

**RULES AND REGULATIONS**  
**PERTAINING TO**  
**HIV COUNSELING, TESTING,**  
**REPORTING, AND CONFIDENTIALITY**  
(R23-6-HIV)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health  
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December 1989  
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the provisions of section 42-35-4.1 of the  
Rhode Island General Laws, as amended)**

## ***INTRODUCTION***

These *Rules and Regulations Pertaining to Counseling, Testing, Reporting and Confidentiality (R23-6-HIV)* are promulgated pursuant to the authority conferred under Chapter 23-6, sections 23-17-31, 23-11-17, 23-13-19, 21-28-4.20, 11-34-10, 23-1-38, 23-18.6-12, and 40.1-24-20 of the General Laws of Rhode Island, as amended, and are established for the purpose of adopting minimum standards for HIV counseling, testing, reporting and confidentiality provisions in Rhode Island.

Pursuant to the provisions of section 42-35-3(c) of the General Laws of Rhode Island, 1956, as amended, the following were given consideration: (1) alternative approached to the regulations; (2) duplication or overlap with other state regulations; and (3) significant economic impact placed on small business as defined in Chapter 42-35 of the General Laws through these regulations. No alternative approach, overlap or duplication or economic impact was identified. Consequently, these rules and regulations are adopted in the best interest of the health, safety and welfare of the public.

These amended rules and regulations shall supersede any previous *Rules and Regulations Pertaining to HIV-1 Counseling, Testing, Reporting and Confidentiality (R23-6-HIV)* promulgated by the Department of Health and filed with the Secretary of State.

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## PART I *Definitions*

### Section 1.0 *Definitions*

Wherever used in these rules and regulations, the following terms shall be construed as follows:

- 1.1 "**Agent**" means (i) A person empowered by the patient/client to assert or to waive the confidentiality, or to disclose or consent to the disclosure of confidential information, as established by Chapter 5-37.3. That person is not, except by explicit authorization, empowered to waive confidentiality or to disclose or consent to the disclosure of confidential information; (ii) A guardian or conservator, if the person whose right to confidentiality is protected under Chapter 5-37.3 is incompetent to assert or waive that right; or (iii) If the patient/client is deceased, his or her personal representative or, in the absence of that representative, his or her heirs-at-law.
- 1.2 "**AIDS**" means the medical condition known as Acquired Immunodeficiency Syndrome, caused by infection of an individual with HIV.
- 1.3 "**Department**" means the Rhode Island Department of Health.
- 1.4 "**Director**" means the Director of the Rhode Island Department of Health.
- 1.5 "**Exposure evaluation group**" means three (3) impartial health care providers (health professionals) designated to determine if a health care provider (health worker/individual) has been involved in a significant exposure to HIV-1. The composition of members of the exposure evaluation groups shall be consistent with statutory and regulatory provisions herein, and shall consist of members who must not have been directly involved in the potential HIV exposure. The composition of the group shall be as follows:
  - a) For inpatient services in a licensed health care facility, hospital setting, the group shall consist of the patient's attending physician or designee, the chief of service or designee, and a staff nurse.
  - b) For non-inpatient exposures in a licensed health care facility, the third member of the exposure evaluation group shall be a representative from the employee health office. If the exposure involves the attending physician, another physician shall be designated by the chief of service.
  - c) In any other licensed health care facility or in a private office of a physician, the group shall consist of three (3) physicians.
- 1.6 "**Health care facility**" means those facilities subject to licensure by the Department of Health in accordance with the provisions of Chapter 23-17 of the General Laws of Rhode Island, as amended, entitled, "Licensing of Health Care Facilities", and as defined by regulations.
- 1.7 "**HIV** or human immunodeficiency virus" means the infectious agent responsible for HIV infection and/or AIDS in humans.
- 1.8 "**HIV test**" means any laboratory diagnostic test currently approved by the federal Food and Drug Administration (FDA) for determining infection of an individual by the AIDS virus (HIV).

- 1.9 **"Informed Consent Form"** means a standardized form provided by the Rhode Island Department of Health to be signed by patients/clients as an acknowledgement that HIV testing and counseling have been offered. Said form shall contain the information outlined in section 3.3 herein. Anonymous testing shall be exempted from the requirement to sign.
- 1.10 **"Office of HIV & AIDS"** refers to the Office of HIV & AIDS within the Division of Disease Prevention and Control at the Rhode Island Department of Health.
- 1.11 **"Other authorized medical personnel"** means licensed health professionals working under the auspices of a physician or other licensed health care professional acting within his/her scope of practice.
- 1.12 **"Person"** means any individual, firm, trust or estate, partnership, corporation (including associations, joint stock companies), limited liability companies, state or political subdivision or instrumentality of a state.
- 1.13 **"Physician"** means an individual licensed to practice allopathic or osteopathic medicine pursuant to the provisions of Chapter 5-37 of the Rhode Island General Laws, as amended.
- 1.14 **"Qualified professional counselor"** refers to physicians, licensed professional (registered) and/or practical nurses, or other persons who meet the qualification requirements of section 7.1 herein.
- 1.15 **"Services"** means clinical health care services.
- 1.16 **"Substance abuse treatment facility"** means a structurally distinct public or private health care establishment, institution or facility, primarily constituted, staffed and equipped to deliver substance abuse treatment and/or rehabilitative services to the general public and known by such terms as: general residential facility, outpatient clinic, chemical dependency program, community residence, day/evening treatment program, narcotic treatment program, extended residential care, social setting detoxification facility, medical detoxification facility, halfway house, three-quarter house, transitional care facility, therapeutic community, or long term care which is not a part of a hospital; providing however, that the term "substance abuse facility and program" shall not apply to organized ambulatory care facilities owned and operated by professional service corporations as defined in Rhode Island General Laws 7-5.1-1 *et seq.* (the "Professional Service Corporation Law"), or to a private practitioner's (physician, dentist or other health care provider) office, or group of practitioners' offices (whether owned and/or operated by an individual practitioner, alone or as a member of a partnership, professional service corporation, organization or association).

## **PART II *Requirements For Offering HIV Counseling and Testing***

### **Section 2.0 *Mandatory Offering of HIV Counseling and Testing***

- 2.1 Pursuant to sections 23-17-31, 23-13-19, 40.1-24-20, and 23-11-17 of the Rhode Island General Laws, as amended, the mandatory offering of HIV counseling and testing (with informed consent) shall be required in conjunction with the following:
- a) Prenatal care or services unless such test is deemed inappropriate by a physician or health care provider caring for the patient;
  - b) Family planning care or services unless such test is deemed inappropriate by a physician or health care provider caring for the patient;
  - c) Services or treatment for sexually transmitted diseases (STDs);
  - d) Clinical services for injection drug users unless such test is deemed inappropriate by a physician or health care provider caring for the patient.

#### ***Mandatory HIV Counseling and Testing***

- 2.2 Pursuant to statutory provisions, mandatory HIV counseling and testing shall be required as below. No consent shall be required for testing.
- a) For any person who is convicted of any criminal offense and committed to the Adult Correctional Institution (ACI);
  - b) For any person convicted of prostitution, lewdness, or any other violation of Chapter 11-34 of the Rhode Island General Laws, as amended.

#### ***Mandatory HIV Testing***

- 2.3 Mandatory HIV testing, and counseling, as appropriate, shall be performed in accordance with the following:
- a) All human organ transplantation testing shall be conducted in accordance with 42 *Code of Federal Regulations Part 486, Subpart G (Guidelines for Preventing Transmission of HIV through Transplantation of Human Tissue and Organs)* for the prevention of HIV transmission.
  - b) Therapeutic donor insemination or other advanced reproductive technologies using freshly donated sperm shall conform with the guidelines and standards of the American Society for Reproductive Medicine for the prevention of HIV transmission. These standards shall not apply in situations wherein both the donor and the recipient waive the testing requirement and sign a written statement to that effect. Mandatory HIV counseling shall be required in these situations, however.

### **Section 3.0 *Procedure For Offering HIV Test***

HIV testing may be "confidential" (name and signature required on the consent form) or "anonymous" (no name or signature required on the consent form).

### ***Presenting the HIV Informational Brochure***

3.1 Each patient/client subject to the provisions of section 2.1 herein, shall be given an informational brochure on HIV infection and testing provided by the Department. Such brochure shall include information pertaining to: (1) the nature of HIV Infection; (2) the desirability of having an HIV test; (3) an explanation of the "Informed Consent Form"; and (4) such other relevant information as may be deemed necessary.

### ***Pre-Test Counseling***

3.2 A physician or other qualified professional counselor shall offer HIV information contained in the HIV informational brochure prior to testing. HIV prevention counseling should be:

- client-centered, that is, tailored to the behaviors, circumstances, and special needs of the person being served;
- include a personalized client risk assessment, as appropriate;
- result in a personalized plan for the client to reduce the risk of HIV infection/transmission, as appropriate.

### ***Signing the HIV Informed Consent Form***

3.3 Each patient/client, with the exception of anonymous testing, shall sign and date the "HIV INFORMED CONSENT FORM" provided by the Department, which shall contain no less than the following:

- a) the public health rationale for HIV testing;
- b) the availability and cost of HIV testing and counseling;
- c) assurance that test results are confidential with certain exceptions;
- d) a list of exceptions to confidentiality of test results; and
- e) assurance that by signing such form the person is only acknowledging that the HIV test and counseling have been offered.

3.4 When a patient/client has agreed (consented) to be tested for HIV an "Informed Consent Form" must be signed by the patient/client, with the exception of anonymous testing, in accordance with section 4.0 hereunder in order for the testing to occur.

### ***Section 4.0 Informed Consent For Testing***

4.1 Unless otherwise exempt as set forth in section 5.0 herein, no person may be tested for the presence of HIV unless he or she has given his or her written informed consent, confirmed by his or her signature, or that of a parent, guardian, or agent on an informed consent form specifically relating to such test and after discussion with a qualified professional counselor. Anonymous testing shall be exempt from the requirement to sign.

4.2 The written informed consent form must include at least the following:

- a) the name and signature of the party(ies) seeking and consenting to the HIV test;
- b) the name and nature of the test;
- c) the reasons for conducting the test;
- d) the fact that the test results are confidential and shall be maintained at the testing site and shall not be released except as provided in the requirements of section 11.0 herein;

4.3 All consent forms, signed and dated, must become part of the patient's/client's record.

### Section 5.0 *Exceptions to the Informed Consent Requirement*

5.1 Notwithstanding the provisions of section 4.0 above, and pursuant to section 23-6-14 of reference 1, a physician may or other health care provider may draw and secure a test for the presence of HIV without informed consent under the conditions listed below. Provided, however, reasonable efforts shall be made to secure voluntary informed consent.

- a) when the person to be tested is under one (1) year of age;
- b) when the person to be tested is between one (1) and thirteen (13) years of age and appears to be symptomatic for HIV infection;
- c) when the person to be tested is a minor under the care and authority of the Rhode Island Department for Children, Youth, and Families, and the Director of said Department certifies that an HIV test is necessary to secure health or human services for that person;
- d) when a person (the complainant) can document significant exposure to blood or other body fluids of another person (the individual to be tested), during performance of the complainant's occupation, providing:
  - i. the complainant completes an incident report within forty-eight (48) hours of the exposure, identifying the parties to the exposure, witnesses, time, place and nature of the event;
  - ii. the complainant submits to a baseline HIV test within seventy-two (72) hours of the exposure, and is negative on that test for the presence of HIV; and
  - iii. there has been a significant percutaneous or mucus membrane exposure (i.e., needle stick; bite; splash over open wound, broken skin, or such membrane) by blood or body fluids of the person to be tested; of a type and in sufficient concentration to permit transmission of HIV, if present in those fluids;
- e) In a licensed health care facility, (including hospitals), or in the private office of a physician in the event that an exposure evaluation group determines that a health care provider (health worker or other individual) has had a significant exposure to the blood and/or body fluids of a patient and the patient or the patient's guardian refuses to grant informed consent

for an HIV test to determine whether the patient is infected with HIV; then, if a sample of the patient's blood is available, said blood shall be tested for the HIV:

- i. If a sample of the patient's blood is not otherwise available and the patient refuses to grant informed consent, then the health care worker may petition the superior court for a court order mandating that the test be performed.
  - ii. Before a patient or a sample of the patient's blood is required to undergo an HIV test, the health care provider (health worker or other individual) must submit to a baseline HIV test within seventy-two (72) hours of the exposure.
  - iii. No member of the exposure evaluation group who determines that a health care worker has sustained a significant exposure and authorizes the HIV testing of a patient, nor any person or health care facility (including hospitals) who relies, in good faith, on the group's determination and performs the test, shall have any liability as a result of their actions carried out under the provisions of the Act of reference 1, unless such person(s) act in bad faith.
- f) In an emergency, where due to a grave medical or psychiatric condition, it is impossible to obtain consent from either the patient or the patient's parent, guardian or agent.
- g) Persons under 18 years of age who may give legal consent for testing, examination, and/or treatment for HIV pursuant to section 23-8-1.1 of the Rhode Island General Laws, as amended; or for human organ transplantation, therapeutic donor insemination or other advanced reproductive technologies using freshly donated sperm pursuant to section 23-1-38 of the Rhode Island General Laws, as amended.

PART III     *HIV Testing*

Section 6.0   *HIV Testing*

6.1 An HIV test shall be ordered by the physician or other authorized medical personnel as defined in section 1.11 herein, for those patients/clients who sign the informed consent form, and for those individuals who are subject to the provisions of section 5.0 herein. The blood sample shall be sent for HIV testing to the Rhode Island Department of Health Laboratory or a Rhode Island-licensed hospital laboratory and shall be accompanied by a Health Department Laboratory form, completed by the physician or other authorized medical personnel who ordered the test. **THE NAME OF THE INDIVIDUAL SHALL NOT APPEAR ON THE LABORATORY FORM ACCOMPANYING THE BLOOD SAMPLE. THE IDENTITY OF THE PATIENT/CLIENT SHALL BE MAINTAINED ONLY AT THE SITE WHERE THE BLOOD SAMPLE IS DRAWN AND SHALL NOT BE RELEASED EXCEPT AS PROVIDED BY LAW AND SECTIONS 13.0 AND 11.0 HEREIN.**

## **PART IV *Pre- and Post- HIV Test Counseling***

### **Section 7.0 *Qualifications for HIV Counselors***

7.1 A qualified professional counselor shall be:

- a) a physician; or
- b) other persons who are involved with clients at risk for HIV and who have completed an HIV counseling training program sponsored by the Department of Health, or who have documented evidence of completion of an HIV counseling training program approved by the Director.

### **Section 8.0 *Pre-Test Counseling***

8.1 Pre-test counseling shall be offered to all those individuals who are subject to the provisions of section 2.0 herein and must be provided to all those who are tested. Such pre-test counseling shall be consistent with the provisions of section 3.2 herein.

### **Section 9.0 *Post-Test Counseling***

#### ***Individuals with Negative HIV Tests***

- 9.1 Each person with a negative HIV test shall be given post-test counseling by the physician or by a qualified professional counselor as defined in section 7.1 herein. Such counseling shall consist of:
- a) informing the patient/client of the test result, its implications and the importance of retesting for individuals at high risk;
  - b) instructing the patient/client on the continuing necessity to take protective measures to avoid contracting the infection.

#### ***Individuals with Positive HIV Test***

- 9.2 Each person with a positive HIV test shall be given post-test counseling by the physician or other qualified professional counselor. Such counseling shall consist of:
- a) the test result(s);
  - b) the infectious nature of the disease and measures to prevent transmission;
  - c) referral to medical and social services;
  - d) the importance of notifying his or her partner; and
  - e) such other information to meet the individual's needs.

## PART V *Records and Confidentiality*

### Section 10.0 *Records*

- 10.1 Entries shall be made in the patient/client record of all services rendered, such as offering of test, test results, reporting, informed consent forms, counseling, etc.
- 10.2 All forms and reports as required in accordance with these regulations shall be maintained in the patient's/client's record by health care providers (e.g., physicians, health care facilities), including copies of any of the forms and/or reports submitted by one health care provider to another as part of the plan of care and consistent with the requirements of reference 1 and the regulations herein.
- 10.3 Providers of health care, public health officials, and any other person who maintain records containing information on HIV test results of individuals, shall be responsible for maintaining full confidentiality of these data as provided in section 23-6-17 of reference 1 and shall take appropriate steps for their protection, including:
- a) keeping records secure at all times and establishing adequate confidentiality safeguards for any such records electronically stored;
  - b) establishing and enforcing reasonable policies and procedures consistent with the confidentiality requirements herein;
  - c) training individuals who handle records in security objectives and techniques.

### Section 11.0 *Confidentiality and Disclosure of Test Results*

- 11.1 All information and reports pertaining to HIV counseling, testing, and reporting as set forth in these rules and regulations are confidential. It shall be unlawful for any person to disclose to a third party the results of an individual's HIV test without the prior written consent of that individual, or in the case of a minor, the minor's parent, guardian or agent on a form that specifically states that HIV tests results may be released, except:
- a) a licensed health care facility or laboratory:
    - i. shall report HIV test results to a licensed physician or other authorized medical personnel who ordered the test; and
    - ii. shall report HIV test results to the Director through the Office of HIV & AIDS as set forth in these regulations.
  - b) a physician:
    - i. may enter HIV test results in the medical record, as would be the case with any other diagnostic test;
    - ii. may notify other health professionals directly involved in care of the individual testing positive on the HIV test, or to whom that individual is referred for treatment;
    - iii. may notify persons exposed to blood or other body fluids of an individual who tests positive on an HIV test, in accordance with section 23-6-14 (4) through (8) of reference 1

and section 23-17-31 of reference 2;

- iv. may notify the Director of the Department for Children, Youth and Families, pursuant to section 23-6-14 (3) of reference 1;
- v. may inform third parties with whom an HIV-infected patient or client is in continuous contact, including but not limited to a spouse; if the nature of the contact, in the physician's opinion, poses a clear and present danger of HIV transmission to the third party; and if the physician has reason to believe that the patient, despite the physician's strong encouragement, has not and will not warn the third party, consistent with the Guidelines set forth by the Rhode Island Department of Health.
- c) as permitted in subsections (b) (1), (2), (5), (6), (8) through (15) of section 5-37.3-4 of the "Confidentiality of Health Care Communications and Information Act," and
- d) as permitted in section 40.1-5-26 of the "Mental Health Law" or as otherwise required by law; and
- e) by a health care provider to appropriate persons entitled to receive notification of persons with infectious or communicable diseases pursuant to section 23-5-9 of the General Laws of Rhode Island, as amended, "Reports of Disease and Disability," and section 23-28.36-3 of the General Laws of Rhode Island, as amended, "Notification of Fire Fighters, Police Officers, and Emergency Medical Technicians After Exposure to Infectious Diseases."

#### Section 12.0 *Notification of Disclosure*

12.1 In all cases when an individual's HIV test results are disclosed to a third party, other than a person involved in the care and treatment of the individual, and except as permitted in sections 11.1(a)(i), 11.1(a)(i)(ii), 11.1(b)(i), 11.1(b)(ii), 11.1(b)(iv), and 11.1(d) herein, the person so disclosing shall make reasonable efforts to inform the individual tested in advance of:

- a) the nature and purpose of the disclosure;
- b) the date of disclosure;
- c) the recipient of the disclosed information.

#### Section 13.0 *HIV Testing and Reporting Cases of Acquired Immunodeficiency Syndrome (AIDS) and Human Deficiency Virus (HIV) Infection*

13.1 Physicians, facility administrators, and laboratories shall report to the Office of HIV & AIDS cases of AIDS and HIV infection in a manner prescribed in the *Rules and Regulations Pertaining to the Reporting of Communicable, Environmental and Occupational Diseases (R23-5-6, 10, 11, 23-24.6-CD/ERD and R23-24.5 ASB)* of reference 11 herein.

## PART VI *Violations and Remedies, and Severability*

### Section 14.0 *Violations and Remedies/Penalties*

14.1 **General:** any person who violates any provision of these regulations shall be subject to the criminal, civil and/or administrative penalties prescribed by law and/or regulation.

14.2 **Pertaining to Confidentiality:** any person who violates the confidentiality provisions herein, shall be subject to the penalties of section 5-37.3-9 of reference 12 which are:

- a) **Civil Penalties:** any one who violates the confidentiality provisions herein may be held liable for actual and exemplary damages.
- b) **Criminal Penalties:** any one who intentionally and knowingly violates the confidentiality provisions herein, shall, upon conviction, be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than six (6) months, or both.
- c) **Commission of Crime:** the civil and criminal penalties above shall also be applicable to anyone who obtains confidential health care information through the commission of a crime.
- d) **Attorney's Fees:** attorney's fees may be awarded, at the discretion of the court, to the successful parties in any action under the confidentiality provisions herein.

### Section 15.0 *Severability*

15.1 If any provision of these regulations or the application thereof to any facility, individual or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the regulations which can be given effect, and to this end the provisions of the regulations are declared to be severable.

## **REFERENCES**

1. "The Prevention and Suppression of Contagious Disease," Chapter 23-6 of the General Laws of Rhode Island, as amended.
2. "Licensing of Health Care Facilities," Chapter 23-17 of the General Laws of Rhode Island, as amended.
3. "Maternal and Child Health Services for Children with Special Health Care Needs," Chapter 23-13 of the General Laws of Rhode Island, as amended.
4. "Licensing of Facilities and Programs for the Mentally Ill and the Mentally Retarded," Chapter 40.1-24 of the General Laws of Rhode Island, as amended.
5. "Sexually Transmitted Diseases," Chapter 23-11 of the General Laws of Rhode Island, as amended.
6. "Uniform Anatomical Gift Act," Chapter 23-18.6 of the General Laws of Rhode Island, as amended.
7. "Department of Health," Chapter 23-1 of the General Laws of Rhode Island, as amended.
8. "Corrections Department," Chapter 42-56 of the General Laws of Rhode Island, as amended.
9. "Prostitution and Lewdness," Chapter 11-34 of the General Laws of Rhode Island, as amended.
10. "Uniform Controlled Substances Act", Chapter 21-28 of the General Laws of Rhode Island, as amended.
11. *Rules and Regulations Pertaining to the Reporting of Communicable, Environmental and Occupational Diseases (R23-5-6, 10, 11, 23-24.6-CD/ERD and R23-24.5 ASB)*, as amended, Rhode Island Department of Health.
12. "Confidentiality of Health Care Communications and Information Act," Chapter 5-37.3 of the General Laws of Rhode Island, as amended.
13. "Mental Health Law," Chapter 40.1-5 of the General Laws of Rhode Island, as amended.
14. "Reports of Disease and Disability," Chapter 23-5 of the General Laws of Rhode Island, as amended.
15. "Notification of Fire Fighters, Police Officers, and Emergency Medical Technicians After Exposure to Infectious Diseases," Chapter 23-28.36 of the General Laws of Rhode Island, as amended.
16. *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)*, as amended, Rhode Island Department of Health.
17. "Quarantine Generally", Chapter 23-8 of the Rhode Island General Laws, as amended.

18. *Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs* available online at:  
**<http://www.cdc.gov/mmwr/preview/mmwrhtml/00031670.htm>**

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