexually transmitted diseases (STDs) (see Definitions (8)), which is written, published, distributed, or used by any public entity, or is paid for, in whole or in part, with any public monies, and which is directed at children in grades kindergarten through twelve, shall place primary emphasis on abstinence from premarital intimacy and on the avoidance of drug abuse in controlling the spread of AIDS. Adoption of any program of AIDS education shall not be required in any local education agency until adopted by the local Board of Education. § 49-6-1008.

(2) A locally devised program of family life instruction shall be implemented in any county in which the pregnancy rate exceeds 19.5 pregnancies per 1,000 females aged fifteen through seventeen. The program shall include a component which specifically addresses the nature and prevention of AIDS and other STDs. § 49-6-1301. The State Board of Education plan for family life instruction shall also include an AIDS education component. The plan shall be suitable for adoption by any local education agency which fails to develop a family life instruction program based on the prevalence of teen pregnancy. § 49-6-1302.

(3) It is the duty and responsibility of the Public School Nurse Program to provide local education agencies with information, advice, and technical assistance for student and parental instruction on topics related to health and wellness, including STDs. § 68-1-1202.

(4) It is the duty and responsibility of the executive director of the Public School Nurse Program to: 1) Assist local education agencies in the development, implementation and coordination of student health policies with regard to first aid emergencies, medications, acute illnesses and infection control; 2) Provide local education agencies with information, advice and technical assistance pertaining to student and

parental instruction on topics related to health and wellness, including, but not limited to, sexually transmitted disease and infection control; 3) Assist local education agencies in the provision of student health services, including, but not limited to, medical screening, acute care, counseling for students with chronic diseases, and counseling for students who are engaging in, or who may be at risk of engaging in, behavioral patterns which jeopardize physical or mental health and well-being. § 68-1-1202.

Miscellaneous (5)

Testing & Reporting (10), (12)

EMPLOYMENT

Social & Medical Services (4), (5)

Testing & Reporting (8)

HOUSING

(1) No cause of action shall arise against an owner or a real estate licensee for failure to disclose that the occupant of real property was afflicted with HIV or another disease which has been determined by medical evidence to be highly unlikely to be transmitted through occupancy. § 66-5-207.

INSURANCE

(1) Upon assignment of benefits of a health, accident or sickness insurance policy to a hospital, residential HIV supportive living facility (see Definitions (7)), and other health care agencies or the doctor or dentist for health care services rendered, by the insured under the policy, the health care agency or doctor or dentist shall be paid the benefits under such policy to the extent of the assignment within thirty days from the time the insurance company has received a final billing statement from such health care agency, doctor or dentist; provided, that the insurance company has received information necessary to determine the extent of liability, if any. It is the duty of the insurance company to request the information required for payment of such benefits within fifteen days after receiving claim for benefits under such policy. If any portion of the claim is under dispute, the insurer shall within such thirty day period pay the amount of the claim that is not in dispute and notify the health care provider in writing of the reason(s) for the dispute of the amount in dispute. An audit on the premise of the health care provider shall be scheduled if the dispute is due to the need for verification of

services rendered and cannot otherwise be resolved by the insurer and health care provider. The insurer shall pay the amount determined to be due under the audit within thirty days of the date of the audit. If any portion of an assigned claim remains unpaid sixty days after the billing statement is received by the insurance company, interest charges may be added to the unpaid portion of the claim. Failure of the insurer to comply with these provisions may be reported to the commissioner. § 69-11-219.

RESEARCH

Criminal Law (6)

SOCIAL & MEDICAL SERVICES

(1) The Department of Health is empowered and directed to make such rules for the control of sexually transmitted diseases (STDs) (see Definitions (8)) as it may deem advisable, including the reporting, isolation and quarantine of infected persons. § 68-10-109.

(2) The Department of Health is authorized to quarantine or isolate within a secure facility, as may be necessary, any person when such person clearly and convincingly demonstrates willful and knowing disregard for the health and safety of others regarding the transmission of HIV and continues to pose a direct threat of significant risk to the health and safety of the public. § 39-13-108. In establishing isolation or quarantine, the municipal or county health officer having jurisdiction shall designate and define the limits of the area of quarantine, and no person other than the attending physician or nurse shall enter or leave without the permission of the health officer. § 68-10-105. No one but a state, municipal, district, or county health officer or authorized representative shall establish or terminate quarantine of persons infected with an STD. The decision to establish or terminate quarantine shall be made based on available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health. § 68-10-106. County legislative bodies, city officials, or other boards of the incorporated towns and cities are empowered to provide suitable places for the detention of persons who may be subject to isolation or quarantine. Such legislative bodies and governing boards are authorized, on behalf of their counties, cities, and towns, to incur the necessary expense to enforce the quarantine laws. § 68-10-108.

(3) One of the duties of the Black Health Care Commission is to study the many problems which jeopardize the health of Tennessee's

[TENNESSEE]

Black community, including, but not limited to, such persistent interdisciplinary problems as AIDS. § 3-15-404.

(4) The superintendent, warden, or director of any correctional institution or county or municipal jail or workhouse shall provide training in universal precaution for bloodborne pathogens for all employees at risk of potential occupational exposure to bloodborne pathogens, including HIV. In order to increase awareness of the need for precaution, the superintendent, director or warden may periodically warn employees at risk that a portion of the inmate population is likely to be infected with a bloodborne pathogen. § 41-51-101.

(5) A professional nurse who is employed by a primary health care center that receives fifty percent or more of its family planning funds from funds distributed by the Department of Health has the authority to issue drugs for STDs that are approved by the Department of Health. § 63-7-124.

(6) Every physician or other person treating persons infected with an STD has the duty to give the person under treatment printed instructions containing information recommended by the Department of Health. § 68-10-103.

(7) State, district, county and municipal health officers or their authorized deputies, within their respective jurisdictions, are directed and empowered to make examinations of persons reasonably suspected of being infected with a communicable STD. Health officers or their deputies shall require such persons, when found to be infected, to report for treatment and to continue treatment until noninfectious or until an infectious relapse shall not occur. When, in the judgment of the Health Officer, it is necessary to protect the public health, the officer shall isolate or quarantine persons infected with an STD, provided that the person suspected of being infected may have present at the time of examination a physician of the person's own choosing. The loitering about or residing at a house of prostitution or other place where lewdness is practiced shall be sufficient to cause a person to be suspected of being infected with an STD. It is the duty of all health officers to investigate the sources of STD infection and to cooperate with officers whose duty it is to enforce laws directed against lewdness, prostitution, and the spread of STDs. § 68-10-104.

(8) Whenever, in the judgment of the municipal, district or county health officer, there is reasonable clinical or epidemiological evidence to suspect that any person or persons are infected with an STD and the person or person refuses to be examined, the health officer or

health officer's authorized deputy may go before a magistrate or judge of a court of general sessions and swear out a warrant of arrest for the person or persons. The magistrate or judge is not bound to issue the warrant unless and until there is a showing of reasonable cause on the basis of sound clinical and epidemiological evidence. If reasonable cause is shown for the arrest and examination of the person or persons, the magistrate or judge shall direct that an examination be made of the person or persons to determine whether or not they are infected. If, after a full hearing, the court is of the opinion that the person examined is infected with an STD, the court may commit the person to an isolation hospital maintained by the state or local government for the purpose of detaining or treating such persons, who shall remain under treatment until the disease, in the opinion of the health officer, is no longer communicable or no longer in a stage in which infectious relapse may occur. § 68-10-110.

(9) Any state, district or municipal health officer or any physician may diagnose and treat minors infected with STDs without the knowledge or consent of the minors' parents and without incurring civil or criminal liability in connection therewith, except for negligence. § 68-10-104.

Criminal Law (1), (4)

Insurance (1)

Education (2), (3)

Testing & Reporting (1), (3), (4), (5), (8), (9)

TESTING & REPORTING

(1) When a person is initially arrested for rape, aggravated rape, statutory rape, or rape of a child, that person shall undergo HIV testing immediately. A licensed medical laboratory shall perform such test at the expense of the arrestee. The arrestee shall obtain a confirmatory test when necessary. The arrestee shall be referred to appropriate counseling. The licensed medical laboratory shall report the test results immediately to the victim. The result of the HIV test (see Definitions (5)) is not a public record and shall be available only to the following: the victim; a parent or guardian of a minor or incapacitated victim; the attending physician of the person tested and of the victim; the Department of Health; the Department of Corrections; the person tested; and the district attorney general prosecuting the case. If the arrestee is convicted, the court shall review the HIV test results prior to sentencing. The court may consider as an enhancement factor at the time of sentencing that the defendant has tested positive for HIV. § 39-13-521.

[TENNESSEE]

(2) Actual transmission of HIV is not necessary in order for the court to consider the defendant's HIV infection as an enhancement factor. Upon the conviction of the defendant for prostitution, the court shall order the convicted person to submit to an HIV test. The defendant shall return a certified copy of the results of all tests to the court, which shall examine the results in camera and seal the record. The district attorney general may view the record for the sole purpose of determining whether there is probable cause to prosecute for aggravated prostitution. The district attorney general must file a written, signed request stating the reason the court should grant permission to view the record. If the test result is positive, the district attorney general may use the results in a prosecution for aggravated prostitution. § 39-13-521.

(3) Whenever any physician, surgeon, or practitioner of medicine knows or suspects that any person whom such physician has been called to visit, or who has been brought to see such physician for examination, is infected or suspected of being infected with a communicable disease including AIDS, such physician shall immediately notify the health authorities of the town or county where the diseased person is found. In the event of the death of such person, the physician shall also notify the person to whom the body is delivered, at the time of delivery, of the known or suspected communicable disease, so that the necessary precautions can be taken in the handling, preparation, and disposition of the body. § 68-5-102.

(4) Every physician or other person who diagnoses, treats, or prescribes for a case of a sexually transmitted disease (STD) (see Definitions (8)) and every superintendent or manager of a clinic, hospital, laboratory, or penal institution in which there is a case of a STD shall report the case immediately to those persons or agents designated as recipients of such reports by the Commissioner of Health. Reporting of STDs other than those designated as reportable in the Health Department regulations is not required. § 68-10-101.

(5) An attending physician or other person shall notify the municipal or county health officer of the name and address of any person who has an STD and is known or reasonably suspected to conduct themselves so as to expose others to infection. § 68-10-102.

(6) All records and information held by the Health Department or a local health department relating to known or suspected cases of STDs shall be strictly confidential. Such information shall not be released or made public under subpoena, court order, discovery, search warrant, or otherwise, except that release may be made under the

following circumstances: for statistical purposes, in a form that does not allow identification of individuals; with the consent of all persons identified in the information released; to enforce provisions governing control and treatment of STDs, with release being made to medical personnel, appropriate state agencies or county and district courts; in a medical emergency, to protect the health or life of the patient; for a minor not more than thirteen years of age, with only the name, age, address, and the STD treated being reported, and for a court proceeding involving child abuse, with any information regarding the minor disclosed in camera; and during a legal proceeding if the evidence is material, relevant, and reasonably calculated to be admissible, the probative value exceeds the interest in confidentiality, the merits of the litigation cannot be fairly resolved without disclosure, and the evidence is necessary to avoid substantial injustice to the party seeking it. § 68-10-113.⁶² Except as provided above, no state or local health department officer shall be examined in a civil, criminal, special, or other proceeding as to the existence or contents of records of a person treated for an STD by a state or local health department or as to the existence or contents of such reports received from a private physician or private health facility. § 68-10-114.

(7) If during the course of transporting or processing a person charged with the commission of a criminal offense, a law enforcement officer is exposed to the blood or other body fluid of such arrested person in any manner that presents a significant risk of transmission of HIV, then the exposed officer has the right to request that such arrested person be tested for the presence of HIV. § 68-10-116.

(8) All licensed acute care hospitals, birthing centers, and ambulatory surgical treatment centers in Tennessee shall adopt, at the institutions' discretion, appropriate policies regarding the testing of patients and staff for HIV and any other identified causative agents of AIDS. Acting in consultation with the Department of Health, the following state entities shall promulgate rules requiring the facilities and persons, regulated by such state entities, to adopt and utilize universal precautions for the prevention of HIV: the Board of Licensing of Health Care Facilities; the Board of Registration in Podiatry; the Board of Dentistry; the Board of Medical Examiners; the Board of Nursing; the Board of Optometry; the Board of Osteopathic Examination; the Board of Occupational and Physical Therapy Examiners; and the Board of Medical

62. See, e.g., *State v. Thompson*, C.C.A. No. 6 (Tenn. Crim. App. May 13, 1992); 1992 Tenn. Crim. App. LEXIS 405.

Examiners' Committee on Physician Assistants. In the event that an employee of a health care facility, a student studying at the facility, or other health care provider is exposed to the blood or other body fluid of a patient, such facility may require that patients' blood be tested for the presence of HIV and Hepatitis B. Such testing shall be performed at no charge to the patient. The results of the testing shall be confidential. § 68-11-222.

(9) All facilities collecting fresh human blood or plasma directly from an individual donor shall have such blood or plasma tested for the potential presence of HIV. Any blood shown to be potentially contaminated by HIV shall not be used for transfusions or for any other purposes which might pose a threat of transmission of the virus. Any person who contracts AIDS from any contaminated blood or blood product shall have a cause of action for damages, including all medical expenses, against any facility supplying untested blood, if the person can establish that the person received any untested blood or blood product derived therefrom. No cause of action shall arise in those emergency situations where the attending physician determines that failure to transfuse will be life threatening to the patient. § 68-32-102.

(10) A provider of health care services who assume responsibility for the prenatal care of a pregnant woman during gestation shall counsel each pregnant woman in the provider's care, as early as possible in the course of the pregnancy, with written materials or videos that explain and provide information on HIV and the medical treatment of HIV. The Department of Health shall make available the educational and counseling materials required for the counseling of pregnant women to providers responsible for the counseling. After the pregnant woman has received counseling and information, she shall sign a form indicating that she has been informed and indicating her consent or refusal to HIV testing (see Definitions (5)). Unless the pregnant woman has refused testing, the health care provider shall arrange for the pregnant woman to be tested for HIV as early as possible. A pregnant woman who presents herself for delivery and who has not been tested for HIV during the course of pregnancy shall be given counseling and information as soon as may be medically appropriate and, unless she refuses in writing after receiving counseling and information, shall be tested for HIV as soon as may be medically appropriate. All HIV testing performed shall be done in a confidential manner and the test results may be disclosed only as provided by law. If the HIV test results are positive, the health care provider shall arrange for a counselor to be present when the health care

provider discloses the results to the woman tested. The counselor shall explain the test results, counsel the woman to obtain appropriate medical treatment for her and her baby, make available information concerning the available medical intervention to prevent the onset of illness in the mother and to prevent transmission of HIV to her children, and arrange for additional counseling. §§ 68-5-701 to 68-5-703. Each health care provider treating pregnant women shall report to the Department of Health on a monthly basis the total number of women under such provider's care who were tested for HIV and the total number of such women who tested positive. The Department of Health shall, each month, compile the reports and publish the total number of women tested and total number of women testing positive in the previous month for the entire state and for each county. § 68-5-704.

(11) If in the course of performing normal, authorized professional job duties, a paramedic, emergency response employee (see Definitions (2)), fire fighters, first response workers, emergency medical technician, or volunteer making an authorized emergency response believes that such member may have been exposed to potentially life-threatening airborne or bloodborne diseases, including HIV, such person has the right to request in writing that the individual who may have exposed such person be evaluated to determine the presence of such disease or diseases. Such requests shall be made to the designated exposure control officer of the responding agency or county medical examiner who shall conduct the evaluation. This evaluation shall include all medical records pertaining to the individual who is the subject of the evaluation. This information shall be used solely for the purpose of performing the evaluation and shall be otherwise confidential. The responding agency shall pay for any costs related to the evaluation. This evaluation shall be conducted pursuant to public necessity rules. Any agency, individual, or facility providing any assistance or information necessary for completing such evaluation shall not incur any civil or criminal liability as a result of providing such assistance or information consistent with the rules. § 68-10-117.

(12) A local government or any licensed ambulance service may utilize one or more of its employees licensed as an EMT-P as its designated officer or officers for exposure control to perform infection control procedures necessary for prevention, exposure control and post-exposure evaluation on persons employed by that local government or licensed ambulance service as emergency response employees (see Definitions (2)). Infection control procedures shall include immunization,

informational and educational programs, and post-exposure evaluation of an emergency response employee exposed to potentially life-threatening airborne or bloodborne disease, including, but not limited to HIV. This post-exposure evaluation shall consist of ascertaining information relative to the events regarding the perceived exposure, as well as assessing the degree or significance of the exposure for the purpose of informing the medical director. The medical director shall determine the potential public health risk and recommend the immediate course of action pertaining to the medical care of the emergency response employee and any potential public health risk relative thereto. Further evaluation, treatment and follow-up of the emergency response employee's condition shall be performed at a licensed hospital or physician's office. § 68-140-520.

Criminal Law (6), (7), (8)
Social & Medical Services (1)
Miscellaneous (1)

MISCELLANEOUS

(1) A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. § 68-10-115.

(2) The Department of Health has the power to license health care facilities, including residential HIV supportive living facilities (see Definitions (7)). It has the power to review all licensed facilities. § 68-11-202. It is unlawful for such facilities to operate without a license. The Department of Health may initiate proceeding for injunctive or other form of relief, including penalties, against facilities operating without a license or violations of the law or terms and conditions of the licenses. §§ 68-11-204, 68-11-213. Federally operated health care facilities are exempt from the licensing requirement. § 68-11-204. The provisions governing application for license and the licensing fees are found at §§ 68-11-206 and 68-11-216 respectively.

(3) Every licensed hospital, residential HIV supportive living facility (see Definitions (7)), and other health care facilities (see Definitions (3)), shall be inspected at least once each year by a duly appointed representative of the Department of Health. § 68-11-210.

(4) The Board for Licensing Health Care Facilities has the duty and power to adopt such rules and regulations pertaining to the operation and management of hospitals, residential HIV supportive living facilities (see Definitions (7)), and other medical care facilities, and to

rescind, amend or modify such rules and regulations, as are necessary in the public interest and particularly the establishment and maintenance of standards of hospitalization required for the efficient care of patients or medical care facilities, including residential HIV supportive living facilities (see Definitions (7)). The board may waive any of the rules and regulations pertaining to any covered health care facility, where such waiver would not have a detrimental effect on the health, safety and welfare of the public. The board shall prescribe the minimum standards as to equipment and provision for the care of patients of medical care facilities, including residential HIV supportive living facilities (see Definitions (7)), in order to operate lawfully as such. Persons who wish to serve as chief administrator of a licensed residential HIV supportive living facility (see Definitions (7)) or other residential or institutional home, shall first be the board as a residential/institutional home administrator. § 68-11-209.

(5) An owner or lessee of a motor vehicle, who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles, and paying the fees applicable, shall be issued a supporter of AIDS Response Knoxville (ARK) new specialty earmarked license plate for a motor vehicle. This new specialty earmarked plates shall be designed in consultation with the board of directors of ARK and the commissioner of safety; provided, that such plates shall bear a logo of a "red ribbon", the symbol of HIV education, service and support groups, as part of such plates' approved design. The funds derived from the sale of such plate, less the expense the state has incurred in designing and manufacturing the plate, shall be deposited in a special fund in the general fund to be used exclusively to support HIV-AIDS prevention, education, information, services and support programs administered or approved by ARK. This money shall be deposited in a general fund reserve to be allocated by the general appropriations act which shall be known as the HIV-AIDS prevention, education, service and support endowment fund. The Commissioner of Health shall make grants to ARK for such programs from the moneys available in this fund. § 55-4-279.

TEXAS

All citations are to "Texas Code Ann." unless otherwise noted.

DEFINITIONS

(1) "AIDS" is defined at Health & Safety §§ 81.101, 85.002, 162.001, and 248.002 and at Educ. § 51.919.

(2) "Bereavement services," "services," "special care facility," "palliative care," "support services," "residential AIDS hospice," and "residential AIDS hospice care," as they relate to the licensing of special care facilities, are defined at Health & Safety § 248.002.

(3) "Bona fide occupational qualification" is defined at Health & Safety § 81.101 and at Lab. § 21.002.

(4) "Chronically ill and disabled child" is defined at Health & Safety § 35.002.

(5) "Communicable disease" is defined at Health & Safety §§ 81.003 and 85.002.

(6) "Community supervision" is defined at Tex. Code Crim. Proc. art. 42.12.

(7) "Contact tracing" is defined at Health & Safety § 85.002.

(8) "Disability" includes AIDS and HIV and is defined at Lab. § 21.002.

(9) "Exposure prone procedure," "invasive procedure," and "universal precautions" are defined at Health & Safety § 85.202.

(10) The term "genetic test" does not include testing from HIV. Tex. Ins. Code art. 21.73, Lab. § 21.401.

(11) "HIV" is defined at Health & Safety §§ 35.002, 81.101, 85.002, 162.001 and at Ins. § 21.21-4.

(12) "Home collection kit" and "service provider" are defined at Health & Safety § 85.251.

(13) "Reportable disease" and "sexually transmitted disease" are defined at Health & Safety § 81.003.

(14) "State agency" means those agencies listed in Health & Safety § 85.113.

CRIMINAL LAW

(1) A person who requires another to undergo an HIV test other than is permitted by statute (see Testing & Reporting (8)) is guilty of a Class A misdemeanor. Health & Safety § 81.102.

[TEXAS]

(2) A person commits a Class A misdemeanor if, with criminal negligence and in violation of confidentiality requirements (see Testing & Reporting (9)), the person releases, discloses, or otherwise allows to become known a test result or other information. Health & Safety § 81.103.

(3) Unless approved by the United States Food and Drug Administration, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person is infected with HIV, AIDS, or a related disorder or condition is unlawful and prohibited (see Testing & Reporting (26)). Health & Safety § 431.021.

(4) A defendant in a criminal proceeding who is placed on community supervision (see Definitions (6)) may be required to pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling or education relating to AIDS or HIV. Tex. Code Crim. Proc. art. 42.12.⁶³

(5) A magistrate may require as a condition of bond that a defendant charged with prostitution receive counseling or education, or both, relating to AIDS or HIV. Tex. Code Crim. Proc. art. 17.45.

(6) A person or entity that, with criminal negligence, releases or discloses a test result or other information or that allows a test result or other information to become known in the context of testing for insurance coverage (see Insurance (10)) commits a Class A misdemeanor. Tex. Ins. Code art. 21.21-4.

(7) A person who fails to report a reportable disease (see Definitions (13)) as required by statute (see Testing & Reporting (3) and (4)) commits a Class B misdemeanor. Health & Safety § 81.049.

(8) A victim, guardian of a victim, or close relative of a deceased victim, through the criminal justice system, is entitled to counseling, on request, regarding AIDS and HIV if the offense is sexual assault or aggravated sexual assault. Tex. Code Crim. Proc. art. 56.01.

Education (3), (7), (8), (9)

Social & Medical Services (12), (23)

Testing & Reporting (1), (2), (4), (5), (6), (8), (9), (24), (25)

EDUCATION

(1) Each school district shall choose course materials relating to sexually transmitted diseases (STDs) (see Definitions (13)), HIV (see Definitions (11)) or AIDS (see Definitions(1)) with advice of a local

63. Corley v. State, 856 S.W.2d 823 (Tex. Ct. App. 1993) (due to public health problem of AIDS, rules concerning probation are strictly enforced).

health education advisory council. The materials and instruction must present abstinence from sexual activity as the preferred choice, devote more attention to abstinence than to any other behavior, and emphasize abstinence as the only 100 percent effective form of protection. The school district shall make all curriculum materials available for reasonable public inspection, notify parents of the basic content of the instruction and notify parents that they have the right to remove their child from any part of the instruction. Educ. § 28.004.

(2) Each institution of higher education shall make available the institution's policy on HIV infection and AIDS to students, faculty, and staff members by including the policy in the student handbook and personnel handbook, if practicable, or by any other method. An educational pamphlet on HIV infection shall be made available to each student. The student health center of each institution of higher education shall provide clear, accurate information on how to prevent the transmission of HIV infection. The curricula of medical, dental, nursing, allied health, counseling, and social work degree programs of institutions of higher education shall include information about methods of transmission and prevention of HIV infection and federal and state laws, rules, and regulations concerning HIV infection and AIDS. These curricula shall also give special attention to the physical, emotional, and psychological stress associated with the care of patients with terminal illnesses. Educ. § 51.919.

(3) The Department of Criminal Justice and the state jail division, in consultation with the Department of Health, shall establish education programs to educate inmates and employees of the Department of Criminal Justice about AIDS and HIV. Such programs shall deal with issues relevant to both confined and released inmates. Such programs shall take into account cultural and other differences among inmates. Each inmate in the Department of Criminal Justice shall be required to participate in education programs established under this section. Each employee of the Department of Criminal Justice shall be required to participate in such programs at least once each year. Such education programs for employees shall also include information and training related to infection control procedures and shall reflect the latest medical information available on AIDS and HIV. Gov't §§ 501.054, 507.023.

(4) The Department of Health (Department) shall develop model education programs to be available to educate the public about AIDS and HIV infection. As part of the programs, the Department shall develop a model educational pamphlet about methods of transmission and

prevention of HIV infection, about state laws relating to the transmission of HIV infection, and to conduct that may result in the transmission of HIV. The programs shall include special components designed to reach minorities, persons younger than eighteen years of age, and persons with behavior conducive to HIV transmission. The materials in the education programs intended for persons younger than eighteen must: emphasize sexual abstinence before marriage and fidelity in marriage as the expected standard in terms of public health and the most effective ways to prevent HIV infection and STDs; state that homosexual conduct is not an acceptable lifestyle and is a criminal offense. The Department shall develop and promote HIV education and prevention programs specifically designed to address the concerns of persons with disabilities. To the maximum extent possible, state-funded HIV education shall be accessible to persons with physical disabilities. The Department shall assist communities in establishing self-sustaining education programs using public and private resources. AIDS and HIV education programs shall be made available to local governments and private businesses upon request. All health care facilities licensed by the Department of Health, the Department of Mental Health and Retardation, or the Department of Human Services shall require their employees to complete an educational course about HIV infection based on the model education programs. Health & Safety §§ 85.004 to 011.

(5) An AIDS and HIV program funded with a grant under the grant program to community organizations (see Education (11)) shall provide information and educational materials that are accurate, comprehensive, and consistent with current findings of the United States Public Health Service. Information and educational materials developed with such a grant must be presented in a manner that is specifically directed to the group for which the materials are intended. Health & Safety § 85.039.

(6) Each state agency shall provide annually to each state employee an educational pamphlet about methods of transmission and prevention of HIV infection and state laws relating to the transmission of HIV infection. The educational pamphlet shall be provided to a newly hired state employee on the first day of employment. Such pamphlet shall be based on the model developed by the Department and shall include the workplace guidelines adopted by the state agency. Health & Safety § 85.111.

(7) Each state agency (see Definitions (14)) shall routinely make available HIV education for clients, inmates, patients, and residents

of treatment, educational, correctional, or residential facilities under the agency's jurisdiction. Health & Safety § 85.114.

(8) Correctional and law enforcement agencies, fire departments, and emergency medical services providers must: provide for periodic education of employees, inmates, and probationers concerning HIV; ensure that education programs for employees include information and training relating to infection control procedures and that employees have infection control supplies and equipment readily available; and ensure access to appropriate services and protect confidentiality of medical records relating to HIV infection. Health & Safety § 85.143.

(9) The Department shall develop a model public health education program suitable for school-age children and shall make the program available to any person on request. The program should emphasize: that abstinence from sexual intercourse is the most effective protection against AIDS when transmitted sexually; that abstinence from sexual intercourse outside of lawful marriage is the expected societal standard for school-age unmarried persons; the physical, emotional, and psychological dangers of substance abuse, including the risk of AIDS transmission through the sharing of needles during IV drug usage; the importance of self-control, responsibility, and ethical conduct in making decisions relating to sexual behavior; information concerning the laws prohibiting sexual abuse; information on how to cope with and rebuff unwanted physical and verbal sexual advances; psychologically sound methods of resisting unwanted peer pressure; and that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense. Course materials relating to sexual education or STDs should be age appropriate. Health & Safety §§ 163.001, 163.002.

(10) The Department of Human Services shall collect information relating to educational programs provided in the public school system relating to family life education, abstinence from sex, and STDs. Hum. Res. § 52.001.

(11) In awarding grants for education programs in the State Grant Program to Community Organizations, the Department shall give special consideration to nonprofit community organizations whose primary purpose is serving persons younger than eighteen years of age. The Department shall endeavor to: complement existing education programs in a community; prevent unnecessary duplication of services within a community; provide HIV education programs for populations

engaging in behaviors conducive to HIV transmission; initiate needed HIV education programs where none exist; and promote early intervention and treatment of persons with HIV infection. Health & Safety § 85.036.

(12) On the proper execution of a marriage license application, the county clerk shall distribute to each applicant printed materials about AIDS and HIC and note on the license that the distribution was made. Fam. §§ 2.009, 2.404. Materials providing information about AIDS and HIV shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the applicants about the incidents and mode of transmission of AIDS and HIV; the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV; and available and appropriate counseling services regarding AIDS and HIV infection. Fam. § 2.010, 2.404.

Criminal Law (4), (5)

Employment (1)

Insurance (6)

Research (1)

Social & Medical Services (2), (3), (4), (6), (7), (10), (11), (14), (19), (20)

EMPLOYMENT

(1) The Department of Health, in consultation with appropriate state and local agencies and private entities, shall develop model workplace guidelines concerning persons with HIV infection and related conditions. The model workplace guidelines must include provisions stating that: all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions; accommodations will be made to keep persons with HIV employed and productive for as long as possible; the confidentiality of employee medical records will be protected; HIV-related policies will be consistent with the current information from public health authorities and with state and federal law and regulations; persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases (see Definitions (5)); and employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information. These model workplace guidelines shall be made available upon request. Health & Safety § 85.012.

[TEXAS]

(2) Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection. The workplace guidelines shall incorporate at a minimum the model workplace guidelines developed by the Department of Health. Health & Safety § 85.112.

Education (2), (3), (4), (6), (8)

Insurance (3), (6), (9), (10)

Social & Medical Services (7), (13), (14), (15), (16), (20), (23)

Testing & Reporting (4), (5), (6), (8), (9), (13), (16), (19), (20)

HOUSING

(1) Neither a seller of residential real property, a seller's agent, nor a licensed real estate broker shall have a duty to disclose or release information related to the HIV status of a previous occupant. Prop. § 5.008, Tex. Rev. Civ. Stat. Art. 6573a.

Education (7)

Social & Medical Services (17), (18)

Testing & Reporting (2), (8)

INSURANCE

(1) The Insurance Code and any rules adopted by the State Board of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. Health & Safety § 81.108.

(2) The Department of Human Services may purchase and pay the premiums for a conversion policy or other health insurance coverage for a person who is diagnosed as having AIDS, HIV, or other terminal or chronic illness and whose income level is less than 200 percent of the federal poverty level. If a person is eligible for benefits under the state medical assistance program (Hum. Res. §§ 32.001 to 042), the Department may not purchase or pay premiums for a health insurance policy under this section if the premiums to be charged for the health insurance coverage are greater than premiums paid for benefits under the medical assistance program. Hum. Res. § 22.023.

(3) A hospital district or a county may purchase and pay premiums for a conversion policy or other health insurance coverage for a person who is diagnosed as having HIV or AIDS, who is unemployed, and whose income level is less than 200 percent of the federal poverty level, even though the person may be eligible for benefits under state

[TEXAS]

medical assistance program or a medical assistance program of the county or hospital district. Local Gov't. § 157.006.

(4) The State Board of Insurance shall establish and maintain a program through which it can gather data and information relating to the effect of HIV and AIDS on the availability and adequacy of and the affordability of premiums and health insurance coverage in the state. The Board of Insurance shall establish reporting guidelines for such information and shall compile the data and information included in reports in an annual report. The report shall be made available to the public. The Board of Insurance may submit to the Legislature written recommendations for legislation necessary to resolve problems related to the impact of HIV and AIDS on premiums and charges for health insurance coverage. Tex. Ins. Code art. 1.24C.

(5) An entity, in contracting for group insurance or health maintenance organization (HMO) coverage or in self-insuring, may not contract for or provide in that coverage an exclusion or limitation on coverage or services for AIDS or HIV. Tex. Ins. Code art. 3.50-3.

(6) A municipality, county, school district, or other political subdivision of the state that provides group health insurance coverage, HMO coverage, or self-insured health care coverage to its officers or employees may not contract for or provide coverage that excludes or limits coverage or services for AIDS or HIV. Tex. Ins. Code art. 3.51-5A.

(7) No group policy of accident, health, or accident and health insurance, including group contracts issued by a hospital and medical service plan corporation or HMO, shall be renewed or delivered that excludes or denies coverage for HIV, AIDS, or HIV-related illnesses. Tex. Ins. Code art. 3.51-6.

(8) An insurer that delivers a policy or contract for accident and sickness insurance or group health insurance in the state may not cancel the policy during its term because the insured has been diagnosed as having or is being treated for HIV or AIDS. Tex. Ins. Code arts. 3.51-6D, 3.70-3A.

(9) Under the Texas Employees Uniform Group Insurance Benefits Act, the Board of Trustees may not contract for a plan or group coverage or with an HMO or provide coverage directly from a fund that excludes or limits coverage or services for AIDS or HIV. Tex. Ins. Code art. 3.50-2.

(10) An insurer may request or require applicants for insurance coverage to take an HIV test in connection with an application for

insurance coverage. If an insurer requests or requires applicants for insurance coverage to take an HIV test, the insurer must do so on a non-discriminatory basis. An HIV test may be required of or required to be given to a person only if the test is based on the person's current medical condition or medical history or if the underwriting guidelines for the coverage amounts require all persons within the risk class to be tested. If a proposed insured is requested or required to take an HIV test, the uses that will be made of the test must be explained to the proposed insured or any other person legally authorized to consent to the test and a written authorization must be obtained from that person by the insurer. The authorization must be on a form adopted by the State Boards of Insurance and must be a document separate from any other document presented to the proposed insured or other person legally authorized to consent to the test. An insurer may inquire if an applicant has ever tested positive on an HIV-related test or has been diagnosed as having HIV or AIDS. A insurer may not inquire whether a person has been tested for HIV or has received a negative result on an HIV test. The result of an HIV test is confidential, and an insurer may not release or disclose the test result or allow the test result to become known except as required by law or pursuant to the written request or authorization of the proposed insured or other person legally authorized to consent to the test on behalf of the proposed insured. Release shall be limited to: the proposed insured; the person legally authorized to consent to the test; a licensed physician, medical practitioner, or other person designated by the proposed insured; an insurance medical information exchange under procedures designed to assure confidentiality; a reinsurer, if the reinsurer is involved in the underwriting process; persons within the insurer's organization who have the responsibility to make underwriting decisions on behalf of the insurer; or outside legal counsel who needs the information to effectively represent the insurer in regard to matters concerning the proposed insured. An applicant must be given written notice of a positive HIV test result by a physician designated by the applicant or, in the absence of that designation, by the Texas Department of Health for a fee. An insurer may not make an adverse underwriting decision based on a positive HIV test unless test protocol as established by rule of the State Board of Insurance is followed in testing. The marital status, occupation, gender, beneficiary designation, or zip code or other territorial classification of a proposed insured may not be used by an insurer in making a determination as to who will be required or requested to take an HIV test. Any person who is injured by a breach of the confidentiality requirements

of this section may bring a civil action for damages. Any person may bring an action to restrain such a breach or threatened breach. Tex. Ins. Code art. 21.21-4.

(11) An insurance company may pay an accelerated benefit under an individual or group term life insurance policy or certificate if: the company has received a written medical opinion, satisfactory to the company that the insured has a terminal illness, a long-term care illness, or a specified disease, including but not limited to AIDS; and the amount of the accelerated benefit is deducted from the amount of the death benefit payable under the policy or certificate and from any amount the insured would otherwise be entitled to convert to an individual contract. Tex. Ins. Code art. 3.50-6.

Criminal Law (6)

Testing & Reporting (8), (16)

RESEARCH

(1) The Texas Higher Education Coordinating Board shall encourage institutions of higher education and the faculty of those institutions to individually, or through collaborative effort, conduct HIV-related research and to recognize achievements in basic and applied HIV-related research. The Board shall encourage and fund applied and basic HIV-related research through its ongoing research programs, including the Advanced Technology and Advanced Research Programs. Educ. § 61.082.

(2) To ensure a continuum of nursing care for persons with AIDS or HIV infection and related conditions who require long-term nursing care but do not require hospitalization except for acute exacerbation of their condition, the Texas Department of Human Services shall develop one or more demonstration projects to research the cost and need for special care services including services addressing medical complications resulting from AIDS or HIV infection. Health & Safety § 85.131.

Testing & Reporting (14)

SOCIAL & MEDICAL SERVICES

(1) The Department of Health (Department) may contract with a physician to provide services to persons infected or reasonably suspected of being infected with an STD if local or regional health department services are not available, there is an immediate need for

examination or treatment of the person, and the person is unable to pay for the services. Health & Safety § 81.092.

(2) The Department or Health shall act as the lead agency for AIDS and HIV policy and is the primary resource for HIV education, prevention, risk reduction materials, policies, and information in this state. Health & Safety § 85.003.

(3) The Department shall maintain current information on public and private sources of funding, and the amount, type, and sources of such funding for HIV-related prevention, education, treatment, and social support services being provided throughout the state. The Department shall encourage and maximize the use of such funds by promptly forwarding the information to public and nonprofit agencies that may be eligible for funding and shall make the information available to public and private entities on request. Health & Safety § 85.013.

(4) The Department shall provide technical assistance to nonprofit community organizations to maximize the use of limited resources and volunteer efforts and to expand the availability of health care, education, prevention, and social support services needed to address the HIV epidemic. The Department shall provide technical assistance in: recruiting, training, and effectively using volunteers in the delivery of HIV-related services; identifying funding opportunities and sources; and developing and implementing effective service delivery approaches for community-based health care, education, prevention, and social support services pertaining to HIV. Health & Safety § 85.014.

(5) The Department may contract with an entity to provide services if the contract would minimize duplication of effort and would deliver services cost-effectively. The contracting entity must not advocate or promote conduct that violates state law. A contract entered into by the Department under this subchapter may not be for a term of more than one year, except that a contract may be renewed without a public hearing. Health & Safety § 85.015.

(6) The Department shall establish and administer a state grant program to nonprofit community organizations for HIV education, prevention, and risk reduction programs and for treatment, health, and social services programs for persons with HIV infection. Health & Safety § 85.031.

(7) The Board of Health may adopt rules relating to: the services that may be furnished under the State Grant Program to Community Organizations (see Education (11)); a system of priorities regarding the types of services provided, geographic areas covered, or

classes of individuals or communities targeted for services under the program; and a process for resolving conflicts between the Department and a program receiving money under the State Grant Program. In structuring the program and adopting rules, the Department and the Board of Health shall attempt to: coordinate the use of federal, local, and private funds; encourage the provision of community-based services; address needs that are not met by other sources of funding; provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and encourage cooperation among local service providers (see Definitions (12)). To prevent unnecessary duplication of services, the Board of Health and the Department shall seek to coordinate the services provided by eligible programs with existing federal, state, and local programs. The Department shall consult with the Texas Department of Human Services to ensure that programs funded under the State Grant program complement and do not unnecessarily duplicate services provided through the Texas Department of Human Services. The Department may not award a grant to an entity or community organization that advocates or promotes conduct that violates state law. The Department may not use more than five percent of the funds appropriated for the grant program to employ staff. Not more than one-third of the funds available may be used for HIV education, prevention, and risk reduction. The department may provide a due process hearing procedure for resolution of conflicts between the Department and a program funded by the State Grant Program. The Board may appoint an advisory committee to assist in the development of procedures and guidelines for the State Grant Program. Health & Safety §§ 85.032-035, 85.037-38, 85.043-44.

(8) The Department shall develop evaluation criteria to document effectiveness, unit-of-service costs, and number of volunteers used in organizations funded with grants under the State Grant Program to Community Organizations. An organization that receives funding under this program shall collect and maintain relevant data as required by the Department and submit to the Department copies of all material the organization has printed or distributed relating to HIV infection. The Department shall provide prompt assistance to grantees in obtaining materials and skills necessary to collect and report the data required under this section. The Department shall require each program receiving a grant to maintain records and information specified by the Department. The Department shall review annually such records, information, and reports, and shall prepare a report that is available to the public summarizing data

regarding the type, level, quality, and cost-effectiveness of services provided under this program. As a condition of accepting a grant, a community organization must allow the Department to periodically review the financial records of that organization. Health & Safety §§ 85.040 to 042.

(9) The Texas HIV medication program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the Board of Health that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. To be eligible for the program, an individual: must not be eligible for Medicaid benefits; must meet financial eligibility criteria set by the Board of Health; must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and must be diagnosed by a licensed physician as having AIDS or an HIV-related condition. The Department shall give priority of participation in the program to eligible individuals younger than eighteen years of age. The Department may accept and use local, state, and federal funds and private donations to fund the program. State, local, and private funds may be used to qualify for federal matching funds if federal funding becomes available. A hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization may participate in the program by sending funds to the Department for the purpose of providing assistance to clients for the purchase of HIV medication. The Department may institute a sliding fee scale to help eligible HIV-infected individuals purchase medications under this program. The Board may appoint an advisory committee to assist in the development of procedures and guidelines required by the HIV medication program. Health & Safety §§ 85.061 to 066.

(10) State-funded primary health, women's reproductive health, and STD clinics shall make available to patients and clients information and educational materials concerning the prevention of HIV infection. These clinics shall either provide voluntary, anonymous, and affordable HIV counseling and testing programs or provide referral to such programs. Such information and educational materials shall be routinely incorporated into patient education and counseling in clinics specializing in STDs and women's reproductive health. Violation of this section may result in disciplinary action by the appropriate licensing authorities for the health care provider. Health & Safety §§ 85.088, 85.089.

(11) The Department of Human Services shall establish one or more demonstration projects in nursing facilities to: assist the Department of Human Services in analyzing the cost of providing care for persons with AIDS or HIV infection and related conditions; provide test sites in designated nursing facilities; demonstrate the extent of the need for facilities that can provide the long-term nursing care that is required by a person with AIDS or HIV and related conditions when those persons are not in need of hospitalization for an acute exacerbated condition; determine the extent of the individualized nursing care required to adequately meet the specific needs of persons with AIDS or HIV infection and related conditions; provide appropriate nursing care without imposing the costs of providing those programs and services on all facilities that currently provide nursing care to persons whose needs are different than the needs of persons with AIDS or HIV; and provide one or more teaching and demonstration models for caring for persons with AIDS or HIV infection and related conditions. Participants in the demonstration program are entitled to reimbursement at a special rate that covers all the costs of the care provided. Health & Safety § 85.132.

(12) The Department, in consultation with appropriate correctional and law enforcement agencies, fire departments, and emergency medical services providers, shall develop a model policy regarding the handling, care, and treatment of persons with AIDS or HIV infection who are in the custody of the Texas Department of Criminal Justice, local law enforcement agencies, municipal and county correctional facilities, and district probation departments. Each state and local law enforcement agency, fire department, emergency medical services provider, municipal and county correctional facility, and district probation department shall adopt such a policy, which shall be substantially similar to the model policy. Health & Safety §§ 85.141, 85.142.

(13) The Legislature finds that in order to reduce the risk of transmission of HIV from health care workers to patients in the health care setting, health care workers should adhere to infection-control procedures recommended by the Centers for Disease Control. Furthermore, health care workers who perform exposure-prone invasive procedures (see Definitions (9)) should know their HIV antibody status. Health & Safety § 85.201.

(14) All health care workers should adhere to universal precautions (see Definitions (9)). Health care workers with exudative lesions or weeping dermatitis shall refrain from all direct patient care and

from handling patient care equipment and devices used in performing invasive procedures until the condition resolves. All institutions of higher education and professional and vocational schools training health care workers shall provide instruction on universal precautions. Health care institutions shall establish procedures for monitoring compliance with universal precautions. Health & Safety § 85.203.

(15) A health care worker who is infected with HIV may not perform an exposure-prone procedure unless the health care worker has: sought counsel from an expert review panel and has been advised under what circumstances, if any, the health care worker may continue to perform the exposure-prone procedure; notified the prospective patient of the health care worker's HIV positive status; and obtained the patient's consent before the patient undergoes an exposure-prone procedure, unless the patient is unable to consent. To promote the continued use of the talents, knowledge, and skills of a health care worker whose practice is modified because of the worker's HIV status, the worker should be provided opportunities to continue patient care activities, if practicable, and receive career counseling and job retraining. The practice of an infected health care worker shall not be restricted, provided the health care worker adheres to infection control standards. A health care worker who fails to comply with the provisions for the prevention of transmission of HIV by infected health care workers is subject to disciplinary procedures by the appropriate licensing entity. Health & Safety §§ 85.204 to 205.

(16) Health care workers who are infected with HIV shall not be required to have their licenses, registrations, or certifications revoked. Infected health care workers who adhere to universal precautions shall not be prohibited from performing procedures not identified as exposure-prone; providing health care services in emergency situations; or providing health care services, including exposure-prone procedures, to persons with HIV. Health care workers shall not be required to be tested for HIV. Health & Safety § 85.206.

(17) An entity licensed and designated as a residential AIDS hospice is not required to have a home and community support services license. Health & Safety § 142.003.

(18) In order for a licensed special care facility (see Definitions (2)) to be designated as a residential AIDS hospice (see Definitions (2)), the facility must provide: exclusively palliative care (see Definitions (2)); bereavement services (see Definitions (2)); support services (see Definitions (2)) to the family of a client; an initial plan of care for a client

developed by a registered nurse and periodic review of the plan of care by an interdisciplinary team of the facility; and clinical and medical review of patient care services by a physician who acts as a medical consultant. Health & Safety § 248.029.

(19) The Texas Commission on Alcohol and Drug Abuse may fund community outreach programs that have direct contact with intravenous (IV) drug users. An outreach program funded by the Commission must: provide education on HIV infection based on the model education program developed by the Department; encourage behavior changes to reduce the possibility of HIV transmission; and promote other HIV risk education activities. Health & Safety § 461.0131.

(20) A licensed facility treating alcohol and drug-dependent persons shall provide to employees and clients of the facility education regarding methods of transmitting and preventing HIV based on the model education program developed by the Texas Department of Health. Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the Department of Health. A treatment facility for alcohol and drug-dependent persons shall make available or make referrals to voluntary, anonymous, and affordable counseling and testing services concerning HIV infection. Health & Safety § 464.012.

(21) Case management services for chronically ill and disabled children (see Definitions (4)) shall include counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of mental and psychological health care and social and support services. Health & Safety § 35.002.

(22) The HIV/AIDS Interagency Coordinating Council is created to facilitate communication between state agencies concerning HIV/AIDS policies. The council consists of one representative from various agencies appointed by the executive director or commissioner of each agency. All representatives appointed to the council must be directly involved in policy or program activities related to AIDS and HIV services for their respective agencies. A representative from the Department serves as the chairperson of the council. Health & Safety § 85.017.

(23) Each state agency and each entity that receives funds from a state agency for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the agency and for

clients, inmates, patients, and residents served by the agency or entity. An entity that does not adopt confidentiality guidelines is not eligible to receive state funds until the guidelines are developed and implemented. Health & Safety § 85.115.

Criminal Law (4), (5), (8)

Education (2), (4), (5), (7), (8), (11), (12)

Employment (1)

Insurance (2), (3), (4), (5), (6), (7), (8), (9), (10)

Research (2)

Testing & Reporting (1), (2), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (25), (26), (27), (28)

Miscellaneous (1)

TESTING & REPORTING

(1) A child who is adjudicated delinquent shall undergo testing for AIDS, HIV, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the child to undergo the procedure or test on the court's own motion or on the request of the victim of the delinquent conduct. If the child or another person who has the power to consent to medical treatment for the child refuses to submit voluntarily or consent to the procedure or test, the court shall require the child to submit to the procedure or test. The person performing the procedure or test shall make the test results available to the local health authority. The local health authority shall be required to notify the victim and the test subject of the result. The state may not use the fact that a medical procedure or test was performed on a child under this section or use the results of the procedure or test in any proceeding arising out of the delinquent conduct. Testing under this section shall be conducted in accordance with written infectious disease control protocols adopted by the Board of Health that clarify established procedural testing guidelines and that respect the rights of the child and the victim of the delinquent conduct. A court may not release a test result to anyone other than a person specifically authorized under this section. Fam. § 54.033.

(2) The Department of Criminal Justice shall adopt a policy for handling persons with AIDS or HIV infection who are in its custody. The Department of Criminal Justice shall maintain the confidentiality of positive HIV test results of an inmate after the inmate's discharge or release on parole or mandatory supervision and may not honor the request of an agency of the state or any person who requests a test result as a

condition of housing or supervising the inmate while the inmate is on parole or mandatory supervision, unless honoring the request would improve the ability of the inmate to obtain essential health and social services. The Department of Criminal Justice may test an inmate for HIV. If the Department of Criminal Justice determines that an inmate is HIV positive, it may segregate the inmate from other inmates. Gov't. § 501.054.

(3) AIDS and HIV are diseases for which the Board of Health shall require reports. Health & Safety § 81.041.

(4) Reports, records, and information furnished to a health authority or the Department of Health (Department) that relate to cases or suspected cases of diseases or health conditions are confidential and are not public information. Medical or epidemiological information may be released: for statistical purposes if released in a manner that prevents the identification of any person; with the consent of each person identified in the information; to medical personnel, appropriate state agencies, or county and district courts to comply with provisions concerning prevention, control, and reporting of communicable diseases (see Definitions (5)); to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service; or to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information. In a case of sexually transmitted disease (see Definitions (13)) involving a minor under thirteen years of age, information may not be released, except to appropriate agents as required by statute. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera. A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records or reports or information about a person examined or treated for a reportable disease (see Definitions (13)) without that person's consent. Health & Safety § 81.046.

(5) The Board of Health by rule shall prescribe the criteria that constitute exposure to reportable diseases, including HIV infection. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection. A law enforcement officer, fire fighter, emergency medical service employee or paramedic, or a correctional officer may request the Department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection. A request for such testing

may be made only if the person: has experienced the exposure in the course of the person's employment or volunteer service; believes that the exposure places the person at risk of HIV infection; and presents to the Department or health authority a sworn affidavit that delineates the reasons for the request. The Department shall review the person's request to determine if it meets the criteria for establishing a risk of infection. A person ordered to be tested under this section must be notified promptly and confidentially of such order. The order must: state the grounds and provisions of the order, including the factual basis for its issuance; refer the person to appropriate health care facilities where the person can be tested for HIV infection; and inform the person who is subject to the order of that person's right to refuse to be tested and of the authority of the Department or health authority to ask for a court order requiring the test. If the person who is subject to the order refuses to comply, the prosecuting attorney shall petition the district court for a hearing on the order. In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The Department shall inform the person who requested the order of the results of the test. If the person subject to the order is found to be infected with HIV, the Department shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The Department shall insure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete. HIV testing and counseling conducted under this section must conform to the model protocol on HIV testing and counseling prescribed by the Department. For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to HIV infection must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than ten days after the date of exposure, the employee had a test result that indicated an absence of HIV infection. Health & Safety § 81.050.

(6) The Department shall establish programs for partner notification and referral services. The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV

positive status. If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification. An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of: the methods of transmission and prevention of HIV infection; the telephone numbers and addresses of HIV testing sites; and the existence of local HIV support groups, mental health services, and medical facilities. The employee may not disclose the name of or other identifying information concerning the identity of the person who gave the partner's name or the date or period of the partner's exposure. If the person with HIV infection also makes the notification, the person should provide the information listed above. A partner notification program shall make the notification of a partner of a person with HIV infection regardless of whether the person with HIV infection who gave the partner's name consents to the notification. A health care professional shall notify the partner notification program when the health care professional knows the HIV status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. A health care professional who fails to make such notification is immune from civil or criminal liability for failure to make that notification. A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners. A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control for professionals participating in the program. Health & Safety § 81.051.

(7) The Department shall ensure timely and accurate reporting of information relating to AIDS and HIV infection. The Department shall routinely analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, age, gender, race, ethnicity, mode of transmission, and other factors as appropriate. The Department shall annually project the number of AIDS cases expected in the state based on the reports and shall make available epidemiological projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services. Health & Safety § 81.052.

[TEXAS]

(8) A person may not require another person to undergo a test or medical procedure to determine if a person has HIV or AIDS unless: the test or medical procedure is required pursuant to an occupational exposure (see Testing & Reporting (5)) or under the criminal code (see Testing & Reporting (24)); the test or procedure is authorized pursuant to an application for insurance (see Insurance (10)); or a medical procedure is to be performed on the person which could expose health care personnel to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted. Such a test or procedure may also be administered if the test or medical procedure is necessary: as a bona fide occupational qualification (see Definitions (3)) and there is not a less discriminatory means of satisfying the occupational qualification; to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation; to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by a health care agency or facility; or for the health and safety of residents and clients of residential facilities of the Texas Department of Mental Health and Retardation or of the Texas Youth Commission. An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation. Protocols adopted pursuant to an accidental exposure to blood or body fluids in a health care facility must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure that confidentiality of the identity of the person with the infection is maintained. The Board of Health may adopt emergency rules for mandatory testing for HIV infection if the Commissioner files a certificate of necessity with the Board of Health that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders. Health & Safety § 81.102.⁶⁴

(9) HIV and AIDS test results are confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except for the

64. *Winters v. Houston Chronicle Pub. Co.*, 795 S.W.2d 723, 724 n.1 (Tex. 1990) (legislative exceptions to employment at will doctrine include restrictions against employers requiring HIV testing of employees).

following circumstances. A test result may be released to: the Department; a local health authority if reporting is required; the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law; the physician or other person authorized by law who ordered the test; a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and the patient's health and welfare; the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; a person authorized to receive test results under the criminal code (see Testing & Reporting (24)), concerning a person who is tested as required thereunder; and a person who suffers occupational exposure to HIV infection (see Testing & Reporting (5), (20)). A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this section must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. A person may release or disclose a test result for statistical summary purposes without written consent of the person tested only if information that could identify the person is removed from the report. A blood bank may report positive test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. Such a report may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name. A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing. An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential. Health & Safety § 81.103.⁶⁵

65. J.K. and Susie Wadley Research Inst. & Blood Bank v. Whittington, 843 S.W.2d 77 (Tex. Ct. App. 1992) (HIV test results of recipient of HIV-infected blood donation were not protected by physician-patient privilege, but were subject to confidentiality rules).

(10) A person may bring an action to restrain a violation or threatened violation of AIDS confidentiality provisions. A person who violates these provisions or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known is liable for: actual damages; a civil penalty of not more than \$5000; and court costs and reasonable attorney's fees incurred by the person bringing the action. A person who is found in a civil action to have willfully released or disclosed a test result or allowed a test result to become known (see Testing & Reporting (9)) is liable for: actual damages; a civil penalty; and court costs and reasonable attorney's fees incurred by the person bringing the action. Each release or disclosure made or allowance of a test result to become known is a separate offense. A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action. Health & Safety § 81.104.

(11) Except as otherwise provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested. Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained. Health & Safety § 81.105.

(12) A person who has signed a general consent form for the performance of medical tests or procedures is not required also to sign or be presented with a specific consent form relating to HIV tests that will be performed on the person during the time in which the general consent form is in effect. The result of an HIV test under the authorization of a general consent form may be used only for diagnostic or other purposes directly related to medical treatment. Health & Safety § 81.106.

(13) In case of accidental exposure to blood or other body fluids, the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test. A test under this section must be done according to established significant exposure testing protocols, such that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result. A test result under this section is confidential. Health & Safety § 81.107.

(14) A positive HIV test result may not be revealed to a test subject without giving that person the immediate opportunity for individual, face-to-face counseling, unless the test result is used for statistical or research purposes only and any information that could

identify the person is removed from the report, or unless the test is conducted solely for the purpose of research or for purposes of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation. A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover attorneys fees and actual damages for each violation. A person performing an HIV test is not liable for failing to provide post-test counseling if the person tested does not appear for the counseling. Health & Safety § 81.109.

(15) The Department shall develop model protocols for counseling and testing related to HIV infection. The protocols shall be made available to health care providers on request. A testing program shall adopt and comply with the model protocols developed by the Department. Health & Safety § 85.081.

(16) The Department shall establish voluntary testing programs in each public health region to make confidential counseling and testing available. The Department shall complete contact tracing (see Definitions (7)) after a confirmed positive test. The Department may contract with public and private entities to perform the testing. The results of a test conducted by a testing program or Department program may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment. A person who is injured by an intentional violation of this provision may bring a civil action for damages in the amount of \$1000 or actual damages and reasonable attorney's fees. The injured person may also bring an action to restrain a violation or threatened violation of this provision. Health & Safety § 85.082.

(17) A person may not advertise or represent to the public that the person conducts a testing program for AIDS, HIV infection, or a related condition without first registering with the Department of Health. A person who fails to comply with the registration requirement may be liable for a civil penalty of \$1000 for each day of a continuing violation. Licensed hospitals and physicians who advertise or represent to the public that they conduct or specialize in testing programs for AIDS, HIV infection, or related conditions shall be registered. The Department may assess and collect a registration fee in an amount that does not exceed the costs of administering the registration process. Health & Safety § 85.083.

(18) A testing program that operates for profit, that advertises or represents to the public that it conducts or specializes in testing programs, and that is required to register as a provider of such services

shall obtain the informed consent of the person to be tested before conducting the test and shall provide an itemized statement of charges to the person tested or counseled. Any medical care or procedure provided under a testing program shall be supervised by a licensed physician. Testing programs shall report HIV test results as specified in the Communicable Disease Prevention and Control Act (Health & Safety §§ 81.001 to 209). Health & Safety §§ 85.084 to 086.

(19) The Department shall develop and offer a training course for persons providing HIV counseling. The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs. The Department shall maintain a registry of persons who successfully complete the training course. The Department may charge a reasonable fee for the course to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the Department. The Department may contract for the training of counselors. Health & Safety § 85.087.

(20) On the request of an employee of a state agency, the agency shall pay the costs of testing and counseling an employee of that agency concerning HIV infection if the employee documents to the agency's satisfaction that the employee may have been exposed to HIV while performing duties of employment with that agency, or the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV. The Board of Health shall prescribe the criteria that constitute possible exposure to HIV. For the purposes of qualifying for workers' compensation or any other similar benefits or compensation, any employee who claims a possible work-related exposure to HIV infection must provide the employer with a written statement of the date and circumstances of the exposure and document that, within ten days after the date of exposure, the employee had a negative test result for HIV infection. The costs of testing shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested. Health & Safety § 85.116.

(21) For each donation of blood, a blood bank shall require the donor to submit to tests for infectious diseases, including tests for AIDS and HIV. A blood bank is not required to obtain the donor's informed consent before administering tests for infectious diseases and is not

required to provide counseling concerning the test results. Health & Safety § 162.002.

(22) A blood bank shall disclose all information required by law, including HIV test results, to: the Department and a local health authority (as required under the Communicable Disease Prevention Act); the Centers for Disease Control (as required by federal law); and any other local, state, or federal entity, as required by law, rule, or regulation. Health & Safety § 162.004.

(23) A blood bank shall report positive HIV test results to: the hospital or other facility in which the blood was transfused or provided; the physician who transfused the infected blood; or the recipient of the blood. A blood bank may report blood test results for statistical purposes. A blood bank that reports test results may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or person's identity, including an address, social security number, designated recipient, or replacement donation information. Health & Safety § 162.007.

(24) A person indicted for sexual assault or aggravated sexual assault, shall, at the discretion of the court, undergo HIV testing. The court may direct the person to undergo testing on its own motion or on the request of the victim of the alleged offense. If the person refuses to submit voluntarily to the testing, the court may require such testing. The person performing the test shall make the results available to the local health authority, and the local health authority shall be required to notify the victim of the test result. The state may not use the fact that an HIV test was performed, or the results of such test, in any criminal proceeding arising out of the alleged offense. Testing under this section must be conducted in accordance with written infectious disease control protocols adopted by the Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and the victims of the alleged offense. A court shall not be allowed to release a test result to anyone who is not specifically authorized by law (see Testing & Reporting (9)). Tex. Code Crim. Proc. art 21.31.⁶⁶

(25) A county or municipality may test an inmate confined in the county or municipal jail or in a contract facility to determine the proper medical treatment of the inmate or the proper social management

66. State v. McDonald, 839 S.W.2d 854 (Tex. Ct. App. 1992) (crime victims have no discovery right even if evidence suggests HIV infection, but victims of a sex offense may petition to have defendant tested).

of the inmate or other inmates in the jail or facility. If it is determined that an inmate is HIV positive, the inmate may be segregated from other inmates in the jail or facility. There is no duty to test such inmates for HIV or AIDS, and there shall be no cause of action arising from a failure to test for HIV or AIDS. Tex. Code Crim. Proc. art. 46A.01.

(26) A person may not market, distribute, or sell a home collection kit (see Definitions (12)) for HIV infection testing or any product to be used by a member of the public to test a specimen collected from the human body for HIV infection in this state unless such kit complies with the provisions of the Texas Food, Drug, and Cosmetic Act (Health & Safety §§ 431.001 to 279). This does not apply to a product marketed, distributed, or sold only to physicians or other persons authorized by law to test specimens for HIV infection. A home collection kit for HIV infection shall be sold as a part of a package that includes: laboratory testing by a qualified facility; reporting of test results; verification of positive test results; counseling; and information, upon request, describing how test results and related information are stored by the service provider (see Definitions (12)), how long the information is retained, and under what circumstances the information may be communicated to other persons. A laboratory facility that conducts testing of a specimen collected with a home collection kit for HIV infection testing must comply with the Clinical Laboratory Improvement Amendments of 1988. A service provider shall report test results from a home collection kit for HIV infection testing orally to the individual tested. The test results may be provided by telephone. A service provider shall provide pretest counseling to an individual who is considering using a home collection kit. This counseling may be provided orally by telephone or through written information included with the home collection kit. At the time the test results are reported to the individual tested, the service provider shall provide counseling and appropriate referrals for care and treatment. Such counseling and referrals shall conform with protocols adopted by the Board of Health. Counseling must be provided in English and in Spanish. The Board of Health may require a service provider to provide counseling in another language if the Board of Health finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish. A service provider, in providing counseling, may not solicit the purchase of additional services or products or refer the individual being counseled to an entity that has another ongoing financial relationship with the service

provider. The labeling on a home collection kit shall explain which persons or entities will have access to the test results for the individual. A home collection kit labeled in Spanish must also be available. Any statement that an identifiable individual has or has not been tested with a home collection kit, including a statement or assertion that the individual is positive, negative, is at risk, or has a certain level of antigen or antibody, is confidential. A service provider may not use technology that permits the service provider to identify an individual to whom test results or counseling is provided or to identify the telephone number from which that individual is calling. A service provider shall report test results from a home collection kit in the manner required by the Department. The Legislature encourages manufacturers of home collection kits for HIV infection testing to make the kits available, at reduced cost, to appropriate nonprofit organizations for use in HIV testing and counseling programs. It is the intent of the Legislature that the use of home collection kits shall not affect the accessibility of anonymous testing programs established by the Texas Department of Health. Health & Safety §§ 85.251 to 262.

(27) The Department of Protective and Regulatory Services shall provide HIV testing as necessary for the welfare of a child who it believes has been abused in a manner by which HIV may be transmitted. The results of such a test are confidential. Fam. § 261.314.

(28) A physician or other person permitted by law to attend to a pregnant woman during gestation or at delivery of an infant shall: take a sample of the woman's blood at the first examination and visit; submit the sample to a laboratory for a standard serologic test for syphilis and HIV infection; and retain a report of each case for nine months and deliver the report to any successor in the case. A physician or other person in attendance at a delivery shall take a blood sample from the mother or from the umbilical cord of the infant within twenty-four hours of delivery and submit the sample to a laboratory for testing for syphilis and HIV infection. Before conducting a test for HIV infection under this section, the physician or other person shall advise the woman that the result of the test is confidential but not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate, if resources permit. Before the blood sample is

taken, the health care provider shall distribute to the patient printed materials about HIV, AIDS, and syphilis and shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the Department and shall be prepared and designed to inform, patients about: the incidence and mode of transmission of HIV, AIDS, and syphilis; how being infected with HIV, AIDS, or syphilis could affect the health of their child; the available cure for syphilis; the available treatment to prevent maternal-infant HIV transmission; and methods to prevent the transmission of HIV and syphilis. A physician or other person may not conduct an HIV test if the woman objects. If a screening test and a confirmatory test show that the woman is or may be infected with HIV, the physician or other person who submitted the sample for the test shall provide or make available to the woman: information relating to treatment of HIV infection and AIDS, which must be in a language other than English, if needed, and must be presented in terms understandable to an illiterate person; and counseling. Health & Safety § 81.090.

Definitions (10)

Criminal Law (1), (2), (3), (6), (7), (8)

Insurance (1), (4), (10)

Social & Medical Services (8), (10), (11), (16), (20)

MISCELLANEOUS

(1) The Legislature finds that narcotic treatment programs are an important component of the state's effort to prevent further proliferation of the AIDS virus. Health & Safety § 466.001.