

South Dakota

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April 8, 2011

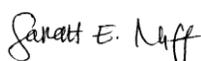
To the Reader:

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

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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: 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>

South Dakota

A Quick Reference Guide for Clinicians to South Dakota HIV Testing Laws

April 8, 2011

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

Informed Consent

- No specific provisions regarding consent were found.

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 not required.

Minor/Adolescent Testing

- Minors may consent to STD testing, HIV not explicitly included.

South Dakota

Perinatal Quick Reference Guide:

A Guide to South Dakota Perinatal HIV Testing Laws for Clinicians

April 8, 2011

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

- **Initial visit**
 - No specific provisions regarding initial visit prenatal testing were found.
- **Third trimester**
 - No specific provisions regarding third trimester prenatal testing were found.

Labor & Delivery

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

Neonatal

- No specific provisions regarding neonatal testing were found.

Other

- N/A

South Dakota State Policies Relating to HIV Testing, 2011

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South Dakota Codified Laws [SDCL]

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South Dakota Administrative Rules [SDAR]

Title 44: Health..... Pages 10-12

	Policy Category	Type	Section Code(s)
RESTRICTIONS/MANDATES	Restrictions on use of HIV test	No related laws found	
	Mandatory testing within the criminal justice system	Potential transmission to victims – victims and law enforcement officers may request testing of source in cases of exposure	SDCL § 23A-35B-1 SDCL § 23A-35B-3 SDCL § 23A-35B-4 SDCL § 23A-35B-5
		Occupational exposure – law enforcement officers may request testing and counseling	SDCL § 23A-35B-1 SDCL § 23A-35B-6
	Mandatory testing outside of the criminal justice system	A potentially exposed emergency medical services person may request testing of source individual in writing or petition the court if the source individual refuses/does not respond in 3 days	SDCL § 23A-35B SDCL § 23A-35B-1
PRE-TESTING	Mandatory offering of HIV/AIDS information and/or testing	Persons seeking marriage licenses must receive HIV information	SDCL §25-1-28.1
	Informed consent	No related laws found	
	Counseling requirements	Victims may request counseling but department not required to provide services	SDCL § 23A-35B-2
	Anonymous testing	No related laws found	
POST-TESTING	Disclosure/confidentiality	HIV test results as confidential	SDCL §34-22-12.1
		Court orders may allow access to confidential test results	SDCL §34-22-12.1
		Disclosure to specific parties	SDAR 44:20:02:08
		Disclosure to health care	SDAR 44:20:02:08

		workers, EMS, funeral directors in cases of exposure	
		Disclosure to contacts of infected individuals	SDAR 44:20:02:08
		Penalties for unauthorized disclosure of HIV results	SDCL §34-22-12.2
	Reporting	Name-based reporting	SDAR 44:20:01:04 SDAR 44:20:02:05
OTHER	Testing of pregnant women and/or newborns	No related laws found	
	Testing of minors/adolescents	Minors may consent to testing and treatment for venereal disease	SDCL §34-23-16 SDCL §34-23-17
	Rapid HIV testing	No related laws found	
	Training and education of health care providers	No related laws found	

Recommended Resources

South Dakota Codified Laws

<http://legis.state.sd.us/statutes/index.aspx>

South Dakota Administrative Rules

<http://legis.state.sd.us/rules/index.aspx>

South Dakota Department of Health

<http://www.state.sd.us/doh>

Title 23A: Criminal Procedure

SD Title 23A Code §	Code Language
§ 23A-35B	<p>An emergency medical services person who is a victim may request in writing to the source individual, or if the source individual is deceased, to a relative of the source individual or to the source individual's estate, for medical records or information concerning blood-borne pathogens. If the source individual, a relative, or the estate denies the request or does not provide a response within three business days, the emergency medical services person may file a petition with the circuit court to require the source individual to provide the information or to be tested for blood-borne pathogens by the Department of Health and that an order be obtained for the purpose of taking a blood sample from the source individual for testing. The petition shall state that the emergency medical services person believes there was an exchange of blood, semen, or other bodily fluids from the source individual to the emergency medical services person and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the emergency medical services person and the source individual, a relative, or the estate may be present. If the court finds probable cause to believe that there was an exchange of blood, semen, or other bodily fluids from the source individual to the emergency medical services person, the court may issue an order for the purpose of taking a blood sample from the source individual for testing for blood-borne pathogens. If the source individual is not available for testing, the court may order a release of medical information from the source individual's medical providers to the emergency medical services person.</p>
§ 23A-35B-1	<p>Terms used in this chapter mean:</p> <ol style="list-style-type: none"> (1) "Assault," an offense described in § 22-18-1, in which the facts show a possibility of exchange of bodily fluids; (2) "Blood-borne pathogens," any of a family of pathogenic micro-organisms that are present in and may be transmitted by human blood, including hepatitis B and HIV; (3) "Crime of violence," any of the offenses described in subdivision 22-1-2(9); (4) "Defendant," a person as described in subdivision 23A-45-9(4); (5) "Emergency medical services person," a person who renders emergency care or assistance including: <ol style="list-style-type: none"> (a) A person employed or receiving compensation to provide out-of-hospital emergency medical services such as a firefighter, paramedic, emergency medical technician, licensed nurse, rescue squad person, or other person who serves as an employee or volunteer of an ambulance service or other first responder, who provides out-of-hospital emergency medical services during the performance of the person's duties; (b) A person employed as a law enforcement officer; (c) A person employed as a coroner or a funeral director; (d) A person employed as a forensic crime laboratory worker while working outside the laboratory and involved in a criminal investigation; or

SD Title 23A Code §	Code Language
	<p>(e) A person who renders emergency care or assistance at the scene of an emergency or while an injured person is being transported to receive medical care and who is acting as an unpaid volunteer also known as a good samaritan;</p> <p>(6) "HIV," the human immunodeficiency virus or any other identified causative agent of acquired immune deficiency syndrome (AIDS);</p> <p>(7) "Juvenile," a minor charged in juvenile court with being a delinquent child as the result of actions that would constitute a sexual assault, an assault or a crime of violence in criminal court;</p> <p>(8) "Law enforcement officer," any person described in subdivision 23A-45-9(9) or (14);</p> <p>(9) "Sexual assault," an offense described in chapter 22-22 in which the facts show a possibility of exchange of bodily fluids;</p> <p>(10) "Source individual," any person, living or dead, whose blood, tissue, or potentially infectious body fluids may be a source of blood-borne pathogen exposure to an emergency medical services person;</p> <p>(11) "Test," "testing," any medically recognized test for determining the presence of blood-borne pathogens; and</p> <p>(12) "Victim," any person who is the direct subject of an alleged act which would constitute a crime of violence as defined by subdivision 22-1-2(9), a violation of chapter 22-22, an assault as defined by § 22-18-1, a violation of § 22-18-26, or a motor vehicle accident which involved a violation of chapter 32-23 or the parent or guardian of such a person if the person is under age eighteen. Except for § 23A-35B-3, a victim also includes any emergency medical services person who has potentially been exposed to a blood-borne pathogen while rendering aid to a source individual. If a victim is unable to make a request, a member of the victim's immediate family may make such request upon the victim's behalf.</p>
§ 23A-35B-2	<p>Victim's request for testing of self</p> <p>A victim may request that the Department of Health provide counseling, testing for infection by blood-borne pathogens and referral for appropriate health care and support services to the victim through its public health services. Such referral does not include any requirement that the Department of Health bear any responsibility for provision of such health care or support services to the victim.</p>
§ 23A-35B-3	<p>Victim's request for testing of defendant or juvenile -- Search warrant for blood sample</p> <p>A victim or a law enforcement officer may request in writing to the state's attorney that the defendant or the juvenile be tested for blood-borne pathogen infection by the Department of Health and that a search warrant be obtained for the purpose of taking a blood sample from the defendant or the juvenile for testing for such infection. The written request shall state that the victim or law enforcement officer believes there was an exchange of blood, semen or other bodily fluids from the defendant or the</p>

SD Title 23A Code §	Code Language
	juvenile to the victim or law enforcement officer and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the victim or law enforcement officer and the defendant or the juvenile may be present. If the court finds probable cause to believe that the defendant or the juvenile committed the offense and that there was an exchange of blood, semen or other bodily fluids from the defendant or the juvenile to the victim or from the defendant or the juvenile to the law enforcement officer, the court may order a search warrant for the purpose of taking a blood sample from the defendant or the juvenile for testing for blood-borne pathogen infection.
§ 23A-35B-4	<p>Testing procedure -- Notification of results -- Payment of costs</p> <p>A health professional licensed or certified to do so shall take the blood samples required for testing for blood-borne pathogen infection and forward them to the Department of Health for testing. The testing shall take place under a test protocol determined by the Department of Health. A licensed physician designated by the victim or the law enforcement officer to receive the results of the test shall notify the victim or the law enforcement officer of the results of the victim's or law enforcement officer's test and shall notify the victim or the law enforcement officer and the defendant or the juvenile of the results of the defendant's or the juvenile's test within forty-eight hours after receipt. The county in which the alleged crime of violence, assault, sexual assault, or equivalent juvenile offense occurred shall pay for the services of the licensed or certified health professionals involved in the counseling and the testing, and a defendant, if convicted, shall reimburse the county for the costs of the testing. If the defendant is an inmate under the jurisdiction of the Department of Corrections, the costs of the testing shall be taken from the inmate's account pursuant to § 24-2-29.</p>
§ 23A-35B-5	<p>Confidentiality -- Test results not to be used to establish guilt or innocence</p> <p>All persons involved in carrying out the provisions of this chapter shall act in a manner that will protect the confidentiality of the victim, the source individual, and the defendant or juvenile, including sealing relevant court records. The results of the test for infection by blood-borne pathogens may not be used to establish a defendant's guilt or innocence of the charge and may not be used to determine a juvenile's status as a delinquent child.</p>
§ 23A-35B-6	<p>Possible exchange of suspect's bodily fluids with officer -- Testing or counseling</p> <p>Any law enforcement officer who has reason to believe that in a crime of violence case, an assault, a violation of chapter 32-23 or a case of resisting arrest, or in an equivalent juvenile delinquency adjudication, there may have been an exchange of blood or other bodily fluids from the defendant or the juvenile to the officer, the officer may request that the</p>

SD Title 23A Code §	Code Language
	Department of Health provide counseling, testing for infection by blood-borne pathogens and referral for appropriate health care and support services to the officer through its public health services. Such referral does not include any requirement that the Department of Health bear any responsibility for provision of such health care or support services to the officer.

Title 25: Domestic Relations

SD Title 25 Code §	Code Language
§ 25-1-28.1	<p>Educational materials regarding sexually transmitted disease and prenatal care</p> <p>At the time the application for a marriage license is filed, the register of deeds shall distribute to each applicant educational materials prepared and provided at no cost to the counties by the Department of Health on topics related to sexually transmitted disease, HIV transmission, and prenatal care. The information shall include a list of locations where counseling and testing services are available.</p>

Title 34: Public Health and Safety	
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SD Title 34 Code §	Code Language
§ 34-22-12	<p>The state department of health shall provide for the collection and processing of mandatory reports of identifiable and suspected cases of communicable disease, communicable disease carriers, and laboratory tests for communicable disease carriers, from all physicians, hospitals, laboratories, and institutions. The state department of health shall maintain a complete case register of tuberculosis suspects, active and presumably active cases, tuberculosis contacts, and arrested or presumably arrested cases. The state department of health shall provide information necessary for disease surveillance and control. To implement this section, the state department of health may adopt, pursuant to chapter 1-26, rules specifying the methods by which disease reports shall be made, the contents and timeliness of such reports, and diseases which shall be considered in such reports.</p>
§ 34-22-12.1	<p>Any report required to be submitted pursuant to § 34-22-12 is strictly confidential medical information. No report may be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise. No report is admissible as evidence in any action of any kind in any court or before any tribunal, board, agency, or person. However, the Department of Health may release medical or epidemiological information under any of the following circumstances:</p> <ol style="list-style-type: none"> (1) For statistical purposes in such a manner that no person can be identified; (2) With the written consent of the person identified in the information released; (3) To the extent necessary to enforce the provisions of this chapter and rules promulgated pursuant to this chapter concerning the prevention, treatment, control, and investigation of communicable diseases; (4) To the extent necessary to protect the health or life of a named person; (5) To the extent necessary to comply with a proper judicial order requiring release of human immunodeficiency virus test results and related information to a prosecutor for an investigation of a violation of § 22-18-31; and (6) To the attorney general or an appropriate state's attorney if the secretary of the Department of Health has reasonable cause to suspect that a person violated § 22-18-31.
§ 34-22-12.2	<p>Except as provided in § 34-22-12.1, any person responsible for recording, reporting or maintaining medical reports required to be submitted pursuant to § 34-22-12 who knowingly or intentionally discloses or fails to protect medical reports declared to be confidential under § 34-22-12.1, or who compels another person to disclose such medical reports, is guilty of a Class 1 misdemeanor.</p>

§ 34-22-12.3	Good faith reporting or disclosure pursuant to § 34-22-12 does not constitute a libel or slander or a violation of the right of privacy or privileged communication.
§ 34-22-12.4	Any person who in good faith complies with the reporting requirements of § 34-22-12 is immune from civil and criminal liability for such action taken in compliance with the provisions of § 34-22-12. Compliance by a person or facility with the reporting requirements of § 34-22-12 fulfills any duty of such person or facility to protect the public health.
§ 34-23-16	Any licensed physician, upon consultation by any minor 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. Any such consent shall not be subject to later disaffirmance by reason of minority.
§ 34-23-17	Treatment of a minor for venereal disease by a county health department, state health department or doctors attached to such departments shall be offered to a minor, if available, upon the minor's request and without the necessity of consent of parents or notification to the parents.

South Dakota Administrative Rules – Title 44: Health	
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Title 44 SDAR	Code Language
44:20:01:04	<p>44:20:01:04. Category II reportable diseases.</p> <p>Category II reportable diseases include:</p> <ul style="list-style-type: none"> (1) Acquired immunodeficiency syndrome (AIDS); (24) Human immunodeficiency virus (HIV) infection;
44:20:02:01	<p>Reporting by physicians</p> <p>A physician attending a person who has been diagnosed with or is suspected of having a reportable disease listed in § 44:20:01:03 or 44:20:01:04 shall report to the department the information required by § 44:20:02:05. A physician may authorize a designee to submit reports of reportable diseases on persons attended by the physician, but the physician is not relieved of the reporting responsibility. Category I diseases are reportable immediately by telephone on the day of recognition or strong suspicion of disease. Category II diseases are reportable by telephone, mail, courier, or facsimile within three days after recognition or strong suspicion of disease.</p>
44:20:02:02	<p>Reporting by hospitals, laboratories, and institutions</p> <p>The director, principal manager, or chief executive officer of a hospital, laboratory, or institution who has knowledge that a person employed, attended, or served by the hospital, laboratory, or institution has been diagnosed with or is suspected of being a carrier of any of the reportable diseases listed in § 44:20:01:03 or 44:20:01:04 shall report to the department the information required by § 44:20:02:05. The director, principal manager, or chief executive officer of a hospital, laboratory, or institution may authorize a designee to submit reports of reportable diseases, but the director, principal manager, or chief executive officer is not relieved of the reporting responsibility. Category I diseases are reportable immediately by telephone on the day of recognition or strong suspicion of disease. Category II diseases are reportable by telephone, mail, courier, or facsimile within three days after recognition or strong suspicion of disease. Reporting of a reportable disease by a hospital, laboratory, or institution is in addition to, and not a substitute for, the reporting by the attending physician in § 44:20:02:01. For purposes of this section, hospitals, laboratories, and institutions include:</p> <ul style="list-style-type: none"> (1) Health care facilities defined in SDCL 34-12-1.1; (2) Medical laboratories; (3) Diagnostic laboratories; (4) Blood bank, collection, or storage centers; (5) Public and private elementary and secondary schools; (6) Public and private universities and colleges; (7) Health and correctional institutions operated or regulated by municipal, county, state, or federal governments; (8) Funeral establishments and mortuaries; (9) Child-care facilities defined in SDCL chapter 26-6; and

Title 44 SDAR	Code Language
	(10) Food service, lodging, and campground establishments defined in SDCL 34-18-1 .
44:20:02:05	<p>Contents of reports</p> <p>Reportable disease reports made pursuant to this article must include the following or as much of the following as is known to the person making the report:</p> <ol style="list-style-type: none"> (1) The disease or condition diagnosed or suspected; (2) The case's or carrier's name, age, date of birth, sex, race, address, and occupation; (3) The date of onset or diagnosis of illness and whether the person is hospitalized and, if so, where; (4) Any pertinent laboratory results; (5) Public health measures given; (6) The name and address of the attending physician; and (7) The name and telephone number of the person making the report. <p>If the reportable disease is an epidemic or outbreak, the report must also include the diagnosis or principal symptoms, the approximate number of cases, the place or community within which the cases occurred or are occurring, and the name and telephone number of the reporting physician or person. In addition to the information required by this section, the department may request the attending physician or a designee to complete a surveillance form provided by the department.</p>
44:20:02:08	<p>Disclosure of reports</p> <p>The department may disclose or authorize the disclosure of reportable disease information, limited to that necessary to provide medical care to a person or to prevent the further transmission of reportable diseases. The following may receive confidential, pertinent, reportable disease information:</p> <ol style="list-style-type: none"> (1) Physicians and health care workers for whom the information is necessary to proceed with medical treatment; (2) Institutions whose employees or clients may pose a risk to the public's health; (3) Review panels convened or authorized by the department regarding HIV-infected physicians or health care workers; (4) Agencies of the U.S. Public Health Services, including the Centers for Disease Control and Prevention and Indian Health Services, and other local, state, tribal, and territorial health agencies; (5) Agencies or persons receiving donated blood, organs, tissues, or body fluids; (6) Researchers conducting anonymous epidemiological research; (7) Health care workers, emergency response workers, good samaritans, and funeral directors if there has been a potentially significant exposure to the blood or body fluids of a person; (8) School officials or administrators of child care settings if there is an exposure affecting children;

Title 44 SDAR	Code Language
	(9) Contacts of infected persons; and (10) Health care workers needing tuberculosis information to comply with tuberculosis screening requirements.