

Kansas

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April 8, 2011

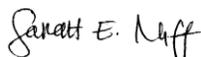
To the Reader:

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 updates and verification concurrent with all changes. We encourage readers to send updates (with citations when possible) and comments to Sarah Neff at neffs@nccc.ucsf.edu.

Thank you,



Sarah E. Neff, MPH
Director of Research and Evaluation

&



Ronald H. Goldschmidt, MD
Director

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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

April 8, 2011

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: neffs@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>

Kansas

A Quick Reference Guide for Clinicians to Kansas HIV Testing Laws

April 8, 2011

This Quick Reference Guide for clinicians is a summary of relevant Kansas 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 Kansas HIV testing laws, please refer to the section of the Compendium that follows this Quick Reference Guide.

Informed Consent

- No specific provisions regarding informed consent were found.

Counseling

- Counseling must be offered.

Provisos of Testing

- **Anonymous**
 - Testing must be available anonymously.
 - Anonymous testing is available at designated anonymous testing sites.
- **Rapid**
 - No specific provisions regarding rapid testing were found.
- **Routine**
 - No specific provisions regarding routine testing were found.

Disclosure

- No specific provisions regarding the notification of partners or contacts were found.

Minor/Adolescent Testing

- Minors may consent to STD testing and treatment, HIV not explicitly included.
- Physicians may, but are not required to, notify the parents of the HIV test result.

Kansas

Perinatal Quick Reference Guide:

A Guide to Kansas Perinatal HIV Testing Laws for Clinicians

April 8, 2011

This Perinatal Quick Reference Guide for clinicians is a summary of relevant Kansas 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 Kansas 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

- **First trimester**
 - A physician/health care professional who is authorized by law to provide medical treatment to a pregnant woman shall take or cause to be taken, a routine opt-out HIV screening.
- **Third trimester**
 - When the physician/health care professional determines certain pregnant women to be at high risk, they shall administer a repeat screening during the third trimester.

Labor & Delivery

- When the physician/health care professional determines certain pregnant women to be at high risk, they shall administer a repeat screening at labor and delivery.
- When a pregnant woman’s HIV status is unknown for any reason at the time of labor and delivery, she shall be screened for HIV as soon as possible within medical standards.

Neonatal

- When the mother’s HIV status is unknown, the newborn shall be screened for HIV as soon as possible within medical standards to determine need for prophylaxis. A mother’s/guardian’s consent is not required to screen the newborn, except that this shall not apply to any newborn whose parents have religious objections.
- Documentation of a mother’s HIV status shall be recorded in both the mother’s and newborn’s medical records. The mother shall be informed in writing of the provisions of this subsection and of the purposes and benefits of the screening and shall sign a form stating that the mother has received the information.

Other

- When an HIV rapid test kit is used, a confirmatory sample shall be submitted for serological testing which meets the standards recognized by the United States public health service to a laboratory approved by the secretary of health and environment.
- A pregnant woman shall have the right to refuse screening at any time. Before any screening is performed, the pregnant woman shall be informed in writing of the provisions above and the purposes and benefits of the screening, and the pregnant woman shall sign a form provided by the department of health and environment to authorize or opt-out of the screening.
 - The form shall contain the following wording: “I test all of my pregnant patients for HIV as part of the panel of routine tests to alert me to any conditions that can have a very serious effect on your pregnancy and your baby. You will be tested for HIV unless you tell me not to.”

**Kansas
State Policies Relating to HIV Testing, 2011**

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Kansas Annotated Statutes [KSA]

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Title 65: Public Health..... Pages 7-16

Kansas Administrative Regulations [KAR]

Title 28: Department of Health and Environment..... Pages 17-18
Title 40: Insurance Department..... Page 19

	Policy Category	Type	Section Code(s)
RESTR-ICTIONS//MANDATES	Restrictions on use of HIV test	No related laws found	
	Mandatory testing within the criminal justice system	Persons convicted of crimes involving potential transmission to victims upon request of victim	KSA § 65-6009 KSA § 38-2317
		Occupational exposure – correctional employees – secretary of corrections may order testing of source inmate	KSA § 65-6017
	Mandatory testing outside of the criminal justice system	No related laws found	
PRE-TESTING	Mandatory offering of HIV/AIDS information and/or testing	Insurer must provide information to applicant when test is required	KAR 40-1-36
		Person charged with a crime involving potential transmission must be informed of availability of testing and counseling	KSA § 65-6009
	Informed consent	Written informed consent required for insurance testing	KSA 40-1-36
	Counseling requirements	Persons, including juveniles, charged with an offense, victims, and parents must be notified of availability of testing and counseling	KSA § 38-2317 KSA § 65-6009
	Anonymous testing	State department of health must sponsor anonymous testing sites	KSA § 65-6007
POST-TEST	Disclosure/confidentiality	Patient HIV information as confidential	KAR 28-1-26
		Exceptions to confidentiality	KSA § 65-6004

		Penalties for unlawful disclosure	KSA § 65-6005
		Disclosure of HIV status of sex offender to victim	KSA § 65-6016 KSA § 38-2317
	Reporting	Name-based reporting	KSA § 65-118 KSA § 65-6002
OTHER	Testing of pregnant women and/or newborns	Routine opt-out screening for women in their first trimester	KSA § 65-6018
		Repeat opt-out screening during third trimester or at the time of labor and delivery for women at high risk	KSA § 65-6018
		Opt-out HIV screening as soon as possible within medical standards at L&D with unknown HIV status of mother	KSA § 65-6018
		Consent must be written; pregnant must sign a form (see language below for specific form requirements)	KSA § 65-6018
		Mandatory newborn screening if mother has unknown HIV status and refused testing (as soon as possible within medical standards); mother's/guardian's consent not needed; exceptions for religious objections	KSA § 65-6018
		Documentation of mother's status in mother's and newborn's medical records	KSA § 65-6018
	Testing of minors/adolescents	Minors may consent to diagnosis of and treatment for STDs	KSA § 65-2892
		Physician may, but is not required to, inform parents or guardians	KSA § 65-2892
	Rapid HIV testing	Confirmatory test must be submitted when using an HIV test kit for perinatal testing	KSA § 65-6018
	Training and education of health care providers	No related laws found	

Recommended Resources

Kansas Legislature

<http://www.kslegislature.org/legsrv-statutes/index.do>

Kansas Administrative Regulations

<http://www.kslegislature.org/legsrv-kars/index.do>

Kansas Department of Health and Environment

<http://www.kdhe.state.ks.us/>

Title 38: Minors

KS Title 38 Code §	Code Language
§ 38-123b	<p>Consent by minor 16 or over to hospital, medical or surgical treatment or procedures.</p> <p>Notwithstanding any other provision of the law, any minor sixteen (16) years of age or over, where no parent or guardian is immediately available, may give consent to the performance and furnishing of hospital, medical or surgical treatment or procedures and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of such a minor shall not be necessary in order to authorize the proposed hospital, medical or surgical treatment or procedures.</p>
§ 38-2317	<p>Infectious disease testing and counseling; disclosure of results; penalties.</p> <p>(a) As used in this section:</p> <p>(1) "Adjudicated person" means a person found to be a juvenile offender or a person found not to be a juvenile offender because of mental disease or defect.</p> <p>(2) "Laboratory confirmation" means positive test results from a confirmation test approved by the secretary of health and environment.</p> <p>(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.</p> <p>(4) "Infectious disease test" means a test approved by the secretary of health and environment.</p> <p>(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.</p> <p>(6) "Infectious disease" means any disease communicable from one person to another through contact with bodily fluids.</p> <p>(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of infectious disease testing and counseling and shall cause each alleged victim of the offense and if the alleged victim is a minor, the parent, if any, to be notified that infectious disease testing and counseling are available.</p> <p>(c) If the victim of the offense or if the victim is a minor, if the victim's parent requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that such person has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person charged with the offense to submit to infectious disease tests as.</p>

KS Title 38 Code §	Code Language
	<p>(d) For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to a infectious disease tests; or (2) shall order the adjudicated person to submit to infectious disease tests if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If an infectious disease test is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If testing for HIV or hepatitis B infection results in a negative reaction, the court shall order the adjudicated person to submit to another test for HIV or hepatitis B infection six months after the first test was administered.</p> <p>(e) The results of infectious disease tests ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (d) by a victim or by the parent or legal guardian of a victim. If infectious disease tests under this section results in a laboratory, the results shall be reported to the secretary of health and environment and to: (1) The commissioner of juvenile justice, in the case of a juvenile offender or a person not adjudicated because of mental disease or defect, for inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case of a person under 16 years of age who has been convicted as an adult, for inclusion in such person's medical file. The secretary of health and environment shall provide to each victim of the crime or sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus and hepatitis B, testing for HIV or hepatitis B infection in accordance with K.S.A. 65-6001 et seq., and amendments thereto, and referral for appropriate health care and services.</p> <p>(f) The costs of any counseling and testing provided under subsection (e) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.</p> <p>(g) When a court orders an adjudicated person to submit to infectious disease tests under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of infectious disease tests nor</p>

KS Title 38 Code §	Code Language
	<p>any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices.</p> <p>(h) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section or authorized in writing by the juvenile to receive the results or information. Any violation of this section is a class C nonperson misdemeanor.</p>

Title 65: Public Health

KS Title 65 Code §	Code Language
§ 65-118	<p>Reporting to local health authority as to infectious or contagious diseases; persons reporting; immunity from liability; confidentiality of information; disclosure.</p> <p>(a) Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease. In the case of a licensed hospital or adult care home, the administrator may designate an individual to receive and make such reports. The secretary of health and environment shall, through rules and regulations, make provision for the consolidation of reports required to be made under this section when the person required to make the report is working in a licensed hospital or adult care home. Laboratories certified under the federal clinical laboratories improvement act pursuant to 42 code of federal regulations, 493 shall report the results of microbiologic cultures, examinations, immunologic essays for the presence of antigens and antibodies and any other laboratory tests which are indicative of the presence of a reportable infectious or contagious disease to the department of health and environment. The director of the division of health may use information from death certificates for disease investigation purposes.</p> <p>(b) Any person who is an individual member of a class of persons designated under subsection (a) of this section and who reports the information required to be reported under such subsection in good faith and without malice to a county or joint board of health, a local health officer or the department of health and environment shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.</p> <p>(c) Information required to be reported under subsection (a) of this section shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the requirements of subsection (a) of this section or subsection (a) of K.S.A. 65-119, except such information may be disclosed: (1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes; (2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;</p>

KS Title 65 Code §	Code Language
	<p>(3) if the disclosure is necessary, and only to the extent necessary, to protect the public health;</p> <p>(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat infectious or contagious diseases. Any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or</p> <p>(5) if the information to be disclosed is required in a court proceeding involving child abuse and the information is disclosed in camera.</p>
§ 65-1108a	<p>Information obtained through certain tests conducted by approved laboratories confidential; exceptions; penalties for violations</p> <p>(a) Information obtained through tests performed under 42 CFR Part 493 and amendments thereto (CLIA '88) or tests to evaluate biological specimens for the presence of controlled substances included in schedule I or II of the uniform controlled substances act or metabolites thereof, conducted by a laboratory approved under K.S.A. 65-1,107 and 65-1,108 and amendments thereto by the secretary of health and environment to perform such tests shall be confidential and shall not be disclosed or made public by officers or employees, or former officers and employees, of such laboratory, except that such laboratory test results shall be released only to: (1) The person who ordered such tests be made; (2) the secretary of health and environment if required by the secretary as part of the approval of the laboratory under K.S.A. 65-1,107 and 65-1,108 and amendments thereto; and (3) the secretary of health and environment for data collection purposes so long as such information is released in such a manner that the information will not reveal the identity of the person who is the subject of the information.</p> <p>(b) A violation of this section shall constitute a class C misdemeanor.</p>
§ 65-2892	<p>Examination and treatment of persons under 18 for venereal disease; liability.</p> <p>Any physician, upon consultation by any person under eighteen (18) years of age as a patient, may, with the consent of such person who is hereby granted the right of giving such consent, make a diagnostic examination for venereal disease and prescribe for and treat such person for venereal disease including prophylactic treatment for exposure to venereal disease whenever such person is suspected of having a venereal disease or contact with anyone having a venereal disease. All such examinations and treatment may be performed without the consent of, or notification to, the parent, parents, guardian or any other person having custody of such person. Any physician examining or treating such person for venereal disease may, but shall not be obligated to, in accord with his opinion of what will be most beneficial for such person, inform the spouse, parent, custodian, guardian or fiance of such person as to the treatment given or needed without the consent of such person. Such informing shall not constitute libel or slander or a violation of the right of privacy or privilege or otherwise subject the physician to any liability whatsoever. In any such</p>

KS Title 65 Code §	Code Language
	<p>case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered, provided reasonable care has been taken to elicit from such person under eighteen (18) years of age any history of sensitivity or previous adverse reaction to the medication.</p>
§ 65-6001	<p>Definitions</p> <p>As used in K.S.A. 65-6001 to 65-6007, inclusive, and K.S.A. 65-6008, 65-6009 and 65-6010, and amendments thereto, unless the context clearly requires otherwise:</p> <p>(a) "AIDS" means the disease acquired immune deficiency syndrome.</p> <p>(b) "HIV" means the human immunodeficiency virus.</p> <p>(c) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary.</p> <p>(d) "Secretary" means the secretary of health and environment.</p> <p>(e) "Physician" means any person licensed to practice medicine and surgery.</p> <p>(f) "Laboratory director" means the person responsible for the professional, administrative, organizational and educational duties of a laboratory.</p> <p>(g) "HIV infection" means the presence of HIV in the body.</p> <p>(h) "Racial/ethnic group" shall be designated as either white, black, Hispanic, Asian/Pacific islander or American Indian/Alaskan Native.</p> <p>(i) "Corrections officer" means an employee of the department of corrections as defined in subsections (f) and (g) of K.S.A. 75-5202, and amendments thereto.</p> <p>(j) "Emergency services employee" means an attendant or first responder as defined under K.S.A. 65-6112, and amendments thereto, or a firefighter.</p> <p>(k) "Law enforcement employee" means:</p> <ol style="list-style-type: none"> (1) Any police officer or law enforcement officer as defined under K.S.A. 74-5602, and amendments thereto; (2) any person in the service of a city police department or county sheriff's office who performs law enforcement duties without pay and is considered a reserve officer; (3) any person employed by a city or county who is in charge of a jail or section of jail, including jail guards and those who conduct searches of persons taken into custody; or (4) any person employed by a city, county or the state of Kansas who works as a scientist or technician in a forensic laboratory. <p>(l) "Employing agency or entity" means the agency or entity employing a corrections officer, emergency services employee, law enforcement employee or jailer.</p> <p>(m) "Infectious disease" means AIDS.</p> <p>(n) "Infectious disease tests" means tests approved by the secretary for detection of infectious diseases.</p> <p>(o) "Juvenile correctional facility staff" means an employee of the juvenile justice authority working in a juvenile correctional facility as defined in K.S.A. 38-1602, and amendments thereto.</p>

KS Title 65 Code §	Code Language
§ 65-6002	<p>Reporting to secretary of health and environment information concerning AIDS or HIV infection; information reported, when; persons reporting; immunity from liability; confidentiality of information; disclosure; use of information to discriminate prohibited</p> <p>(a) Whenever any physician has information indicating that a person is suffering from or has died from AIDS, such knowledge or information shall be reported immediately to the secretary, together with the name and address of the person who has AIDS. Any physician or administrator of a medical care facility or such administrator's designee who is in receipt of a report indicating laboratory confirmation of HIV infection resulting from the examination of any specimen provided to a laboratory by such physician or administrator or designee shall report all such information to the secretary. Reports shall be provided within 30 days of testing and shall include the name and address of the person tested, the type of test or tests performed, the date of performance of the test or tests, the results of the test or tests, the sex, date of birth, county of residence and racial/ethnic group of the person tested.</p> <p>(b) Whenever any laboratory director has information on laboratory confirmation of HIV infection, this information shall be reported to the secretary. Reports shall be provided within 30 days of testing and shall include the type of test or tests, the results of the test or tests, dates of performance of the test or tests, the name of the physician or facility requesting the test or tests, and any identifying information about the person tested as the laboratory director has access to, such as the name and address of the person tested, the sex, date of birth, county of residence and racial/ethnic group, exposure category and pregnancy status of the person tested.</p> <p>(c) Any physician, administrator of a medical care facility or such administrator's designee or laboratory director who reports the information required to be reported under subsection (a) or (b) in good faith and without malice to the secretary shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such physician, administrator or designee or laboratory director shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.</p> <p>(d) Information required to be reported under subsection (a) or (b) and information obtained through laboratory tests conducted by the department of health and environment relating to HIV or AIDS and persons suffering therefrom or infected therewith shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the disclosure necessary under subsection (a) or (b) or under subsection (a) of K.S.A. 65-6003 and amendments thereto or the usual reporting of laboratory test results to persons specifically designated by the secretary as authorized to obtain such information, except such information may be disclosed:</p>

KS Title 65 Code §	Code Language
	<p>(1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;</p> <p>(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;</p> <p>(3) if the disclosure is necessary, and only to the extent necessary, as specified by rules and regulations of the secretary, to protect the public health;</p> <p>(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat AIDS or HIV infection, except that any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or</p> <p>(5) if the information to be disclosed is required in a court proceeding involving a minor and the information is disclosed in camera.</p> <p>(e) Information regarding cases of AIDS or HIV infection reported in accordance with this section shall be used only as authorized under this act. Such information shall not be used in any form or manner which would lead to the discrimination against any individual or group with regard to employment, to provision of medical care or acceptance into any facilities or institutions for medical care, housing, education, transportation, or for the provision of any other goods or services.</p>
§ 65-6003	<p>Investigation of cases of AIDS or HIV infection; rules and regulations; protection of public health; disclosure of information; confidentiality; agreements with local boards of health authorized.</p> <p>(a) The secretary shall investigate cases of persons who have HIV infection or AIDS and monitor such cases during their continuance. The secretary may adopt and enforce rules and regulations for the prevention and control of HIV infection or AIDS as may be necessary to protect the public health. The secretary shall adopt rules and regulations for maintaining confidentiality of information under this act which at a minimum are as strict as the centers for disease control and prevention guidelines.</p> <p>(b) Any information relating to persons who have HIV infection or AIDS which is required to be disclosed or communicated under subsection (a) shall be confidential and shall not be disclosed or made public beyond the disclosure necessary under subsection (a) or under subsection (a) of K.S.A. 65-6002 and amendments thereto to persons specifically designated by the secretary as authorized to obtain such information, except as otherwise permitted by subsection (d) of K.S.A. 65-6002 and amendments thereto.</p> <p>(c) The secretary may enter into agreements with any county or joint board of health to perform duties required to be performed by the secretary under subsection (a) as specified by such agreement. The confidentiality requirements of subsection (b) shall apply to any duties performed pursuant to such an agreement.</p>

KS Title 65 Code §	Code Language
§ 65-6004	<p>Physician authorized to disclose to certain persons information about patient who has infectious disease or who has had laboratory confirmation of a positive reaction to an infectious disease test; confidentiality of information; immunity in judicial proceedings.</p> <p>(a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had laboratory confirmation of a positive reaction to an infectious disease test may disclose such information to other health care providers, emergency services employees, corrections officers or law enforcement employees who have been or will be placed in contact with body fluids of such patient. The information shall be confidential and shall not be disclosed by such health care providers, emergency services employees, corrections officers or law enforcement employees except as may be necessary in providing treatment for such patient.</p> <p>(b) Notwithstanding any other law to the contrary, a physician who has reason to believe that the spouse or partner of a person who has had laboratory confirmation of HIV infection or who has AIDS may have been exposed to HIV and is unaware of such exposure may inform the spouse or partner of the risk of exposure. The information shall be confidential and shall not be disclosed by such spouse or partner to other persons except to the spouse or partner who has had laboratory confirmation of HIV infection or who has AIDS.</p> <p>(c) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to HIV.</p> <p>(d) Any physician who discloses or fails to disclose information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.</p>
§ 65-6005	<p>Unlawful acts; penalties</p> <p>Except as otherwise provided in this section, any person violating, refusing or neglecting to obey any provision of K.S.A. 65-6001 through 65-6004, and amendments thereto, or of the rules and regulations adopted by the secretary for the prevention and control of HIV infection or AIDS shall be guilty of a class C misdemeanor. Any person who discloses information which is made confidential and prohibited from disclosure under K.S.A. 65-6002 through 65-6004, and amendments thereto, shall be guilty of a misdemeanor punishable by a fine of not less than \$ 500 nor more than \$ 1,000 and by imprisonment in the county jail for not more than six months.</p>
§ 65-6007	<p>Establishment and maintenance of sites for testing for HIV.</p> <p>The secretary shall establish and maintain test sites throughout the state</p>

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	<p>where testing for HIV may be undertaken including anonymous testing. The secretary shall establish test sites throughout the state so that an anonymous test site is available within 100 miles of any resident of the state.</p>
§ 65-6009	<p>Same; persons arrested or convicted; disclosure of test results; costs of counseling and testing.</p> <p>(a) At the time of an appearance before a magistrate under K.S.A. 22-2901 and amendments thereto, the magistrate shall inform any person arrested and charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved of the availability of infectious disease tests and shall cause the alleged victim of such a crime, if any, to be notified that infectious disease tests and counseling are available. If the victim of the crime or the county or district attorney requests the court to order infectious disease tests of the alleged offender or if the person arrested and charged with a crime stated to the law enforcement officer making such arrest that the person arrested and charged with the crime has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the arrested person to submit to infectious disease tests. The results of any test obtained under this section shall be inadmissible in any criminal or civil proceeding.</p> <p>(b) Upon conviction of a person for any crime which the court determines from the facts of the case involved or was likely to have involved the transmission of body fluids from one person to another, the court: (1) May order the convicted person to submit to infectious disease tests; or (2) shall order the convicted person to submit to infectious disease tests if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to issue such order. If infectious disease tests are ordered under this subsection, the victim of the crime, if any, who is not a minor, shall designate a health care provider or counselor to receive such information on behalf of the victim. If the victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive such information.</p> <p>(c) The results of any infectious disease test ordered under subsection (a) shall be disclosed to the law enforcement officer making such arrest, the person arrested and such other persons as the court determines have a legitimate need to know the test result in order to provide for their protection. The results of any infectious disease test ordered under subsection (b) shall be disclosed to the court which ordered the test, the convicted person and to the person designated under subsection (b) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor. If an infectious disease test ordered under this section results in a positive reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections.</p> <p>(d) As used in this section, infectious disease includes HIV and hepatitis B.</p>

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	<p>(e) The costs of any counseling and testing provided under this section shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.</p>
§ 65-6016	<p>Physician authorized to disclose infectious diseases to certain corrections employees; confidentiality; immunity in judicial proceedings.</p> <p>(a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had a positive reaction to an infectious disease test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient. The information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient. Any other disclosure of such information by a corrections employee is a class C misdemeanor.</p> <p>(b) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to an infectious disease.</p> <p>(c) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.</p>
§ 65-6017	<p>Court ordered testing of certain offenders in custody of secretary of corrections.</p> <p>(a) If a corrections employee has been placed in contact with body fluid from one or more offenders while performing duties within the scope of such employee's duties as a corrections employee, the secretary of corrections or the secretary's designee upon consultation with a medical care provider may make application to the district court of the county where the offender or offenders are in custody for an order requiring such offender or offenders to submit to tests for infectious diseases. Such application shall include an allegation that the offender or offenders sought to be tested have been requested to voluntarily submit to tests for a specific infectious disease or diseases and have refused the tests and that the corrections employee has agreed to voluntarily testing for the same infectious disease, including appropriate follow-up testing. When any such application is received, the court shall hold a hearing forthwith and shall issue its order thereon immediately if the court finds that: (1) There is probable cause to believe that the employee involved has been placed in</p>

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	<p>contact with body fluid of the offender or offenders sought to be tested; and (2) the offender or offenders sought to be tested have been requested to submit to the tests and have refused, unless the court makes a further finding that exigent circumstances exist that would, in the court's judgment, excuse the applicant from making such a request. Expenses of the testing shall be assessed as a cost of the proceeding.</p> <p>(b) If a test for an infectious disease ordered pursuant to this section results in a negative reaction, the court, upon proper application, shall order the offender tested to submit to another test six months after the date the first test was administered.</p> <p>(c) If a test is ordered pursuant to this section, the corrections employee shall designate a health care provider or counselor to receive the test results on behalf of the corrections employee. The results of the test shall be disclosed to the court that ordered the test, the person tested and the health care provider or counselor designated by the corrections employee. The results shall also be disclosed to the secretary of corrections for inclusion in the offender's medical records. Test results of the corrections employee shall not be disclosed except as specifically authorized in writing by the employee.</p> <p>(d) When a court orders an offender to submit to tests under this section which require withdrawal of blood, the withdrawal of the blood may be performed only by: (1) A physician or a person acting under the supervision of a physician; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.</p> <p>(e) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by law to receive such results, reports or information. Any violation of this subsection is a class C misdemeanor.</p>
§ 65-6018	<p>(a) A physician or other health care professional who is otherwise authorized by law to provide medical treatment to a pregnant woman shall take or cause to be taken, during the first trimester of pregnancy, a routine opt-out screening for HIV infection. When the physician or other health care professional determines certain pregnant women to be at high risk for acquiring HIV infection, such women shall be administered a repeat screening during the third trimester or at the time of labor and delivery. When a pregnant woman's HIV status is unknown for any reason at the time of labor and delivery, such woman shall be screened for HIV infection as soon as possible within medical standards. When an HIV rapid test kit is used for screening, a confirmatory sample shall be submitted for serological testing which meets the standards recognized by the United States public</p>

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	<p>health service for the detection of HIV to a laboratory approved by the secretary of health and environment for such serological tests. A pregnant woman shall have the right to refuse screening under this subsection at any time. Before any screening is performed under this subsection, the pregnant woman shall be informed in writing of the provisions of this subsection and the purposes and benefits of the screening, and the pregnant woman shall sign a form provided by the department of health and environment to authorize or opt-out of the screening. The form shall contain the following wording: "I test all of my pregnant patients for HIV as part of the panel of routine tests to alert me to any conditions that can have a very serious effect on your pregnancy and your baby. You will be tested for HIV unless you tell me not to."</p> <p>(b) When the mother's HIV status is unknown because of refusal to take such screening during the pregnancy or any other reasons, such mother's newborn child shall be screened with an HIV test as soon as possible within medical standards to determine if prophylaxis is needed. A mother's or a guardian's consent is not required to screen such newborn child, except that this subsection shall not apply to any newborn child whose parents object to the test as being in conflict with their religious tenets and practices. Documentation of a mother's HIV status shall be recorded in both the mother's and newborn's medical records. The mother of the child shall be informed in writing of the provisions of this subsection and of the purposes and benefits of the screening and shall sign a form stating that the mother has received the information.</p> <p>(c) The secretary of health and environment is hereby authorized to adopt rules and regulations, within six months from the effective date of this section, establishing guidelines for routine HIV infection screening for pregnant women and each newborn child where the HIV status of the mother is unknown at the time of birth. These rules and regulations shall be based on the recommendations and best practices established by the United States centers for disease control and prevention and public health service task force recommendations for use of antiretroviral drugs in pregnant HIV infected women for maternal health and interventions to reduce perinatal HIV transmission in the United States.</p> <p>(d) As used in this section, physician, HIV and HIV infection have the meanings defined in K.S.A. 65-6001, and amendment thereto.</p> <p>(e) This section shall be effective on and after July 1, 2010.</p>

Kansas Administrative Regulations – Title 28: Department of Health and Environment

Title 28 KAR	Code Language
28-1-26	<p>Protection of confidentiality of information regarding individuals with HIV infection.</p> <p>(b) Each public health agency shall appoint an HIV confidentiality officer, who shall have the authority to make decisions about the agency operations that may affect the protection of HIV confidential information.</p> <p>(c) HIV confidential information shall be maintained in a secured area that is not easily accessible through a window and that is protected by a locked door. Access to the secured area shall be limited to authorized personnel only, and "Restricted area--No unauthorized access" signs shall be prominently posted. Access to the secured area by cleaning crews and other building maintenance personnel shall be granted only during hours when authorized personnel are available for escort or under conditions in which the data is protected by security measures specified in the written security policy.</p> <p>(d) Hard copy records containing HIV confidential information shall be kept in a locked cabinet located in a secured area, except when in use by authorized personnel. Records shall not be removed from a secured area without authorization from the HIV confidentiality officer.</p> <p>(e) Electronic records containing HIV confidential information shall be kept on computers protected by coded, individual passwords and located in a secured area. Transfer of records onto removable electronic media shall occur only if absolutely necessary for HIV surveillance program operations and shall be authorized by the HIV confidentiality officer. The records shall always be encrypted before the transfer to the removable media. Exchange of HIV confidential information using electronic mail shall be done only if encryption procedures are utilized.</p> <p>(f) HIV confidential information shall be permanently removed from HIV records as soon as the information is no longer necessary for the purposes of the control of HIV infection.</p> <p>(g) Mail containing HIV confidential information shall not include on the envelope or address any reference to the HIV infection, to the HIV virus, or to AIDS.</p> <p>(h) All telephone conversations in which HIV confidential information is exchanged shall be conducted in a manner that prevents the conversations from being overheard by unauthorized persons.</p> <p>(i) Each public health agency shall adopt and implement a written security policy related to HIV confidential information consistent with the provisions of this regulation. A copy of the security policy shall be distributed to all authorized personnel.</p>

Title 28 KAR	Code Language
	<p>(j) Access to HIV confidential information shall be restricted to a minimum number of authorized personnel trained in confidentiality procedures and aware of penalties for the unauthorized disclosure of HIV confidential information. The HIV confidentiality officer shall authorize the persons who may have access to HIV confidential information and shall keep a list of authorized personnel.</p> <p>(k) A confidentiality agreement shall be signed by each person authorized to access HIV confidential information. The HIV confidentiality officer shall maintain a copy of the confidentiality agreement for all authorized personnel.</p> <p>(l) HIV confidential information shall not be cross-matched with records in other data bases if the resulting cross-matched data bases do not have equivalent security and confidentiality protections, and penalties for unauthorized disclosure as those for the HIV confidential information.</p> <p>(m) The use of records containing HIV confidential information for research purposes shall be approved by institutional review boards, and all researchers shall sign confidentiality statements. Information made available for epidemiologic analyses shall not include names or other HIV confidential information and shall not result in the direct or indirect identification of persons reported with HIV and AIDS.</p> <p>(n) Any security breach of HIV confidential information shall be investigated by the HIV confidentiality officer, and personnel sanctions and criminal penalties shall be imposed as appropriate. The HIV confidentiality officer shall make an immediate telephone notification to the secretary that a breach of HIV confidential information occurred and shall transmit to the secretary a written report within seven days from the time the breach is discovered.</p> <p>(o) The provisions contained in this regulation shall apply to all individuals required to send HIV reports to the secretary under K.S.A. 65-6002, and amendments thereto, and to counseling and testing sites that receive funds from public health agencies. (Authorized by K.S.A. 65-101, 65-128, and 65-6003, as amended by L. 1999, ch. 109, sec. 3; implementing K.S.A. 65-128 and K.S.A. 1998 Supp. 65-6002, as amended by L. 1999, ch. 109, sec. 2; effective Feb. 18, 2000.)</p>

Kansas Administrative Regulations – Title 40: Department of Insurance

Title 40 KAR	Code Language
40-1-36	<p>Life and health insurance applications; underwriting; acquired immunodeficiency syndrome (AIDS); defined</p> <p>(b) All individual and group applications for insurance that require health information or questions shall comply with the following standards:</p> <p>(1) Whenever an applicant is requested to take an HIV antibody test in connection with an application for insurance, the insurer shall:</p> <p>(A) Obtain written informed consent from the applicant;</p> <p>(B) reveal the use of the test to the applicant;</p> <p>(C) provide the applicant printed material prior to testing containing factual information describing AIDS, its causes, symptoms, how it is and can be spread, the tests used to detect the HIV antibody and what a person should do whose test results are positive; or, arrange for the applicant to receive relevant counseling from a qualified practitioner who has had extensive training and experience in addressing the fears, questions and concerns of persons tested for the HIV antibody;</p> <p>(D) administer an initial test which meets the test protocol established by the food and drug administration of the federal department of health and human services;</p> <p>(E) administer a second test, the immunoelectroprecipitate using disrupted whole virus antigen test (western blot), to substantiate an initial positive test result; and</p> <p>(F) disclose the results of the testing in accordance with K.S.A. 40-2,112(b)(2) and (3).</p> <p>(2) Insurers may ask diagnostic questions on applications for insurance.</p> <p>(3) Application questions shall be formed in a manner designed to elicit specific medical information and not lifestyle, sexual orientation or other inferential information.</p> <p>(4) Questions which are vague, subjective, unfairly discriminatory, or so technical as to inhibit a clear understanding by the applicant are prohibited.</p> <p>(c) All underwriting shall be based on individual review of specific health information furnished on the application, any reports provided as a result of medical examinations performed at the company's request, medical record information obtained from the applicant's health care providers or any combination of the foregoing. Adverse underwriting decisions shall not be based on less than conclusive responses to application questions.</p> <p>(d) Adverse underwriting decisions shall be based on sound actuarial principles pursuant to K.S.A. 40-2,109. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2,109, 40-2404(7) as amended by L. 1987, Ch. 171, Sec. 1; effective, T-88-35, Sept. 17, 1987; amended May 1, 1988.)</p>