

# West Virginia

## Introduction and Table of Contents

April 21, 2011

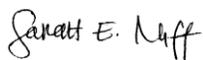
To the Reader:

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](mailto:neffs@nccc.ucsf.edu).

Thank you,



Sarah E. Neff, MPH  
Director of Research and Evaluation

&



Ronald H. Goldschmidt, MD  
Director

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.<sup>1</sup>
  - **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.<sup>1</sup>
- **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.<sup>2</sup>
- **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.<sup>1</sup>
- **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.<sup>3</sup>
- **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](mailto:neffs@nccc.ucsf.edu)

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

<sup>1</sup> 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>

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

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

# West Virginia

## A Quick Reference Guide for Clinicians to West Virginia HIV Testing Laws

April 21, 2011

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

### Informed Consent

- Voluntary informed consent process: The patient is informed either orally or in writing that HIV-related testing will be performed as part of their routine care, that HIV-related testing is voluntary and that the patient may decline HIV-related testing (opt-out); that the patient’s general consent for medical care includes consent for HIV-related testing.
- See *State Policies Relating to HIV Testing, 2011*, below, for exceptions to consent.

### Counseling

- No specific provisions regarding counseling were found.

### Provisos of Testing

- **Anonymous**
  - All testing must be available anonymously.
- **Rapid**
  - No specific provisions regarding rapid testing were found.
- **Routine**
  - HIV-related testing on a voluntary basis should be recommended by healthcare providers in a health facility as part of a routine screening for treatable conditions and as part of routine prenatal and perinatal care.

### Disclosure

- Notification to sexual partners of a possible exposure to HIV is not required.

### Minor/Adolescent Testing

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

# **West Virginia**

## ***Perinatal Quick Reference Guide:***

### **A Guide to West Virginia Perinatal HIV Testing Laws for Clinicians**

April 21, 2011

This Perinatal Quick Reference Guide for clinicians is a summary of relevant West Virginia 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 West Virginia HIV testing laws, please refer to the corresponding section of the *State HIV Testing Laws Compendium* ([www.nccc.ucsf.edu](http://www.nccc.ucsf.edu)), “Testing of pregnant women and/or newborns.”

#### **Prenatal**

- HIV-related testing on a voluntary basis should be recommended by any healthcare provider in a health facility as part of routine prenatal and perinatal care.
- Voluntary consent process: The patient is informed either orally or in writing that HIV-related testing will be performed as part of their routine care, that HIV-related testing is voluntary and that the patient may decline HIV-related testing (opt-out).

#### **Labor & Delivery**

- Targeted testing may be requested when there is no record of any HIV-related testing during pregnancy and the woman presents for labor and delivery.

#### **Neonatal**

- No specific provisions regarding neonatal testing were found.

#### **Other**

- N/A

**West Virginia  
State Policies Relating to HIV Testing, 2011**

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**West Virginia Code Annotated [WVC]**

**Chapter 16: Public Health**..... Pages 4-14

**Code of State Rules [CSR]**

**Title 64: West Virginia Division of Health**..... Pages 15-20

**Title 114: Insurance Commissioner**..... Pages 21-22

	<b>Policy Category</b>	<b>Type</b>	<b>Section Code(s)</b>
<b>RESTRICTIONS/ MANDATES</b>	Restrictions on use of HIV test	Positive test prohibited from barring health care, school attendance	WVC §16-3C-6
	Mandatory testing within the criminal justice system	Persons charged with prostitution, sexual abuse or assault, incest or sexual molestation	WVC §16-3C-2 (e)(2) WVC §16-4-5
		Charged sex offenders	WVC §16-3C-2 (e)(2) CSR 64-64-0.3
	Mandatory testing outside of the criminal justice system	Blood, anatomical, and semen donations	WVC §16-3C-2 (d)(1) CSR 64-64-0.1
		Physician, dentist, nurse practitioner, nurse midwife, physician assistant or commissioner may request targeted testing if pt is high risk, there is reasonable belief test will benefit patient, or in cases or source pt testing	WVC §16-3C-2 (a)
		Director of department may request testing in cases of possible threats to public health	WVC §16-3C-2 (e)(4)
<b>PRE-TESTING</b>	Mandatory offering of HIV/AIDS information and/or testing	Prosecuting attorney must inform victim of sex offense of availability of HIV testing	WVC §16-3C-2 (e)(6)
		Persons seeking marriage licenses must receive HIV information	WVC §16-3C-2 (f)
	Informed consent	Voluntary routine testing; informed consent required – orally or in writing; opt-out;	WVC §16-3C-2 (a), (b)

		incorporated in general consent for medical care		
		Exceptions to required consent, such as emergencies	WVC §16-3C-2 (d), (e)	
		Procedures for refused consent – court orders	WVC §16-3C-3 (a)(11)	
		No consent for mandated testing required	WVC §16-3C-2 (e)(1)	
	Counseling requirements	Counseling must be provided with any mandatory testing	WVC §16-3C-2 (e)(1)	
	Anonymous testing	All testing must be available anonymously by a local or county health department	WVC §16-3C-2 (c)	
	POST-TESTING	Disclosure/confidentiality	HIV test results as confidential	WVC §16-3C-3 CSR 64-64-1
			Exceptions to confidentiality	WVC §16-3C-3 (a)
			Department must make good faith effort to notify possible exposed contacts	WVC §16-3C-3 (c)
			Health care provider not mandated to notify partner	WVC §16-3C-3 (d)
Disclosure to of HIV status of sex offender to victim			WVC §16-3C-3 (a)(2)	
Disclosure to funeral directors, EMS, health care providers			WVC §16-3C-2 (e)(9)	
Court orders may allow access to confidential test results			WVC §16-3C-3 (a)(11)	
Persons authorized to pursue action against unauthorized disclosure			WVC §16-3C-5	
Reporting	Name-based reporting (or coded in case of anonymity)	CSR 64-64-2 CSR 64-64-14		
OTHER	Testing of pregnant women and/or newborns	Voluntary routine testing as a part of prenatal and perinatal care; targeted testing for women who present to L&D with no record of testing	WVC §16-3C-1 WVC §16-3C-2	
	Testing of minors/adolescents	Minors may consent to STD services, HIV not included	WVC §16-4-10	
	Rapid HIV testing	No related laws found		
	Training and education of health care providers	No related laws found		

## **Recommended Resources**

### **West Virginia Legislature**

<http://www.legis.state.wv.us/>

### **West Virginia Administrative Law – Code of State Rules**

<https://www.wvsos.com/csr/>

### **West Virginia Department of Health and Human Resources**

<http://www.wvdhhr.org/>

<b>Chapter 16: Public Health</b>
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<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
§ 16-2-13	<p><b>Local health officer; powers and duties</b></p> <p>(a) A local health officer serves as the executive officer of the local board and under its supervision, a local health officer shall administer the provisions of this article, all other laws of this state and the rules and orders of the secretary of the department relating to public health and applicable to the local board's service area, any county commission orders and municipal ordinances of the board's service area relating to public health and the rules and orders of the local board.</p> <p>(b) A local health officer has the following additional powers and duties which may be delegated with the approval of the board:</p> <ol style="list-style-type: none"> <li>(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the board's offices, meeting minutes and records;</li> <li>(2) To supervise and direct the activities of the local board's health services, employees and facilities;</li> <li>(3) To ensure that procedures are established for the receipt of communicable or reportable disease reports from local physicians and other reporting sources and for the transmittal of the reports to the commissioner;</li> <li>(4) To perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area; and</li> <li>(5) To determine when sufficient corrections have been made to warrant removal of any restrictions or limitations placed on an individual or entity for public health purposes by an employee of the local board of health.</li> </ol>
§ 16-3C-1	<p><b>Definitions</b></p> <p>When used in this article:</p> <ol style="list-style-type: none"> <li>(a) "AIDS" means acquired immunodeficiency syndrome.</li> <li>(b) "Bureau" means the bureau for Public Health.</li> <li>(c) "Commissioner" means the commissioner of the bureau of public health.</li> <li>(e) "Department" means the state department of health and human resources.</li> <li>(f) "Funeral director" has the same meaning ascribed to such term in section four [§ 30-6-4, see editor's notes], article six, chapter thirty of this code.</li> <li>(g) "Funeral establishment" shall have the same meaning ascribed to such term in section four [§ 30-6-4, see editor's notes], article six,</li> </ol>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	<p>chapter thirty of this code.</p> <p>(h) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.</p> <p>(i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration or the Centers for Disease Control and Prevention.</p> <p>(j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution.</p> <p>(k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.</p> <p>(l) "Health Information Exchange" means the electronic movement of health-related information in accord with law and nationally recognized standards.</p> <p>(m) "High risk behavior" means behavior by a person including, but not limited to: (i) Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money or drugs; (iii) multiple partners or anonymous unprotected sex or needle sharing partners; (iv) diagnosis of a sexually transmitted disease; or (v) unprotected sex or sharing injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.</p> <p>(n) "Infant" means a person under six years of age.</p> <p>(o) "Medical or emergency responders" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other emergency service personnel, providers or entities acting within the usual course of their duties; good samaritans and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral directors; health care providers; commissioner of the bureau for public health; and all employees thereof and volunteers associated therewith.</p> <p>(p) "Patient" or "test subject" or "subject of the test" means the person upon whom a HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.</p> <p>(q) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability and Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient or test subject.</p> <p>(r) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation or health facility.</p>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	<p>(x) "Release of test results" means a permitted or authorized disclosure of HIV-related test results.</p> <p>(t) "Significant exposure" means:</p> <ol style="list-style-type: none"> <li>(1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery or traumatic events; or</li> <li>(2) Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the national Centers for Disease Control and Prevention, and laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or</li> <li>(3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped, abraded or afflicted with dermatitis or the contact is prolonged or involving an extensive area.</li> </ol> <p>(u) "Source patient" means any person whose body fluids have been the source of a significant exposure to a medical or emergency responder.</p> <p>(v) "Targeted testing" means performing an HIV-related test for sub-populations at higher risk, typically defined on the basis of behavior, clinical or demographic characteristics.</p> <p>(w) "Victim" means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest or sexual molestation occurred or was likely to have occurred in the commission of such crimes.</p>
§ 16-3C-2	<p><b>Testing</b></p> <p>(a) HIV-related testing on a voluntary basis should be recommended by any healthcare provider in a health facility as part of a routine screening for treatable conditions and as part of routine prenatal and perinatal care. A physician, dentist nurse practitioner, nurse midwife, physician assistant or the commissioner may also request targeted testing for any of the following:</p> <ol style="list-style-type: none"> <li>(1) When there is cause to believe that the test could be positive. Persons who engage in high risk behavior should consent to be screened for HIV at least annually;</li> <li>(2) When there is cause to believe that the test could provide information important in the care of the patient; or</li> <li>(3) When there is cause to believe that the results of HIV-testing of samples of blood or body fluids from a source patient could provide information important in the care of medical or emergency responders or other persons identified in regulations proposed by the department for approval by the Legislature in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code: Provided, That the source patient whose blood or body fluids is being tested pursuant to this section must have come into contact with a medical or emergency responder or other person in such a way that a significant exposure has occurred;</li> <li>(4) When there is no record of any HIV-related testing during</li> </ol>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	<p>pregnancy and the woman presents for labor and delivery.</p> <p>(b) A patient voluntarily consents to the test as follows:</p> <p>(1) The patient is informed either orally or in writing that HIV-related testing will be performed as part of their routine care, that HIV-related testing is voluntary and that the patient may decline HIV-related testing (opt-out);</p> <p>(2) The patient is informed that the patient's general consent for medical care includes consent for HIV-related testing;</p> <p>(3) If a patient opts-out of HIV-related testing, the patient is informed when the health care provider in the provider's professional opinion believes HIV-related testing is recommended, that HIV-related testing may be obtained anonymously at a local or county health department;</p> <p>(C) For any person seeking an HIV-related test in a local or county health department or other HIV test setting provided by the commissioner, who wishes to remain anonymous has the right to do so, and to provide written informed consent through use of a coded system with no linking of individual identity to the test request or results.</p> <p>(d) No option to opt-out of HIV-related testing is required and the provisions of subsection (a) and (b) of this section do not apply for the following:</p> <p>(1) A health care provider or health facility performing an HIV-related test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part (including tissue and blood or blood products) donated for a purpose specified under the uniform anatomical gift act, or for transplant recipients, or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;</p> <p>(2) The performance of an HIV-related test in documented bona fide medical emergencies, as determined by a treating physician taking into account the nature and extent of the exposure to another person, when the subject of the test is unable or unwilling to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to a medical or emergency responder, or any other person who has come into contact with a source patient in such a way that a significant exposure necessitates HIV-testing or to a source patient who is unable to consent in accordance with rules proposed by the department for approval by the Legislature in accordance with article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code: Provided, That necessary treatment may not be withheld pending HIV test results: Provided, however, That all sampling and HIV-testing of samples of blood and body fluids, opportunity for the source patient or patient's representative to opt-out of the testing, shall be through the use of a pseudonym and in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code: Provided further, That the department shall propose emergency rules pursuant to the</p>

WV Chapter 16 Code §	Code Language
	<p>provisions of section fifteen [§ 29A-3-15], article three, chapter twenty-nine-a of this code on or before the first day of September, one thousand nine hundred ninety-eight, addressing such matters as, but not limited to:</p> <p>(A) Sampling and testing of blood and body fluids for HIV-related infections including: (i) The taking of samples from source patients; (ii) testing samples; (iii) confidentiality; (iv) documentation; (v) post-test counseling; and (vi) notices to the department by health care providers of: (I) Test results found to be positive and situations where sampling; and (II) testing was performed without the written consent of the test subject; and</p> <p>(B) Costs associated with sampling, testing, counseling, initial prophylactic treatment and compliance with this article: Provided, That: (i) The ordering of samples of blood or body fluids for HIV-test or testing of available samples by: (I) A treating physician of a medical or emergency responder; or (II) a treating physician of the source patient; and (ii) the disclosure of the results of HIV-testing of the source patient, in accordance with regulations proposed by the department for approval by the Legislature pursuant to article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, shall be deemed within acceptable standards of medical care in the state of West Virginia and shall not create a legal cause of action on the part of the source patient against: (i) The treating physician of the medical or emergency responder; or (ii) The treating physician of the source patient; or (iii) any health care provider or laboratory assisting such treating physicians.</p> <p>(3) The performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.</p> <p>(e) Mandated testing:</p> <p>(1) The performance of any HIV-related testing that is or becomes mandatory by court order or other legal process described herein does not require consent of the subject but will include counseling.</p> <p>(2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related test be performed on any persons charged with any of the following crimes or offenses:</p> <p>(i) Prostitution; or</p> <p>(ii) Sexual abuse, sexual assault, incest or sexual molestation.</p> <p>(3) HIV-related tests performed on persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be confidentially administered by a designee of the bureau or the local or county health department having proper jurisdiction. The commissioner may designate health care providers in regional jail facilities to administer HIV-related tests on such persons if he or she determines it necessary and expedient.</p> <p>(4) When the director of the department knows or has reason to believe, because of medical or epidemiological information, that a person, including, but not limited to, a person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a person who has sexually molested, abused or assaulted another, has HIV infection and is or may be a danger to the public health, he or she may issue an</p>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	<p>order to:</p> <ul style="list-style-type: none"> <li>(i) Require a person to be examined and tested to determine whether the person has HIV infection;</li> <li>(ii) Require a person with HIV infection to report to a qualified physician or health worker for counseling; and</li> <li>(iii) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others.</li> </ul> <p>(5) A person convicted of the offenses described in this section shall be required to undergo HIV-related testing and counseling immediately upon conviction and the court having jurisdiction of the criminal prosecution may not release the convicted person from custody and shall revoke any order admitting the defendant to bail until HIV-related testing and counseling have been performed. The HIV-related test result obtained from the convicted person is to be transmitted to the court and, after the convicted person is sentenced, made part of the court record. If the convicted person is placed in the custody of the division of corrections, the court shall transmit a copy of the convicted person's HIV-related test results to the division of corrections. The HIV-related test results shall be closed and confidential and disclosed by the court and the bureau only in accordance with the provisions of section three [§ 16-3C-3] of this article.</p> <p>(6) The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at the earliest stage of the proceedings of the availability of voluntary HIV-related testing and counseling conducted by the bureau and that his or her best health interest would be served by submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be administered at his or her request on a confidential basis and shall be administered in accordance with the Centers for Disease Control and Prevention guidelines of the United States public health service in effect at the time of such request. The victim who obtains an HIV-related test shall be provided with pre- and post-test counseling regarding the nature, reliability and significance of the HIV-related test and the confidential nature of the test. HIV-related testing and counseling conducted pursuant to this subsection shall be performed by the designee of the commissioner of the bureau or by any local or county health department having proper jurisdiction.</p> <p>(8) If a person is tested under this subsection and is found to be HIV infected and the person is not incarcerated, the person shall be referred by the health care provider performing the testing for appropriate medical care and support services. The local or county health departments or any other agency under this subsection may not be financially responsible for medical care and support services.</p> <p>(9) The commissioner of the bureau or his or her designees may require an HIV test for the protection of a person who was possibly exposed to HIV infected blood or other body fluids as a result of receiving or rendering emergency medical aid or who possibly received such exposure as a funeral director. Results of such a test of the person causing exposure may be used by the requesting physician for the purpose of determining appropriate therapy, counseling and psychological support for the person rendering emergency medical aid including good Samaritans, as well as for the patient, or individual receiving the emergency medical</p>

WV Chapter 16 Code §	Code Language
	<p>aid.</p> <p>(10) If an HIV-related test required on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation results in a negative reaction, upon motion of the state, the court having jurisdiction over the criminal prosecution may require the subject of the test to submit to further HIV-related tests performed under the direction of the bureau in accordance with the Centers for Disease Control and Prevention guidelines of the United States public health service in effect at the time of the motion of the state.</p> <p>(11) The costs of mandated testing and counseling provided under this subsection and pre- and postconviction HIV-related testing and counseling provided the victim under the direction of the bureau pursuant to this subsection shall be paid by the bureau.</p> <p>(12) The court having jurisdiction of the criminal prosecution shall order a person convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation to pay restitution to the state for the costs of any HIV-related testing and counseling provided the convicted person and the victim, unless the court has determined the convicted person to be indigent.</p> <p>(13) Any funds recovered by the state as a result of an award of restitution under this subsection shall be paid into the state treasury to the credit of a special revenue fund to be known as the "HIV-testing fund" which is hereby created. The moneys so credited to the fund may be used solely by the bureau for the purposes of facilitating the performance of HIV-related testing and counseling under the provisions of this article.</p> <p>(f) Premarital screening:</p> <p>(1) Every person who is empowered to issue a marriage license shall, at the time of issuance thereof, distribute to the applicants for the license, information concerning acquired immunodeficiency syndrome (AIDS) and inform them of the availability of HIV-related testing and counseling. The informational brochures shall be furnished by the bureau.</p> <p>(2) A notation that each applicant has received the AIDS informational brochure shall be placed on file with the marriage license on forms provided by the bureau.</p> <p>(g) Nothing in this section is applicable to any insurer regulated under chapter thirty-three [§§ 33-1-1 et seq.] of this code: Provided, That the commissioner of insurance shall develop standards regarding consent for use by insurers which test for the presence of the HIV antibody.</p> <p>(h) Whenever consent of the subject to the performance of HIV-related testing is required under this article, any such consent obtained, whether orally or in writing, shall be considered to be a valid and informed consent if it is given after compliance with the provisions of subsection (b) of this section.</p>
§ 16-3C-3	<p><b>Confidentiality of records; permitted disclosure; no duty to notify.</b></p> <p>(a) No person may disclose or be compelled to disclose the identity of any</p>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	<p>person upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:</p> <ol style="list-style-type: none"> <li>(1) The subject of the test;</li> <li>(2) The victim of the crimes of sexual abuse, sexual assault, incest or sexual molestation at the request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is an infant where disclosure of the HIV-related test results of the convicted sex offender are requested;</li> <li>(3) Any person who secures a specific release of test results executed by the subject of the test;</li> <li>(4) A funeral director or an authorized agent or employee of a health facility or health care provider if the funeral establishment, 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 employee has a need to know that information: Provided, That the funeral director, agent or employee shall maintain the confidentiality of this information;</li> <li>(5) Licensed health care providers or appropriate health facility personnel providing care to the subject of the test: Provided, That such personnel shall maintain the confidentiality of the test results and may redisclose the results only for a permitted purpose or as permitted by law. The entry on a patient's chart of an HIV-related illness by the attending or other treating physician or other health care provider may not constitute a breach of confidentiality requirements imposed by this article;</li> <li>(6) The Bureau or the Centers for Disease Control and Prevention of the United States public health service in accordance with reporting requirements for a diagnosed case of AIDS, or a related condition;</li> <li>(7) A health facility or health care provider which procures, processes, distributes or uses: (A) A human body part from a deceased person with respect to medical information regarding that person; (B) semen provided prior to the effective date of this article for the purpose of artificial insemination; (C) blood or blood products for transfusion or injection; or (D) human body parts for transplant with respect to medical information regarding the donor or recipient;</li> <li>(8) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews so long as any identity remains anonymous;</li> <li>(9) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer or any other payer of health care claims, where the disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection is confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment;</li> <li>(10) Persons, health care providers or health facilities engaging in or providing for the exchange of protected health information among the same in order to provide health care services to the patient, including, but not limited to, disclosure through a health information exchange,</li> </ol>

WV Chapter 16 Code §	Code Language
	<p>disclosure and exchange within health care facilities, and disclosure for a permitted purpose, including disclosure to a legally authorized public health authority; and</p> <p>(11) A person allowed access to the record by a court order which is issued in compliance with the following provisions:</p> <p>(i) No court of this state may issue the 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;</p> <p>(ii) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the test subject of the test. The disclosure to the parties of the test subject's true name shall be communicated confidentially in documents not filed with the court;</p> <p>(iii) Before granting any such order, the court shall, if possible, provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;</p> <p>(iv) 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 the public hearing is necessary to the public interest and the proper administration of justice; and</p> <p>(v) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the person who may have access to the information, the purposes for which the information may be used and appropriate prohibitions on future disclosure.</p> <p>(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section may disclose the test results to another person except as authorized by said subsection.</p> <p>(c) Notwithstanding the provisions set forth in subsections (a) through (c) of this section, the use of HIV test results to inform individuals named or identified as spouses, sex partners or contacts, or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids, is permitted: Provided, That the Bureau shall make a good faith effort to inform spouses, sex partners, contacts or persons who have shared needles that they may be at risk of having acquired the HIV infection as a result of possible exchange of body fluids: Provided, however, That the Bureau has no notification obligations when the Bureau determines that there has been no likely exposure of these persons to HIV from the infected test subject within the ten-year period immediately prior to the diagnosis of the infection. The name or identity of the person whose HIV test result was positive is to remain confidential. Spouses, contacts, or sex partners or persons who have shared needles may be tested anonymously at the state bureau of public health's designated test sites, or at their own</p>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	<p>expense by a health care provider or an approved laboratory of their choice. A cause of action may not arise against the Bureau, a physician or other health care provider from any such notification.</p> <p>(d) There is no duty on the part of the physician or health care provider to notify the spouse or other sexual partner of, or persons who have shared needles with, an infected individual of their HIV infection and a cause of action may not arise from any failure to make such notification. However, if contact is not made, the Bureau will be so notified.</p>
§ 16-3C-4	<p><b>Substituted consent</b></p> <p>(a) If the person whose consent is necessary under this article for HIV-related testing or the authorization of the release of test results is unable to give such consent or authorization because of mental incapacity or incompetency, the consent or authorization shall be obtained from another person in the following order of preference:</p> <ol style="list-style-type: none"> <li>(1) A person holding a durable power of attorney for health care decisions;</li> <li>(2) The person's duly appointed legal guardian;</li> <li>(3) The person's next-of-kin in the following order of preference: spouse, parent, adult child, sibling, uncle or aunt, and grandparent.</li> </ol> <p>(b) The person's inability to consent shall not be permitted to result in prolonged delay or denial of necessary medical treatment.</p> <p>(c) The information required to be provided to the patient pursuant to subsections (b) and (d), section two [§ 16-3C-2(b) and (d)] of this article, shall be provided to the person giving substituted consent hereunder.</p>
§ 16-3C-5	<p><b>Remedies and penalties</b></p> <p>(a) Any person aggrieved by a violation of this article has right of action in the circuit court and may recover for the violation:</p> <ol style="list-style-type: none"> <li>(1) Against any person who recklessly violates a provision of this article, liquidated damages of one thousand dollars or actual damages, whichever is greater; or</li> <li>(2) Against any person who intentionally or maliciously violated a provision of this article, liquidated damages of ten thousand dollars or actual damages, whichever is greater; and</li> <li>(3) Reasonable attorney fees; and</li> <li>(4) Such other relief, including an injunction, as the court may consider appropriate.</li> </ol> <p>(b) Any action under this article is barred unless the action is commenced within five years after the violation occurs.</p> <p>(c) Nothing in this article limits the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.</p>

<b>WV Chapter 16 Code §</b>	<b>Code Language</b>
	(d) Nothing in this article may be construed to impose civil liability for disclosure of an HIV-related test result in accordance with any reporting guidelines or requirements of the department or the centers for disease control of the United States public health service.
§ 16-3C-6	<p><b>Prohibiting certain acts; HIV tests results</b></p> <p>(a) A positive HIV test report, or the diagnosis of AIDS related complex (ARC), or the diagnosis of the AIDS syndrome or disease, may not constitute a basis upon which to deny the individual so diagnosed, access to quality health care: Provided, That this subsection does not apply to insurance.</p> <p>(b) No student of any school or institution of higher learning, public or private, may be excluded from attending the school or institution of higher learning, or from participating in school sponsored activities, on the basis of a positive HIV test, or a diagnosis of ARC, or AIDS syndrome or disease. Exclusion from attendance or participation, as described above, shall be determined on a case by case basis, in consultation with the individual's parents, medical care provider, health authorities, school or institution administrators or medical advisors, in accordance with policies and guidelines which may have been established by the entities. Exclusion may only be based on the student representing an unacceptable risk as agreed to by the department for the transmission of the HIV to others because of the stage or nature of the illness.</p>
§ 16-4-5	<p><b>Examination of convicts; liability for expenses</b></p> <p>When any person has been tried and convicted in any police court, or in any criminal or circuit court, or before a justice of the peace [magistrate], upon any charge or offense growing out of sex immorality, such as has been set out in the last preceding section [§ 16-4-4], said person shall not be released from custody by the judge, justice, or police officer trying the case until the local health officer having proper jurisdiction has been notified and has had time to make all necessary tests and examinations to ascertain whether in fact such person is infected with a venereal disease, and all necessary expenses for holding such person in custody pending examination and treatment, if needed, shall be a proper charge against the municipality, if the offense was committed within it, or against the county in which the offense was committed, if committed outside of a municipality; and every municipality, whether it be a county seat or not, shall be liable under this section.</p>
§ 16-4-10	<p><b>Minors.</b></p> <p>Notwithstanding any other provision of law, any licensed physician may examine, diagnose, or treat any minor with his or her consent for any venereal disease without the knowledge or consent of the minor's parent or guardian. The physician shall not incur any civil or criminal liability in connection therewith except for negligence or willful injury.</p>

<b>Code of State Rules – Title 64: West Virginia Division of Health</b>	
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<b>Title 64 CSR</b>	<b>Code Language</b>
64-64-2.1	<p><b>Voluntary Consent.</b></p> <p>a. The HIV-related testing provided for in W. Va. Code 16-3C-2(a) through (d) may also be requested by a health care provider acting within the scope of his or her professional license.</p> <p>b. The provisions of W. Va. Code 16-3C-2(b) through (d) shall also be followed when a patient, without a request from a physician, dentist, other health care provider acting within the scope of his or her professional license, or the division, voluntarily seeks an HIV test from any physician, dentist, other health care provider, or from the division.</p> <p>c. Nothing in this rule shall be construed to provide grounds for any physician, dentist, other health care provider or the director to refuse to treat a patient, nor shall the testing provisions of this rule be used by health care providers to screen patients.</p>
64-64-2.2	<p><b>Consent Not Required.</b></p> <p>a. No consent for testing is required and the provisions of W. Va. Code 16-3C-2(b) and Subsection 4.1 of this rule do not apply for the performance of an HIV test:</p> <ol style="list-style-type: none"> <li>1. On a human body part as provided in W. Va. Code 16-3C-2(e)(1). If a test is required of the donor or recipient of the human body part, reasonable efforts shall be made to obtain consent and otherwise follow the procedures of W. Va. Code 16-3C-2(b) through (d). <ol style="list-style-type: none"> <li>A. All confidentiality restrictions contained in Section 9 of this rule and in W. Va. Code 16-3C-3 apply to information obtained through the testing of human body parts, tissue, blood, blood products, or semen;</li> <li>B. Consent for HIV-related testing is required for donors of routine blood transfusions, and the provisions of W. Va. Code 16-3C-2(e)(1) do not apply to those transfusions;</li> </ol> </li> <li>2. In documented bona fide medical emergencies as provided for in W. Va. Code 16-3C-2(e)(2) and as determined by a treating physician taking into account the nature and extent of the exposure to another person, whether the source patient's blood is to be obtained or is already available: Provided, That <ol style="list-style-type: none"> <li>A. The source patient is unable or unwilling to grant or withhold consent, and if the source patient is unable to grant or withhold consent, substituted consent is not obtained after a reasonable attempt (such as telephoning or personal contact) is made to obtain consent from a legal representative of the source patient in accordance with W. Va. Code 16-3C-4;</li> <li>B. The test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, and the HIV testing for a source patient is conducted only after a health care provider, as qualified in Subsection 8.1 of this rule, documents in the medical record of a medical or emergency responder or another person who has come</li> </ol> </li> </ol>

<b>Title 64 CSR</b>	<b>Code Language</b>
	<p>into contact with a source patient that there has been a significant exposure of the responder or person and that in the medical judgement of the above described health care provider the results are medically necessary to determine the course of treatment for the exposed responder or person; and</p> <ol style="list-style-type: none"> <li>1. Attempts to counsel the source patient for obtaining consent for the performance of the test and release of the results are documented on a form provided by the division and reported to the division in a confidential envelope;</li> <li>2. A reasonable attempt, such as telephoning or personal contact, is made to contact the source patient, or the source patient's legal representative if the source patient is unable to grant or withhold consent, to inform him or her that the test will be performed using a pseudonym;</li> <li>3. The test results are offered to the source patient, and any refusal of acceptance is documented only in the medical record of the exposed medical or emergency responder or other exposed person;</li> <li>4. Post-test counseling is provided in accordance with W. Va. Code 16-3C-2(d). Necessary treatment shall not be withheld pending HIV test results; and</li> <li>5. None of the activities set forth in this Subsection are documented in the source patient's medical record. Confidentiality shall be maintained by the health care facility and the medical or emergency responder. If any improper disclosure occurs, the source patient may invoke the remedies and penalties of W.Va. Code 16-3C-5; and</li> </ol> <p>3. For the purpose of research in accordance with W. Va. Code 16-3C-2(e)(3).</p> <p>b. For a test performed under the authority of W. Va. Code 16-3C-2(f)(9), the director may, at his or her discretion, release the test result to the physician or other health care provider who requested the test: Provided, That the provisions of Section 9 of this rule and W. Va. Code 16-3C-3 regarding confidentiality and disclosure apply. The director may establish a list of health care providers who are approved to authorize HIV testing in emergency medical aid circumstances.</p>
64-64-2.3	<p><b>Mandated HIV Testing of Sexual Offenders and Management of Victims</b></p> <ol style="list-style-type: none"> <li>a. The testing of persons convicted of a sex-related crime as specified in W. Va. Code 16-3C-2(f) is under the direction of the court having jurisdiction of the criminal prosecution.</li> <li>b. The director shall recommend guidelines for courts to follow in referring convicted sexual offenders for medical testing, sharing HIV test results of convicted sex offenders with victims, and advising victims or alleged victims of HIV counseling and testing services.</li> <li>c. The director shall request access to all convicted sex offenders who test HIV positive for the purposes of contact notification consultation</li> </ol>

<b>Title 64 CSR</b>	<b>Code Language</b>
	<p>under the direction of the director. Contact notification information obtained from the convicted sex offender is protected information and shall be used by the director solely for referring individuals with a potential HIV exposure to HIV counseling and testing sources.</p> <p>d. The director shall set the level of reimbursement the division shall pay for the mandated HIV testing and counseling and pre- and post-conviction HIV-related testing and counseling for which it is responsible pursuant to the provisions of W. Va. Code 16-3C-2(f).</p>
64-64-3	<p><b>Confidentiality.</b></p> <p>3.1. Any laboratory performing an HIV-related test in West Virginia shall have the statement of confidentiality in W. Va. Code 16-3C-3(c) appear on the report form or as an attachment to the report form returned to the health care provider or facility.</p> <p>3.2. No person who obtains information protected by the provisions of W. Va. Code 16-3C-1 et seq. and this rule may convey the protected information to any other person except in strict compliance with W. Va. Code 16-3C-1 et seq. and this rule. Unauthorized disclosure will subject the person to all of the penalties available.</p> <p>3.3. The victims or alleged victims of sexual crimes are eligible for HIV counseling and testing at public health HIV testing sites in West Virginia. The provisions of this rule and W. Va. Code W. Va. Code 16-3C-1 et seq. regarding voluntary testing and counseling apply to testing and counseling these individuals. All victim testing information is subject to the confidentiality requirements of this rule and W. Va. Code 16-3C-1 et seq. for voluntary testing.</p> <p>3.4. An agent or employee of a health facility or health care provider has a need to know HIV test results under the provisions of W. Va. Code 16-3C-3(a)(4) when the information is medically necessary to protect the individual from a significant risk of transmission or will have an impact on the treatment modality.</p> <p>9.5. HIV test results may be disclosed to medical or emergency responders who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties. The medical or emergency responder is subject to the requirements of the disclosure statement contained in W. Va. Code 16-3C-3(c) and to the remedies and penalties provided in W. Va. Code 16-5C-5.</p>
64-64-4	<p><b>Requirement for All Health Care Providers to Report Positive Serologic and Other Tests for the Human Immunodeficiency Virus.</b></p> <p>4.4. All health care providers in West Virginia who perform, or cause to have performed, serologic or other tests for HIV shall make a report of all HIV infection associated with laboratory tests that are positive or results</p>

<b>Title 64 CSR</b>	<b>Code Language</b>
	<p>that are indicative of the HIV infection to the director on forms provided by the director for that purpose as follows:</p> <p>4.4.1. All positive (reactive) laboratory test results; and</p> <p>4.4.2. All clinical status data.</p> <p>4.5. These health care provider reports shall include:</p> <p>4.5.1. The name and full address of the laboratory;</p> <p>4.5.2. The name of the tests performed, the date each test was performed and the results of the tests;</p> <p>4.5.3. The legibly printed or typed name and location of the health care provider reporting the positive HIV laboratory results;</p> <p>4.5.4. The name of the confidentially-tested or the identification code of the anonymously-tested individual;</p> <p>4.5.5. Patient demographic information including the patient's age, sex, race and address, unless the patient requests anonymous reporting;</p> <p>4.5.6. Social and risk factor information of the patient relative to HIV infection; and</p> <p>4.5.7. Other information concerning HIV infection judged necessary by the director.</p> <p>4.6. Reports of HIV shall be submitted within thirty (30) days of the receipt of positive (reactive) test results.</p> <p>4.7. Health care providers performing anonymous HIV testing on individuals shall use confidential reporting of HIV infection for patients revealing their identity in HIV infection consultation. If an individual who has been tested anonymously, either makes his or her identity known to the provider or rescinds the request for anonymity, the provider shall report the name to the director.</p> <p>4.8. The director shall work with an individual's health care provider in any follow-up of reported positive laboratory tests or HIV infection.</p> <p>4.9. Health care providers who provide HIV care to patients on the basis of a medical or a self referral shall submit an HIV infection report form to the division.</p> <p>4.10. The reports of all HIV infection submitted in compliance with this rule are protected and are exempt from public disclosure under the exemption for medical records contained in W. Va. Code 29B-1-1 et seq., the Freedom of Information Act: Provided, That the reports are subject</p>

<b>Title 64 CSR</b>	<b>Code Language</b>
	to the provisions of W. Va. Code 16-3C-1 et seq. This information shall not be used except as is necessary to enforce State public health laws and rules and to analyze the magnitude of HIV infection in the State for assisting in the development of adequate safeguards against its spread.
64-64-5	<p><b>Requirement for Laboratories to Report Positive Serologic and Other Tests for the Human Immunodeficiency Virus.</b></p> <p>5.1. All laboratories conducting HIV testing in West Virginia or providing HIV testing results for use in this State shall make a report on the first and fifteenth days of each month of all laboratory tests that are positive or results that are indicative of the HIV infection to the director on forms provided by the director for that purpose as follows:</p> <p>5.1.1. All positive (reactive) serologic antibody tests for HIV;</p> <p>5.1.2. All positive (reactive) laboratory tests for the identification of HIV;</p> <p>5.1.3. All CD4+ test results on peripheral blood with counts less than 200/mm<sup>3</sup> or less than fourteen per cent (14%); and</p> <p>5.1.4. All other positive laboratory test results which identify the presence of HIV or the progression of an HIV infection.</p> <p>5.2. These reports shall include:</p> <p>5.2.1. The name and full address of the laboratory;</p> <p>5.2.2. The name of the test, the date performed, and the result;</p> <p>5.2.3. The name and location of the health care provider who submitted the specimen;</p> <p>5.2.4. The name of the patient, if known, or an identification code, if the name is not known, and the patient's sex, age and address, if available;</p> <p>5.2.5. Other information concerning HIV infection management and control judged necessary by the director; and</p> <p>5.2.6. The signature of the supervisor of the laboratory.</p> <p>5.3. The laboratory shall submit the results of the laboratory reports related to Subdivisions 14.1.a through 14.1.d of this rule on the first and fifteenth days of each month.</p> <p>5.4. If no reportable tests are performed during a reporting period, a statement to this effect shall be submitted by the supervisor of the laboratory.</p> <p>5.5. The director shall work with an individual's health care provider in</p>

<b>Title 64 CSR</b>	<b>Code Language</b>
	<p>any follow-up of the reports of positive laboratory tests.</p> <p>5.6. The reports of all positive tests submitted in compliance with this rule are protected and are exempt from public disclosure under the exemption for medical records contained in W. Va. Code 29B-1-1 et seq., the Freedom of Information Act: Provided, That the reports are subject to the provisions of W. Va. Code 16-3C-1 et seq. The information shall not be used except as is necessary to enforce State public health laws and rules and to analyze the magnitude of HIV infection in the State for assisting in the development of adequate safeguards against its spread.</p>

<b>Code of State Rules – Title 114: Insurance Commissioner</b>	
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Title 114 CSR	Code Language
§114-27-5	<p><b>Testing.</b></p> <p>5.1. AIDS-related testing in connection with the application for group life or accident and sickness insurance is prohibited; provided that an insurer may conduct such testing in relation to the application for group life and accident and sickness insurance when the insurance applied for is individually underwritten and evidence of insurability is required by the insurer because the proposed insured is either a late entrant, is applying for supplemental group life coverage, or is applying for small group insurance where the group consists of less than twenty-five members.</p> <p>5.2. Whenever a proposed insured is requested to take an AIDS-related test in connection with an application for insurance, the use of such a test must be revealed to the proposed insured and his or her written, informed consent obtained.</p> <p>5.3. The proposed insured should demonstrate an understanding that the test is being performed, of the nature of the test, of the persons to whom the results of that test may be disclosed, of the purpose for which test results may be used, of any limitations on the accuracy and meaning of the test results, and of any foreseeable risks and benefits resulting from the test.</p> <p>5.4. The person requesting the test, and not the individual or individual's health care provider, must underwrite the cost of the test.</p> <p>5.5. The individual undergoing the test has a choice to receive the test result directly or to designate in writing, prior to the administration of the test, any other person, such as a health care professional or clergyman, who may receive the results.</p> <p>5.6. The testing must be performed by an individual who is properly trained in the administration of the test; holds an appropriate medical license, if state or federal law requires licensure in order to perform the testing procedure; and is properly supervised in accordance with state and federal law and FDA approval requirements.</p> <p>5.7. The insurer and its agents shall not release or disclose either that a HIV test has been conducted or the test results to any other party except under the following limited circumstances:</p> <ol style="list-style-type: none"> <li>a. Negative test results only may be disclosed to a reinsurer where either: <ol style="list-style-type: none"> <li>1. The reinsurer is to reinsure a portion of the risk on a facultative basis; or</li> <li>2. The reinsurer is to reinsure a portion of a block of business on a treaty basis and where the release of HIV test information is disclosed by the ceding insurer only to the extent that the reinsurer is permitted to perform limited underwriting audits of the ceding insurer's underwriting files to verify that proper HIV underwriting has occurred.</li> </ol> </li> </ol>

<b>Title 114 CSR</b>	<b>Code Language</b>
	<p>b. Positive test results only may be disclosed to the Medical Information Bureau (MIB) provided that such information release is limited to a coded report identified only as a nonspecific abnormal blood, urine or oral fluid test code.</p> <p>c. To the extent necessary to allow them to properly perform the functions for which their services were contracted by the insurer, an insurer may disclose HIV test information to certain contractors of the insurer such as audit firms, third party underwriters and claims adjusting firms. No person receiving HIV test information shall transmit information further, and each person shall maintain strict confidentiality.</p> <p>d. To the extent that they are otherwise entitled to access to the insurer's files, government agencies may be permitted access to files containing HIV test information: Provided that confidentiality is maintained and the HIV test information is not shared with other persons.</p> <p>5.8. Upon written request by the individual undergoing the test the insurer must provide within 30 days, a written list of all persons or entities to whom test information has been released or caused to be released by the insurer.</p> <p>5.9. The testing is required to be administered on a nondiscriminatory basis for all individuals in the same underwriting class. No proposed insured may be denied coverage or rated a substandard risk on the basis of HIV testing unless acceptable testing protocol is followed including the use of FDA-licensed tests. The following is the acceptable HIV testing protocol for use in this state:</p> <p>a. An initial enzyme linked immunosorbent assay (ELISA) test is administered to the proposed insured, and it indicates the presence of HIV antibodies; and</p> <p>b. A second ELISA test is administered and it indicates the presence of HIV; and</p> <p>c. A Western Blot test is conducted and it confirms the results of the two ELISA tests.</p> <p>5.10. If any of the tests in the ELISA-ELISA-Western Blot series produce a negative result, the testing ceases and the proposed insured cannot be denied coverage based on AIDS-related testing.</p> <p>For Example: If the initial ELISA test yields a negative result, the testing ceases. If the initial ELISA test yields a positive result and the subsequent ELISA test yields a negative result, the testing ceases. If both ELISA tests yield a positive result and the Western Blot test yields a negative result, for purposes of insurability, the results are negative.</p> <p>5.11. News of a positive test result could result in serious emotional trauma to the proposed insured. For this reason, it is recommended that the insurer recommend to the proposed insured that positive results be communicated to the proposed insured face to face by a qualified health care professional who could provide AIDS counseling.</p>