

Delaware

Introduction and Table of Contents

August 24, 2009

To the Reader:

The *Compendium of State HIV Testing Laws* describes key state HIV testing laws and policies. Each state's HIV testing laws are unique and many have undergone revision or supplementation since the release of the [CDC's 2006 HIV testing recommendations](#). The *Compendium* is designed to help clinicians understand HIV testing laws and to implement sound HIV testing policies. It should not, however, be used as an official legal document.

The NCCC provides clinical consultation for healthcare providers as part of the HRSA [AIDS Education and Training Centers](#) program. Clinicians with questions about HIV testing are encouraged to call the *National HIV Telephone Consultation Service (Warmline)* at **(800) 933-3413**. The Warmline also provides advice on HIV management, including antiretroviral treatment. Other NCCC consultation services include: the National Clinicians' Post-Exposure Prophylaxis Hotline ([PEPLINE](#)) at **(888) 448-4911** for advice on managing occupational exposures to HIV and hepatitis; and the National Perinatal Consultation and Referral Service ([Perinatal HIV Hotline](#)) at **(888) 448-8765** for consultation on preventing mother-to-child transmission of HIV.

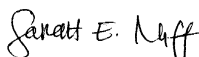
We update the *Compendium* periodically, but it is beyond the scope of the project to perform ongoing verification of every section frequently. We encourage readers to send comments, corrections, and updates (with citations when possible) to Sarah Neff at neffs@nccc.ucsf.edu.

Thank you,



Ronald H. Goldschmidt, MD
Director

&



Sarah E. Neff, MPH
Director of Research and Evaluation

National HIV/AIDS Clinicians' Consultation Center (NCCC)
San Francisco General Hospital
University of California, San Francisco

The Warmline, PEPLINE, and Perinatal Hotline are part of the National HIV/AIDS Clinicians' Consultation Center (NCCC) based at San Francisco General Hospital/ UCSF. The NCCC is a component of the **AIDS Education and Training Centers (AETC) Program** funded by the Ryan White CARE Act of the **Health Resources and Services Administration (HRSA)** HIV/AIDS Bureau in partnership with the **Centers for Disease Control and Prevention (CDC)**.

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Definitions and Helpful Resources

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Definitions Commonly Used Nationally

- **Anonymous Testing** – Patient's name is not recorded with test results.
- **Confidential** – Patient's name is recorded with test results.
- **HIV Prevention Counseling** – Refers to an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV and developing a plan to take specific steps to reduce risks.¹
 - **Pre-test counseling** can include: (1) discussing HIV, risk factors and prevention methods; (2) explaining the meaning of positive and negative test results and their implications; (3) assessing the patient's personal and social supports; (4) determining the patient's readiness to cope with test results; (5) discussing disclosure of test results to others; and (6) advising the patient if reporting positive test results to health authorities is required.
 - **Post-test counseling** can include: (1) informing the patient of the results and meaning of the test results; (2) providing education about avoiding risks of sexual and injection drug exposures; and, for patients who test positive, (3) assessing the impact of test results for the patient and family; (3) explaining treatment options; (4) discussing partner counseling and disclosure of test results to others; and (5) initiating a support and treatment plan.
- **General Consent** – Consent for HIV screening is included in the general medical consent.
- **HIV** – Human Immunodeficiency Virus.
- **Informed Consent** – A process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions.¹
- **Name-based reporting** – Cases are reported by patient name (required in all states except HI and VT).
- **Opt-in** – Patients typically are provided pre-HIV test counseling and must consent specifically to an HIV-antibody test, either orally or in writing.²
- **Opt-out** – Performing HIV screening after notifying the patient that: the test will be performed; and the patient may elect to decline or defer testing. Assent is inferred unless the patient declines testing.¹
- **Routine Testing** – HIV screening that is performed routinely during health-care encounters.
- **Rapid Testing** – Testing with any of the six FDA-approved rapid HIV tests that produce results in 30 minutes or less.³
- **Specific Consent** – Consent for the HIV screening is separate from the general medical consent.

Helpful Resources

CDC Recommendations and Guidelines: <http://www.cdc.gov/hiv/topics/testing/guideline.htm>

Emergency Department Implementation Guide: <http://edhivtestguide.org/>

Prenatal HIV Testing Website: <http://www.cdc.gov/hiv/topics/perinatal/1test2lives/>

For questions or comments about the compendium, contact NCCC: NCCCTemp@nccc.ucsf.edu

Clinicians with questions about HIV testing can call the Warmline at 800-933-3413.

¹ Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings. MMWR Recomm Rep. 2006 Sep 22;55(RR-14):1-17; quiz CE1-4. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

² <http://www.cdc.gov/mmwr/PDF/wk/mm5145.pdf>

³ <http://www.cdc.gov/hiv/topics/testing/resources/factsheets/rt-lab.htm>

Delaware

A Quick Reference Guide for Clinicians to Delaware HIV Testing Laws

August 24, 2009

This Quick Reference Guide for clinicians is a summary of relevant Delaware state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Delaware HIV testing laws, please refer to the section of the Compendium that follows this Quick Reference Guide.

Informed Consent

- Specific informed consent required; may be oral or in writing.

Counseling

- No specific provisions regarding counseling were found.

Provisos of Testing

- **Anonymous**
 - No specific provisions regarding anonymous testing were found.
- **Rapid**
 - No specific provisions regarding rapid testing were found.
- **Routine**
 - No specific provisions regarding routine testing were found.

Disclosure

- Notification to sexual and needle-sharing partners of possible exposure to HIV is required.

Minor/Adolescent Testing

- Persons 12 years of age or older may consent to HIV testing and treatment.

Delaware

Perinatal Quick Reference Guide:

A Guide to Delaware Perinatal HIV Testing Laws for Clinicians

August 24, 2009

This Perinatal Quick Reference Guide for clinicians is a summary of relevant Delaware perinatal state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Delaware HIV testing laws, please refer to the corresponding section of the *State HIV Testing Laws Compendium* (www.nccc.ucsf.edu), “Testing of pregnant women and/or newborns.”

Prenatal

- Testing of pregnant women as a routine component of prenatal care is through the opt-out process; documentation of refusal to consent must be maintained in the patient’s medical record.
- Provider must offer HIV testing in third trimester to women at high risk. A woman is at high risk if 1 or more of the following applies:
 - (A) A history of a sexually transmitted disease; or
 - (B) During the pregnancy:
 - (1) Illicit drug use or the exchange of sex for money or drugs;
 - (2) Multiple sex partners or a sex partner known to be HIV-positive or at high risk of acquiring HIV; or
 - (3) Signs or symptoms suggestive of acute HIV infection.

Labor & Delivery

- No specific provisions regarding labor & delivery testing were found.

Neonatal

- No specific provisions regarding neonatal testing were found.

Other

- **Counseling**
 - Post-test counseling of pregnant women who test positive for HIV is required.
 - Must include the dangers to her fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control and Prevention recommendations for HIV positive pregnant women.

Delaware
State Policies Relating to HIV Testing, 2009

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Delaware Code [Del. C.]

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Title 18: Insurance Code..... Pages 14-16
Title 29: State Government..... Page 17

Delaware Administrative Code [DAC]

Title 16: Health and Social Services..... Pages 18-21

	Policy Category	Type	Section Code(s)
RESTRICTIONS/MADNATES	Restrictions on use of HIV test	No related laws found	
	Mandatory testing within the criminal justice system	Person arrested for a crime with sexual intercourse or contact as an element if requested by victim/ordered by court	10 Del. C. § 1077 11 Del. C. § 3911 11 Del. C. § 3914
		Persons charged with a sex offense	10 Del. C. § 1077
	Mandatory testing outside of the criminal justice system	Blood/organ/anatomical donations	15 Del. C. § 2801
PRE-TESTING	Mandatory offering of HIV/AIDS information and/or testing	Persons charged with a sex offense must be notified of the availability of HIV testing	10 Del. C. § 1076
		Needle exchange sites must offer HIV testing services and referrals	29 Del. C. § 7992
	Informed consent	Specific consent required – verbal or written	16 Del. C. § 1202
	Counseling requirements	Mandatory post-test counseling of pregnant women who test positive for HIV	16 Del. C. § 1204
Mandated post-test counseling of sex offense victims with HIV positive results		16 Del. C. § 1077	

		Mandated offering of post-test counseling to victims of sex offenders with HIV positive results	10 Del. C. § 1077
	Anonymous testing	No related laws found	
POST-TEST	Disclosure/confidentiality	HIV test results as confidential	16 Del. C. § 711 16 Del. C. § 1203
		Exceptions to confidentiality	16 Del. C. § 711 16 Del. C. § 1203 16 Del. C. § 1206A
		Disclosure of HIV status of sex offender to victim	11 Del. C. § 3914
		Partner notification	DAC 7.4.4
	Reporting	Name-based reporting	DAC 7.4.1
OTHER	Testing of pregnant women and/or newborns	Pregnant women in prenatal care as a part of routine battery of prenatal screening – opt-out testing, must document refusal	16 Del. C. § 1204 DAC 7.4.2
		Provider must offer HIV testing in third trimester to women at high risk	16 Del. C. § 1204
		Mandatory post-test counseling of pregnant women who test positive for HIV	16 Del. C. § 1204
	Testing of minors/adolescents	Minors 12 years or older may consent to HIV testing	16 Del. C. § 1202
	Rapid HIV testing	No related laws found	
	Training and education of health care providers	No related laws found	

Recommended Resources

Delaware Health and Social Services

<http://www.dhss.delaware.gov/dhss/index.html>

Delaware Administrative Code

<http://www.state.de.us/research/AdminCode/>

Online Delaware Code

<http://delcode.delaware.gov/index.shtml>

Title 10: Courts and Judicial Procedure
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DE Title 10 Code §	Code Language
10 Del. C. § 1075	<p>Definitions</p> <p>For purposes of this subchapter, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:</p> <p>"Human immunodeficiency virus test" means a test or tests of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection, and includes preliminary screening.</p>
10 Del. C. § 1076	<p>HIV testing made available</p> <p>A person charged with an offense pursuant to Chapter 5 of Title 11, which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing under the provisions of Chapter 12 of Title 16. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.</p>
10 Del. C. § 1077	<p>Order to submit to human immunodeficiency virus testing; test results; notification to Department of Services to Children, Youth and their Families; counseling; costs; notice of appeal not to stay order for HIV testing</p> <p>(a) When a defendant has been arrested and charged with an offense in § 1076 of this title, other provisions of law to the contrary notwithstanding, the court, at arraignment, regardless of any prior human immunodeficiency virus test on the defendant, shall order, at the request of the victim, the defendant to undergo human immunodeficiency virus testing, under the direction of the Division of Public Health.</p> <p>(b) The result of any human immunodeficiency virus test conducted pursuant to this subchapter shall not be a public record for purposes of Chapter 100 of Title 29.</p> <p>(c) The result of any human immunodeficiency virus testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing and any other person or agency pursuant to Chapters 12 and 12A of Title 16.</p> <p>(d) In addition, the Division of Public Health shall provide to the Department of Services to Children, Youth and Their Families the result of</p>

DE Title 10 Code §	Code Language
	<p>any human immunodeficiency virus test conducted pursuant to this subchapter which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Services to Children, Youth and Their Families shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in any institution under the Department's jurisdiction.</p> <p>(e) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.</p> <p>(f) The costs of testing under this subchapter shall be paid by the defendant tested, unless the court has determined that the defendant is an indigent person.</p> <p>(g) Filing of a notice of appeal shall not stay an order that the defendant submit to a human immunodeficiency virus test.</p>

Title 11: Crimes and Criminal Procedure
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DE Title 11 Code §	Code Language
11 Del. C. § 3911	<p>Human immunodeficiency virus (HIV) testing at the request of the victim.</p> <p>At the request of the victim and/or by order of the court, a defendant who has been arrested for a crime which has sexual intercourse, deviant sexual intercourse, or sexual contact as an element must submit to testing for HIV not later than 48 hours after the date on which the defendant has been arrested.</p>
11 Del. C. § 3913	<p>Test results; notification to Department of Corrections; counseling; cost; notice of appeal not to automatically stay order for HIV testing</p> <p>(a) The result of any human immunodeficiency virus testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing, and any other person or agency pursuant to Chapters 12 and 12A of Title 16.</p> <p>(b) In addition, the Division of Public Health shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this subchapter which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in any correctional institution.</p> <p>(c) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.</p> <p>(d) The cost of testing under this subchapter shall be paid by the defendant tested, unless the court has determined that the defendant is an indigent person.</p> <p>(e) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.</p> <p>(f) A defendant must submit to follow-up tests for HIV as may be medically appropriate.”.</p>

Title 16: Health and Safety

DE Title 16 Code §	Code Language
16 Del. C. § 711	<p>Confidentiality of records and information</p> <p>All information and records held by the Division of Public Health relating to known or suspected causes of STD, including infection with human immunodeficiency virus (HIV), the virus causing Acquired Immunodeficiency Syndrome (AIDS), shall be strictly confidential. Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:</p> <ol style="list-style-type: none"> (1) Release is made of medical or epidemiological information for statistical purposes so that no person can be identified; (2) Release is made of medical or epidemiological information with the consent of all persons identified in the information released; (3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies or state courts to the extent required to enforce the provisions of this chapter and related rules and regulations concerning the control and treatment of STDs, or as related to child abuse investigations pursuant to Chapter 9 of this title; (4) Release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; or (5) Release is made during the course of civil or criminal litigation to a person allowed access to said records by a court order which is issued in compliance with the following provisions: <ol style="list-style-type: none"> a. No court of this State shall issue such order unless the court finds that the person seeking the records and information has demonstrated a compelling need for such records which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the subject and the public interest which may be disserved by disclosure which deters future testing and treatment or which may lead to discrimination. b. Pleadings pertaining to disclosure of such records shall substitute a pseudonym for the true name of the subject of the records. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court. c. Before granting any such order, the court shall provide the subject whose records are in question with notice and a reasonable opportunity to participate in the proceedings if the subject is not already a party. d. Court proceedings as to disclosure of such records shall be conducted in camera unless the subject agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice. e. Upon the issuance of an order to disclose such records, the court

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	shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosures.
16 Del. C. § 1201	<p>Definitions</p> <p>For purposes of this subchapter the following definitions shall apply:</p> <p>(1) "Aids" shall mean Acquired Immunodeficiency Syndrome.</p> <p>(2) "Health care provider" shall mean any nurse, physician, dentist or other dental worker, optometrist, podiatrist, chiropractor, laboratory and blood bank technologist and technician, phlebotomist, dialysis personnel, emergency health care provider (including any paramedic, emergency medical technician, law enforcement personnel or firefighter) or others whose activities involve contact with patients, their blood or corpses.</p> <p>(3) "Health facility" shall mean a hospital, nursing home, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution.</p> <p>(4) "HIV" shall mean the human immunodeficiency virus identified as the causative agent of AIDS.</p> <p>(5) "HIV-related test" shall mean a test for the antibody or antigen to HIV.</p> <p>(6) "Legal guardian" shall mean a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.</p> <p>(7) "Manner known to transmit HIV" shall mean parenteral exposure to blood or blood products including but not limited to injection through the skin; or as otherwise determined by the Division of Public Health.</p> <p>(8) "Person" shall mean any natural person, partnership, association, joint venture, trust, public or private corporation or health facility.</p> <p>(9) "Release of test results" shall mean a written authorization for disclosure of HIV-related test results which is signed, dated and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.</p>
16 Del. C. § 1202	<p>Informed consent</p> <p>(a) No health facility, health care provider or other person shall test or shall cause by any means to have tested, any specimen of any patient for HIV-related tests, without the informed consent of the subject of the test or the subject's legal guardian. A health care provider shall ensure that</p>

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	<p>informed consent has been received prior to ordering testing by a laboratory or other facility.</p> <p>(b) Informed consent to an HIV-related test shall consist of a voluntary agreement executed by the subject of the test or the subject's legal guardian. If the agreement is oral, the facts pertaining thereto must be documented by customary practice. Informed consent shall consist of at least the following:</p> <ol style="list-style-type: none"> (1) An explanation of the test, including its purpose, potential uses, limitations and the meaning of its results; (2) An explanation of the procedure to be followed, including that the test is voluntary, that consent may be withdrawn and the extent and limitations of the manner in which the results will be confidential; (3) An explanation of the nature of AIDS and other manifestations of HIV infection and the relationship between the test result and those diseases; and (4) Information about behaviors known to pose risks for transmission of HIV infection. <p>(c) Notwithstanding subsection (a) of this section the provisions of subsections (a) and (b) of this section do not apply when:</p> <ol style="list-style-type: none"> (1) Knowledge of such test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment and the subject of the test is unable to grant or withhold consent. (2) The testing is done for the purposes of research; provided that the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher. (3) A health care provider or health care facility procures, processes, distributes or uses (i) blood, (ii) a human body part donated for a purpose specified under the Uniform Anatomical Gift Act [Chapter 27 of this title] or (iii) semen provided prior to July 11, 1988, for the purpose of artificial insemination, and such test is necessary to assure the medical acceptability of such gift or semen for the purposes intended. (4) The health of a health care worker has been threatened during the course of a health care worker's duties, as a result of exposure to blood or body fluids of the patient in a manner known to transmit HIV. (5) Necessary to control the transmission of HIV infection as may be allowed pursuant to Chapter 7 of this title as it relates to sexually transmitted diseases, or § 6523(b) of Title 11 as it relates to the Department of Correction. (6) Testing is ordered by a court of competent jurisdiction within the confines of civil or criminal litigation where the results of an HIV-related test of a party, or a person in the custody or under the legal control of another party, is relevant to the ultimate issue of culpability and/or liability. Said order must be issued in compliance with the following provisions: <ol style="list-style-type: none"> a. No court of this State shall issue such order unless the court finds that there is a compelling need for such test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure of the test results against

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	<p>the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters future testing or which may lead to discrimination.</p> <p>b. Pleadings pertaining to ordering of an HIV-related test shall substitute a pseudonym for the true name of the subject of the test. The true name shall be communicated confidentially, in documents not filed with the court.</p> <p>c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if the individual is not already a party.</p> <p>d. Court proceedings as to disclosure of test results so ordered shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.</p> <p>(7) The testing is done on a pregnant woman as defined in §1204 of this chapter.</p> <p>(d) Any person on whom an HIV-related test was performed without first having obtained informed consent pursuant to subsections (c)(1), (4) and (5) of this section shall be given notice promptly, personally and confidentially that a test sample was taken and the results of such test may be obtained upon request.</p> <p>(e) At the time of learning the test result, the subject of the test or the subject's legal guardian shall be provided with counseling for coping with the emotional consequences of learning the result, for understanding the interpretation of the test result, for understanding measures for preventing infection to others and to urge the voluntary notification of sexual and needle-sharing partners of the risk of infection.</p> <p>(f) Notwithstanding any other provision of law, a minor 12 years of age or older may consent or refuse consent to be a subject of HIV-related testing and to counseling relevant to the test. The consent or refusal of the minor shall be valid and binding as if the minor had achieved majority, and shall not be voidable, nor subject to later disaffirmance, because of minority.</p>
16 Del. C. § 1203	<p>Confidentiality</p> <p>(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such test in a manner which permits identification of the subject of the test, except to the following person:</p> <p>(1) The subject of the test or the subject's legal guardian.</p> <p>(2) Any person who secures a legally effective release of test results executed by the subject of the test or the subject's legal guardian.</p> <p>(3) An authorized agent or employee of a health facility or health care provider if the health 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 body fluids or tissues, and the agent or</p>

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	<p>employee has a medical need to know such information to provide health care to the patient.</p> <p>(4) Health care providers providing medical care to the subject of the test, when knowledge of the test results is necessary to provide appropriate emergency care or treatment.</p> <p>(5) When part of an official report to the Division of Public Health as may be required by regulation.</p> <p>(6) A health facility or health care provider which procures, processes, distributes or uses: (i) blood; (ii) a human body part from a deceased person donated for a purpose specified under the Uniform Anatomical Gift Act; or (iii) semen provided prior to July 11, 1988, for the purpose of artificial insemination.</p> <p>(7) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews.</p> <p>(8) Pursuant to Chapter 9 of this title as it relates to investigation of child abuse.</p> <p>(9) Pursuant to Chapter 7 of this title as it relates to sexually transmitted diseases and their control.</p> <p>(10) A person allowed access to said record by a court order which is issued in compliance with the following provisions:</p> <p>a. No court of this State shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters future testing or which may lead to discrimination.</p> <p>b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.</p> <p>c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if the individual is not already a party.</p> <p>d. Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.</p> <p>e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used and appropriate prohibitions on future disclosures.</p> <p>(11) Pursuant to Chapter 12A of this title as it relates to notification of emergency medical care providers.</p> <p>(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section shall disclose the test</p>

DE Title 16 Code §	Code Language
	<p>results to another person except as authorized by subsection (a) of this section.</p> <p>(c) The provisions in this section shall not interfere with the transmission of information as may be necessary to obtain 3rd-party payment for medical care related to HIV infection or with the documentation of cause of death on death certificates.</p>
16 Del. C. § 1204	<p>Counseling of all pregnant women</p> <p>(a) As a routine component of prenatal care, every licensed health care provider who renders the primary prenatal care, regardless of the site of such practice, shall advise every pregnant woman who is his or her patient of the value of testing for Human Immunodeficiency Virus (HIV) infection and include a test for Human Immunodeficiency Virus (HIV) infection among the standard battery of prenatal tests administered to each such pregnant woman, unless such pregnant woman opts out. Practitioners shall also counsel all pregnant women who are found to be HIV positive about the dangers to her fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control and Prevention recommendations for HIV positive pregnant women.</p> <p>(b) In addition to the provisions of subsection (a) of this section, a licensed health care provider who renders the primary prenatal care for a pregnant woman must offer HIV testing in the third trimester if she is at high risk for acquiring HIV. A woman is at high risk if 1 or more of the following applies:</p> <ol style="list-style-type: none"> (1) A history of a sexually transmitted disease; or (2) During the pregnancy: <ol style="list-style-type: none"> a. Illicit drug use or the exchange of sex for money or drugs; b. Multiple sex partners or a sex partner known to be HIV-positive or at high risk of acquiring HIV; or c. Signs or symptoms suggestive of acute HIV infection. <p>(c) Any pregnant woman shall have the right to refuse consent to testing HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record. All other provisions of this subchapter shall apply to such counseling, testing and disclosure which takes place pursuant to this section.</p>
16 Del. C. § 1205	<p>Enforcement of subchapter</p> <p>(a) Any person aggrieved by a violation of this subchapter shall have a right of action in the Superior Court and may recover for each violation:</p> <ol style="list-style-type: none"> (1) Against any person who negligently violates a provision of this subchapter, damages of \$ 1,000 or actual damages, whichever is greater. (2) Against any person who intentionally or recklessly violates a provision of this subchapter, damages of \$ 5,000 or actual damages, whichever is greater.

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	<p>(3) Reasonable attorneys' fees.</p> <p>(4) Such other relief, including an injunction, as the court may deem appropriate.</p> <p>(5) Any action under this subchapter is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure pursuant to § 1203 of this title, or that an HIV-related test has been conducted without informed consent pursuant to § 1202 of this title.</p> <p>(b) The Attorney General may maintain a civil action to enforce this subchapter in which the court may order any relief authorized by subsection (a) of this section.</p> <p>(c) Nothing in this subchapter shall be construed to impose civil liability or criminal sanction for disclosure of an HIV-related test result in accordance with any reporting requirement by the Division of Public Health.</p>
16 Del. C. §1206A	<p>Confidentiality of HIV test results</p> <p>A person who has knowledge of the identity of any person upon whom an HIV related test is performed, or the results of such test, in accordance with this chapter, shall maintain the confidentiality of that information pursuant to § 1203 of this title.</p>
16 Del. C. § 2801	<p>Establishment of registry; testing of donors; penalties</p> <p>(a) The Department of Health and Social Services shall establish a registry of all sperm banks and tissue banks operating in this State. All sperm banks and tissue banks operating in this State shall register with the Department of Health and Social Services by May 1 of each year. Any person, hospital, clinic, corporation, partnership or other legal entity which operates a sperm bank or tissue bank in this State and fails to register with the Department of Health and Social Services pursuant to this section shall be subject to a fine of \$ 5,000.</p> <p>(b) All donors of semen for purposes of artificial insemination, or donors of corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body, shall be tested for evidence of exposure to human immunodeficiency virus (HIV) and any other identified causative agent of Acquired Immunodeficiency Syndrome (AIDS) at the time of or after the donation, but prior to the semen, corneas, bones, organs or other human tissue being made available for such use. However, when in the opinion of the attending physician the life of a recipient of a bone, organ or other human tissue donation would be jeopardized by delays caused by testing for evidence for exposure to HIV and any other causative agent of AIDS, testing shall not be required prior to the life-saving measures.</p> <p>(c) No person may intentionally, knowingly, recklessly or negligently use</p>

DE Title 16 Code §	Code Language
	<p>the semen, corneas, bones, organs or other human tissue of a donor unless the requirements of subsection (b) of this section have been met. No person may knowingly, recklessly or intentionally use the semen, corneas, bones, organs or other human tissue of a donor who has tested positive for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection shall be a class E felony.</p> <p>(d) For the purposes of this section, "tissue bank" means any facility or program that is involved in procuring, furnishing, donating, processing or distributing corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body.</p>

Title 18: Insurance Code

DE Title 18 Code §	Code Language
18 Del. C. § 7402	<p>Definitions</p> <p>For the purpose of this chapter, the following definitions apply:</p> <p>(1) "Applicant" means the individual proposed for insurance coverage.</p> <p>(2) "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immune deficiency syndrome (AIDS).</p> <p>(3) "HIV test" means an enzyme-linked immunosorbent assay (ELISA) to determine the presence of antibodies to the human immunodeficiency virus (HIV) or such other test as may be approved by the Department of Health and Social Services; in the event of a positive or indeterminate result, the Western Blot Assay or an equivalent or more reliable confirmatory test shall also be administered prior to notification of the test result.</p> <p>(4) "Insurer" means any individual, corporation, association, partnership, fraternal benefit society or any other entity engaged in the insurance underwriting business, except insurance agents and brokers. This term shall also include medical service plans and hospital plans and health maintenance organizations and health service corporations which shall be designated as engaged in the business of insurance for the purpose of this chapter.</p> <p>(5) "Informed consent" means a voluntary agreement of consent of HIV testing executed by the subject of the test or the subject's legal guardian. Information provided prior to consent shall be provided in such a manner as to be understood by the subject of the test, and shall fully describe:</p> <ul style="list-style-type: none"> (a) The test procedures generally; (b) The implications of the test results; (c) How the test results will be used; (d) With whom the test results shall be shared; (e) The methods of transmission and methods of prevention Of HIV infection; (f) The medically accepted degree of reliability of the testing procedures; (g) The opportunity of medical treatment for HIV infection and any related infections if diagnosed; (h) The presumption that a person who is infected with HIV is infected for life; and (i) The responsibility of an infected person not to knowingly infect others.
18 Del. C. § 7403	Insurer requirements; informed consent; use of results; information

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	<p>(a) No insurer shall request or require that an applicant submit to an HIV test unless the insurer first:</p> <ul style="list-style-type: none"> (1) Obtains the applicant's prior written informed consent; (2) Reveals to the applicant the use to which the HIV test results may be put and entities to whom test results may be disclosed pursuant to §§ 7404 and 7405 of this title; and (3) Provides the applicant with written information approved by the Department of Health and Social Services, such as the brochure "HIV and AIDS" published by the American Red Cross, or its successor, or a similar brochure. <p>(b) An applicant may ask the person conducting the medical examination and testing on behalf of the insurer any questions the applicant may have regarding the HIV test and the informed consent. Such person shall either answer the questions to the extent of the person's knowledge or inform the applicant that prior to undergoing medical examination and testing, the applicant may wish to consult a physician or other knowledgeable health care professional, at the applicant's expense, if any.</p> <p>(c) No positive ELISA test result may be used for any purpose unless it has been confirmed by a Western Blot Assay or an equivalent or more accurate confirmatory test.</p>
18 Del. C. § 7404	<p>Disclosure limitations</p> <p>(a) In addition to the disclosure provided for in § 7405 of this title, or Subsection (b) of this section, on the basis of the applicant's written informed consent as specified in § 7403 of this title, an insurer may also disclose an applicant's HIV test result to its reinsurers or to those contractually retained medical personnel and insurance affiliates, excluding agents and brokers, which are involved in underwriting or claims decisions regarding the individual's application, provided disclosure is necessary to make underwriting or claims decisions regarding such application.</p> <p>(b) An insurer may report a confirmed positive HIV test result to a medical information exchange agency, such as the Medical Information Bureau, provided that:</p> <ul style="list-style-type: none"> (1) The informed consent form clearly explains that such disclosure may be made; and (2) (i) The results are reported in a manner that only identifies that the applicant has had an abnormal blood test result; or <ul style="list-style-type: none"> (ii) The results are reported in a manner that utilizes a neutral identifier to keep the identity of the individual confidential and anonymous to such agency. <p>(c) Insurers shall maintain strict confidentiality regarding HIV test results. Information regarding HIV test results may not be disclosed</p>

DE Title 18 Code §	Code Language
	outside the insurer except as provided for in this section and in § 7405 of this title.
18 Del. C. § 7405	<p>Notification</p> <p>An insurer who fails to issue a policy an applicant due to the results of HIV testing shall notify the applicant in writing of an adverse underwriting decision based upon the results of such applicant's medical examination and testing but shall not disclose the specific results of such medical examination and testing to the applicant. The insurer shall also inform the applicant that the results of the medical examination and testing will be sent to the physician designated by the applicant at the time of application and that such physician should be contacted for information regarding the applicant's medical examination and testing. If a physician was not designated at the time of application, the insurer shall request that the applicant name a physician to whom a copy of the results of the medical examination and testing may be sent. In the event that an applicant fails to identify a physician despite the efforts of the insurer to have the applicant do so, the insurer shall convey to the Department of Health and Social Services information in the insurer's possession which may be necessary to locate and inform the applicant of the applicant's positive HIV test result. If a physician is named by the applicant, the insurer shall, at the time notification is made to the physician, inform the physician that if the applicant fails to contact the physician within 30 days of the notice, the physician shall convey to the Department of Health and Social Services information in the physician's possession which may be necessary to locate and inform the applicant of the applicant's positive HIV test result. The physician shall make such notification to the Department of Health and Social Services if the applicant fails to contact the physician within 30 days of the insurer's notice. All reports made pursuant to this chapter are confidential and protected from release and shall be used for the sole purpose of locating and informing the applicant of the applicant's positive HIV test result.</p>

Title 19: State Government

DE Title 29 Code §	Code Language
§ 7992	<p>Operation of the Program [Subject to sunset according to the terms of § 7997 of this title]</p> <p>The Program shall:</p> <ol style="list-style-type: none"> (1) Operate for the purposes of: <ol style="list-style-type: none"> a. Preventing the transmission of HIV, the hepatitis B virus, and other blood borne diseases; and b. Providing injection drug users with referrals to appropriate treatment and other health and social services programs. (2) Provide for a 1-for-1 exchange, whereby the participants shall receive 1 sterile needle and syringe unit in exchange for each used one. (3) Include policies and procedures for the screening of participants to prevent non-injection drug users from participating in the Program. (4) Be designed and maintained to provide maximum security of exchange sites and equipment, including security measures that shall be required to allow for: identification of Program needles; a full accounting of the number of needles and syringes in circulation; the number in storage; safe disposal of returned needles, and any other measures that may be required to control the use and dispersal of sterile needles and syringes, provided however that a participant may exchange used needles and syringes at any exchange site if more than 1 site is available. (5) Include appropriate levels of staff expertise in working with injecting drug users and adequate staff training in providing community referrals, counseling, and preventive education. (6) Include services to: <ol style="list-style-type: none"> a. Educate the participants about the dangers of contracting HIV or hepatitis viruses through needle-sharing practices and unsafe sexual behaviors; b. Provide HIV testing; c. Provide a linkage for referrals to drug counseling and treatment services, and follow-up to those referrals to assure that participants receive available treatment. (7) Establish procedures for identifying participants consistent with the confidentiality provisions of this subchapter. (8) Establish a method of identification and authorization for Program staff members who have access to hypodermic needles, syringes, or Program records. (9) Operate out of a Program-owned and operated mobile van or vans to be situated at sites to be designated and advertised by the Program.

Delaware Administrative Code – Title 16: Health and Human Services	
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Title 16 DAC	Code Language
7.4.1	<p>Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS)</p> <p>7.4.1 HIV/AIDS is regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, and is of major public health concern, such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as notifiable and reportable pursuant to 16 Del.C. Ch. 5. Under this provision the following shall be reported:</p> <p>7.4.1.1 A diagnosis of HIV, according to the Centers for Disease Control and Prevention case definition of HIV</p> <p>7.4.1.2 A diagnosis of AIDS, according the Centers for Disease Control and Prevention case definition of AIDS</p> <p>7.4.1.3 A positive confirmed result of any test approved and indicative of the presence of HIV.</p> <p>7.4.1.4 All CD4 T-lymphocyte percentage and test results and all viral load detection test results (detectable and undetectable)</p> <p>7.4.1.5 A perinatal exposure of a newborn to HIV.</p>
7.4.2	<p>Reporting of HIV/AIDS and perinatal exposure of newborns to HIV</p> <p>7.4.2.1 A health care provider who diagnoses or treats HIV/AIDS and every administrator of a health care facility or prison in which there is an HIV/AIDS infected person or perinatal exposure to HIV shall report such information to the Division of Public Health. Reports provided under this rule shall specify the infected person's name, address, date of birth, gender, mode of transmission and race as well as the date of HIV positive laboratory result, date of perinatal exposure, date of AIDS diagnosis and stage of disease, type and amount of treatment given and the name and address of the submitting health care provider.</p> <p>7.4.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological or other evidence of HIV/AIDS, including perinatal exposure to HIV, shall notify the Division of Public Health. Reports provided under this rule shall specify the name, date of birth, race, gender and address of the person from whom the specimen was obtained, laboratory findings, including all CD4 T-lymphocyte percentage and test results and all viral load detection test results (detectable and undetectable), and the name and address of the health care provider and that of the processing clinical laboratory.</p>

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	<p>7.4.2.2.1 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.</p> <p>7.4.2.2.2 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV/AIDS consistent with 7.4.2.2.</p> <p>7.4.2.2.3 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.</p> <p>7.4.2.3 Reports made on the basis of perinatal HIV exposure shall be made regardless of confirmatory testing.</p> <p>7.4.2.4 Reports of HIV/AIDS, required by Section 7.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis positive test, or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable to the Division.</p> <p>7.4.2.5 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.</p>
7.4.3	<p>Confidentiality of HIV/AIDS Reports</p> <p>7.4.3.1 The Division of Public Health will evaluate reports of HIV/AIDS for completeness and potential referrals for service. All case reports will be kept in a confidential and in a secure setting.</p> <p>7.4.3.2 The Division of Public Health will evaluate its procedures for HIV/AIDS named-based reporting on a continuous basis for timeliness, completeness of reporting, and security of confidential information.</p> <p>7.4.3.3 The Division of Public Health will follow the December 10, 1999 Morbidity and Mortality Weekly Report Recommendations and Reports, "CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome" document as it pertains to patient records and confidentiality, or any subsequent revisions of said document.</p> <p>7.4.3.4 All reports and notification made pursuant to this section are</p>

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	<p>confidential and protected from release except under the provisions of 16 Del.C. §710, §711 and §1201-4, §1201A-4A. Any person aggrieved by a violation of this Section shall have a right of action in the Superior Court and may recover for each violation:</p> <p>7.4.3.4.1 Against any person who negligently violates a provision of this regulation, damages of \$1,000 or actual damages, whichever is greater.</p> <p>7.4.3.4.2 Against any person who intentionally or recklessly violates a provision of this subchapter, damages of \$5,000 or actual damages, whichever is greater.</p> <p>7.4.3.4.3 Reasonable attorneys' fees.</p> <p>7.4.3.4.4 Such other relief, including an injunction, as the court may deem appropriate.</p> <p>7.4.3.4.5 Any action under this regulation is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure.</p> <p>7.4.3.5 From information received from reports of HIV infection, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person on whom the report is made. However, if delays resulting from informing the physician may enhance the spread of HIV, or otherwise endanger the health of any individuals, the Division of Public Health may contact the person without first informing the attending physician.</p>
7.4.4	<p>Duty to Disclose the Identity of Sexual or Needle sharing Partners of HIV Infected Patients</p> <p>7.4.4.1 Any health care provider diagnosing or caring for an HIV infected patient shall disclose the identity of the patient's sexual or needle-sharing partner(s) (if known), including spouses to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:</p> <p>7.4.4.1.1 The provider knows of an identifiable partner at risk of infection who may not have been informed of their potential risk; and</p> <p>7.4.4.1.2 The provider believes there is a significant risk of harm to the partner; and</p> <p>7.4.4.1.3 Reasonable efforts have been made to counsel the patient pursuant to 16 Del.C. §1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner.</p>

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	<p>7.4.4.2 Any health care provider diagnosing or caring for an HIV infected patient shall also report to the Division of Public Health relevant facts about a patient that does not pose a threat to an identifiable partner but, in the professional judgment of the provider based upon stated intended acts, the patient may threaten further spread of HIV to the general population. In this instance the conditions specified in Section 7.4.4.1.3 shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.</p> <p>7.4.4.3 Procedures for disclosing information pursuant to this section shall be specified by the Division.</p>