

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



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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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 prevailing 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, as amended, the following were given consideration: (1) alternative approached to the regulations; and (2) duplication or overlap with other state regulations. No alternative approach, overlap, or duplication was identified.

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 **"Anonymous HIV testing"** means an HIV test that **does not** require the patient's name or signature on the consent form.
- 1.4 **"Confidential HIV testing"** means an HIV test that **does** require the patient's name and signature on the consent form.
- 1.5 **"Department"** means the Rhode Island Department of Health.
- 1.6 **"Diagnosis of AIDS"** means a diagnosis in adolescents and adults who are HIV infected aged greater than or equal to thirteen (13) years who have either a) less than 200 CD4positive T-lymphocytes/uL; b) a CD4positive T-lymphocyte percentage of total lymphocytes of less than 14%; or c) any of the following three clinical conditions: pulmonary tuberculosis, recurrent pneumonia, or invasive cervical cancer. This expanded definition retains the twenty-three {23} clinical conditions in the AIDS surveillance case definition published in 1987. (Please refer to the Department's "Adult/HIV Confidential Case Report Form" for a list of those conditions).
- 1.7 **"Diagnosis of HIV"** means the revised surveillance case definition for HIV infection published in the *Morbidity and Mortality Weekly Review* of reference 19 herein.
- 1.8 **"Duly licensed health care provider"** means a licensed health professional working within his/her scope of practice.
- 1.9 **"ELISA result"** means Enzyme-Linked Immunosorbent Assay or EIA (Enzyme Immunoassay) which is a serological technique used in immunology to detect the presence of either antibody or antigen. It is a useful tool for determining serum antibody concentrations such as with Human Immunodeficiency Virus (HIV). It is highly sensitive and specific test but its sole purpose is for screening not for diagnostic or confirmation of infection with HIV.

- 1.10 **"Health care facility"** means those facilities subject to licensure by the Department 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 further defined in regulations.
- 1.11 **"HIV"** means the human immunodeficiency virus, the pathogenic organism responsible for the acquired immunodeficiency syndrome (AIDS).
- 1.12 **"HIV CD4 T-lymphocyte test results"** means results of any currently medically accepted test used to count CD 4 T-lymphocyte cells in blood in an HIV infected person.
- 1.13 **"HIV informed consent form"** means a standardized form provided by the Department to those individuals offered HIV testing. Said form shall contain the information outlined in section 3.3 herein. Anonymous testing shall be exempted from the requirement to sign.
- 1.14 **"HIV test"** means any currently medically accepted diagnostic test for determining infection of an individual by HIV.
- 1.15 **"HIV viral load detection test results"** means results of any currently medically accepted test used to measure the amount of HIV in blood.
- 1.16 **"Occupational health representative"** means an individual, within a health care facility, trained to respond to occupational, particularly blood borne, exposures.
- 1.17 **"Opt out"**, as used herein, means to decline HIV testing.
- 1.18 **"Perinatal HIV/AIDS exposure reporting"** means filing a report, with the Department, for a child aged less than eighteen (18) months born to an HIV-infected mother, and the child does not meet the criteria for HIV infection (II) or the criteria for "not infected with HIV" (III) contained in reference 19 herein.
- 1.19 **"Person"** means any individual, firm, partnership, corporation, company, association, or joint stock association, state or political subdivision or instrumentality of a state.
- 1.20 **"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.
- 1.21 **"Qualified professional counselor"** means physicians, physician assistants, licensed professional (registered) and/or practical nurses, nurse-midwives, registered nurse practitioners, medical students who are actively matriculating in a medical degree program who perform duties assigned to them by a physician, or other persons who are involved with clients at risk for HIV and who have completed an HIV counseling training program sponsored by the Department or who have documented evidence of completion of an HIV counseling training program approved by the Department.
- 1.22 **"Routinely"**, as used herein, shall have the same meaning as **"universally."**
- 1.23 **"Services"** means health care and social support services.

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) Services or treatment for sexually transmitted diseases (STDs);
 - b) Clinical services for injecting drug users unless such test is deemed inappropriate by a physician or duly licensed health care provider caring for the patient.
 - c) Every physician or duly licensed health care provider attending any person for prenatal care or family planning services shall include HIV screening in these settings so as to promote earlier detection of HIV with unrecognized or no identified risk factors.
 - d) HIV testing shall be included in the routine panel of prenatal tests for all pregnant women unless testing is declined. Repeat testing in the third trimester is recommended if determined by the physician or duly licensed health care provider.
 - e) A physician or duly licensed health care provider attending to any person who may be at risk for HIV infection shall routinely offer the HIV test to those patients. All testing pursuant to this section shall be performed in accordance with sections 23-6-17 (confidentiality) and 23-6-18 (protection of the medical record) of the Rhode Island General Laws, as amended, and all applicable informed consent standards.
- 2.2 No person shall order the performance of an HIV-related test without first providing the information and counseling set forth in section 2.3 (below), informing the woman that she has a right to decline testing, and obtaining the oral consent of the patient to be tested, or of a person authorized to consent to health care for such individual, which consent and counseling shall be documented in the patient's medical record.
- 2.3 Prior to performing an HIV-related test, patients shall be provided pre-test counseling. To allow greater flexibility for pre-test counseling by allowing client-specific counseling, a physician or health care provider may tailor HIV counseling to best meet the needs of the individual to be tested. Decisions concerning tailoring and the extent of pre-test counseling shall be made on a case-by-case basis, but in no event shall a woman be tested for HIV pursuant to this section without being provided with oral or written information that includes the following:
- a) an explanation of HIV infection;
 - b) a description of the interventions that can reduce HIV transmission from mother to infant;
 - c) the meaning of positive and negative test results;
 - d) an opportunity to ask questions.

- 2.4 No physician or health care professional providing prenatal health services to a pregnant woman shall perform an HIV test of any woman who has not given consent to testing.
- 2.5 In the event that a pregnant woman tests positive for HIV/AIDS, the physician, health care provider or counselor shall provide post-test counseling, which shall include information about:
- a) the meaning of the test result;
 - b) the possible need for additional testing;
 - c) measures to prevent the transmission of HIV;
 - d) measures to prevent perinatal HIV transmission; and
 - e) the availability of, and referrals for, appropriate health care services, including mental health care, and appropriate social and support services.
- 2.6 All HIV testing pursuant to this section shall be kept confidential in accordance with section 23-6-17 of the Rhode Island General Laws, as amended, and all applicable state and federal statutes and regulations.
- 2.7 No physician or health care provider shall discriminate against a woman because she is HIV positive or has declined to take an HIV test.
- 2.8 All persons tested under this section shall be counseled and tested in accordance with these regulations. Provided, however, that the counseling shall be in accordance with acceptable medical standards, and no test results shall be given by any means (e.g. phone, mail, e-mail, fax, etc.) other than in person. Counselors for HIV counseling, testing and referral must undergo training given by the Department to become a qualified professional counselor.

Mandatory HIV Counseling and Testing

- 2.9 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) Any person convicted of possession of any controlled substance that has been administered with a hypodermic instrument, retractable hypodermic syringe, needle, or any similar instrument adapted for the administration of drugs shall be required to be tested for human immunodeficiency virus (HIV).
 - c) For any person convicted of prostitution, lewdness, or any other violation of Chapter 11-34 of the Rhode Island General Laws, as amended.
- 2.10 All persons tested under this section shall be provided pre-test and post-test counseling by individuals trained by the Department, as an HIV testing counselor, in accordance with regulations promulgated herein; provided, that the counseling shall be in accordance with acceptable medical standards.

2.11 All persons who are tested under this section, who are determined to be injecting drug users, shall be referred to appropriate sources of substance abuse treatment by the HIV testing counselor and/or the attending practitioner as follows:

- a) Those persons who test positive for HIV infection shall be given priority for those outpatient substance abuse treatment programs that are sponsored or supported by the appropriate state agency responsible for these services.
- b) Those persons who are injecting drug users and test negative for HIV infection shall be referred, by the HIV testing counselor and/or attending practitioner, to the appropriate state agency responsible for these services for earliest possible evaluation and treatment.

Mandatory HIV Testing

2.12 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

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 (“*Answers to....Questions You May Have About the HIV Antibody Test*” contained in Appendix “A” herein) on HIV infection and testing provided by the Department. Such brochure shall include the information contained in section 3.3 herein (below).

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 for Testing

- 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 and information describing the nature of the HIV disease;
 - 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) That the test is voluntary and that an informed consent form must be signed before testing;
 - f) assurance that by signing such form the person is only acknowledging that the HIV test and counseling have been offered and/or that he or she has declined (opted-out) the offer to be tested; and
- 3.4 Notwithstanding the provisions of subsections e) and f) above, in the event an individual consents to anonymous testing, the HIV testing counselor and/or attending practitioner ordering the test shall receive only verbal confirmation from the client that the client understands all applicable information contained within the informed consent form.
- 3.5 In the event an individual consents to anonymous testing and tests positive for HIV, the HIV testing counselor shall discuss with the client options regarding referrals and reporting of this positive screening, including the necessity of accessing a physician or duly licensed health care provider.
- 3.6 With the exception of anonymous testing, when a patient/client has agreed (consented) to be tested for HIV, an "Informed Consent Form" must be signed by the patient/client, in accordance with section 4.0 hereunder in order for the testing to occur.
- 3.7 Each site that provides anonymous and/or confidential HIV testing, and HIV counseling and referral, shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance, offer a sliding scale for payment for all other individuals and, in the case of confidential testing, screen for ability to pay through a third-party insurer. In the case of nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance.

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.
- 4.2 Only verbal informed consent is required for anonymous testing.
- 4.3 The written informed consent form shall include the information contained in section 3.3 herein (above).
- 4.4 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 A physician may or other duly licensed health care provider may secure a test sample for the presence of HIV without consent under the conditions listed below. Provided, however, reasonable efforts shall be made to secure voluntary 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;
 - 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; and
 - iv. If a sample of the patient's blood is not otherwise available and the patient refuses to grant informed consent, then the complainant may petition the Superior Court for a court order mandating that the test be performed.

- e) In a licensed health care facility, (including hospitals), or in the private office of a physician in the event that an occupational health representative or physician, registered nurse practitioner, physician assistant, or nurse-midwife not directly involved in the exposure determines that a health care provider (health worker or other individual), other than one in a supervisory position to the person making the determination 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 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 person 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 acts in good faith, and recommends the test be performed, 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) are proven to have acted 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.
- h) When a mother's medical record lacks documentation of HIV status, a newborn shall be tested for HIV immediately after birth and without the consent of the parents.

PART III *HIV Testing*

Section 6.0 *HIV Testing*

- 6.1 Recommendations regarding HIV testing shall reference the most current guidelines issued by the Centers for Disease Control and Prevention (CDC) pertaining to HIV Counseling, Testing and Referral of Adults, Adolescents and Pregnant Women. Provided, however, those guidelines shall be interpreted by the Department so as to best serve the clients and patients seeking HIV testing, and shall in no event be interpreted or implemented in a manner inconsistent with the minimum informed consent standards of Title 23 or other protections of state law.
- 6.2 The recommendations shall emphasize that: (1) HIV screening is recommended in all health care settings, after the patient is informed, in accordance with all applicable informed consent standards, that HIV testing will be done unless the patient declines; (2) persons at high- risk for HIV infection should be screened for HIV at least annually, in accordance with all applicable informed consent standards; and (3) only verbal informed consent is required for anonymous testing.

- 6.3 HIV/AIDS shall be designated as notifiable and reportable **by name**.

Under this provision the following shall be reported:

- a) Within four (4) days using an official HIV/AIDS Department case reporting form, a diagnosis of HIV, according to the U.S. Centers for Disease Control and Prevention case definition of HIV.
 - b) Within four (4) days using an official HIV/AIDS Department case reporting form, a diagnosis of AIDS, according to the U.S. Centers for Disease Control and Prevention case definition of AIDS.
 - c) Written notification to the Department of a confirmed positive ELISA result of any HIV test and/or other FDA approved test indicative of the presence of HIV within four (4) days, by name.
 - d) A perinatal exposure of a newborn to HIV indicated by two positive PCR tests; <18 months; and/or other U.S. Food and Drug Administration approved tests that indicate the presence of HIV in pediatric cases.
 - e) Other U.S. Food and Drug Administration approved tests indicative of the presence of HIV/AIDS, as approved by the Department.
- 6.4 An HIV test shall be ordered by the physician or on order of any duly licensed health care provider, 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.
- 6.5 The blood sample shall be sent for HIV testing to the Department Laboratory or a Rhode Island-licensed hospital laboratory and shall be accompanied by a Health Department

Laboratory form. The physician or other duly licensed health care provider who ordered the test shall complete all required fields of the Health Department Laboratory form.

- 6.6 Hospitals shall forward all positive HIV test results to the Department.
- 6.7 The Department of Health Laboratory shall conduct all confirmatory testing for HIV/AIDS; exceptions, for alternative testing methods, may be granted through written approval by the Department.
- 6.8 Except in the case of anonymous testing, a physician or laboratory or duly licensed health care provider providing samples or specimens for HIV-testing, or results of HIV tests to the Department, shall include the name of the patient.
- 6.9 Any HIV cases reported in the previous code based system, shall remain in a code based data set. The Department shall only use and require HIV name case reports submitted on or after July 1, 2006.

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

Section 7.0 *Qualifications for HIV Counselors*

7.1 A qualified professional counselor shall be any person as defined in section 1.21 herein.

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 provided post-test counseling by the physician or by a qualified professional counselor as defined in section 1.21 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 acquiring 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 (see Department's website: <http://www.health.ri.gov/hiv/index.php> for partner contact referral form); 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 persons 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 duly licensed health care provider who ordered the test; and
 - ii. shall report HIV test results to the Department as set forth in these regulations.
 - b) a physician or duly licensed health care provider:
 - 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) (exceptions) of reference 1 and section 23-17-31 (testing of hospitalized patients) of reference 2;
 - iv. may notify the Director of the Department for Children, Youth and Families, pursuant to section 23-6-14 (3) (testing of a minor to secure services) of reference 1;
 - v. may inform third parties with whom an HIV-infected patient or client is in continuous exposure-related contact, including but not limited to a spouse and/or partner; 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 inform the third party that they may have been exposed to HIV;
- 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" (disclosure of confidential information under 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," (report of infectious disease upon death) 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" (notification to EMT, firefighter, police officer of infectious disease).
- 11.2 Facilities and other health care providers subject to this section shall have documentation that each person with access to any confidential information understands and acknowledges that the information may not be disclosed except as provided herein.

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, (permitted disclosures re: confidentiality), and permitted by and disclosed in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) enacted on August 21, 1996 and as thereafter amended, 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 Department 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.

Reporting of HIV/AIDS and Perinatal Exposure of Newborns

- 13.2 The following persons shall report information required by this section to the Department's HIV/AIDS surveillance team:
- a) a physician/health care provider who diagnoses or treats HIV/AIDS;
 - b) The administrator of a health care facility as defined in Rhode Island General Laws Chapter 23-17 who diagnoses or treats HIV/AIDS; or
 - c) the administrator of a prison in which there is an HIV/AIDS infected person or perinatal exposure to HIV/AIDS.
- 13.3 Reports provided under this section shall specify the infected person's **name**, as well as all information required on the official Department HIV Case Report Form.
- 13.4 Any high managerial agent who is responsible for the administration of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological, or other evidence of HIV/AIDS, including perinatal exposure to HIV/AIDS shall notify the Department in a timely manner as stipulated in the rules of reference 11 herein. Reports provided under this section shall specify the name as well as all information indicated on the official Department HIV Case Report Form.
- 13.5 Reports as required by this section shall only be made if confirmed with a Western Blot or other FDA approved confirmatory test.
- a) All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV/AIDS consistent with this section.
 - b) Any laboratory that processes specimens shall permit the Department to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.
- 13.6 Perinatal HIV/AIDS exposure reporting shall be made to the Department regardless of confirmatory testing.
- 13.7 Reports required by this section shall be mailed within forty-eight (48) hours of diagnosis or treatment, to the Department using a designated envelope that shall be provided by the Department's HIV/AIDS Surveillance Team. Any other reporting method shall be approved in advance by the Department.
- 13.8 Nothing in this section shall preclude the performance of anonymous HIV/AIDS testing.

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. Available online:
<http://www.rilin.state.ri.us/Statutes/TITLE23/23-6/INDEX.HTM>
2. "Licensing of Health Care Facilities," Chapter 23-17 of the General Laws of Rhode Island, as amended. Available online:
<http://www.rilin.state.ri.us/Statutes/TITLE23/23-17/INDEX.HTM>
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.
Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-13/INDEX.HTM>
4. "Licensing of Facilities and Programs for People Who Are Mentally Ill and/or Developmentally Disabled" Chapter 40.1-24 of the General Laws of Rhode Island, as amended.
Available online: <http://www.rilin.state.ri.us/Statutes/TITLE40.1/40.1-24/INDEX.HTM>
5. "Sexually Transmitted Diseases," Chapter 23-11 of the General Laws of Rhode Island, as amended. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-11/INDEX.HTM>
6. "Uniform Anatomical Gift Act," Chapter 23-18.6 of the General Laws of Rhode Island, as amended. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-18.6/INDEX.HTM>
7. "Department of Health," Chapter 23-1 of the General Laws of Rhode Island, as amended.
Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-1/INDEX.HTM>
8. "Corrections Department," Chapter 42-56 of the General Laws of Rhode Island, as amended.
Available online: <http://www.rilin.state.ri.us/Statutes/TITLE42/42-56/INDEX.HTM>
9. "Prostitution and Lewdness," Chapter 11-34 of the General Laws of Rhode Island, as amended.
Available online: <http://www.rilin.state.ri.us/Statutes/TITLE11/11-34/INDEX.HTM>
10. "Uniform Controlled Substances Act", Chapter 21-28 of the General Laws of Rhode Island, as amended. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE21/21-28/INDEX.HTM>
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.
Available online: http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DOH/DOH_3844.pdf
12. "Confidentiality of Health Care Communications and Information Act," Chapter 5-37.3 of the General Laws of Rhode Island, as amended. Available online:

<http://www.rilin.state.ri.us/Statutes/TITLE5/5-37.3/INDEX.HTM>

13. "Mental Health Law," Chapter 40.1-5 of the General Laws of Rhode Island, as amended. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE40.1/40.1-5/INDEX.HTM>
14. "Reports of Disease and Disability," Chapter 23-5 of the General Laws of Rhode Island, as amended. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-5/INDEX.HTM>
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. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-28.36/INDEX.HTM>
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. Available online: http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DOH/DOH_2945.pdf
17. "Quarantine Generally", Chapter 23-8 of the Rhode Island General Laws, as amended. Available online: <http://www.rilin.state.ri.us/Statutes/TITLE23/23-8/INDEX.HTM>
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>
19. Revised Surveillance Case Definition for HIV Infection, *MMWR*, December 10, 1999 / 48 (RR13); 29—31, and subsequent amendments thereto. Available online: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4813a2.htm> .

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Questions You May Have About The HIV Antibody Test

What Is The HIV Antibody Test?

The HIV antibody test is a blood test that shows if you have been infected with the **Human Immunodeficiency Virus** (also known as **HIV**). HIV is the virus that causes AIDS (Acquired Immune Deficiency Syndrome), a serious condition that weakens your body's ability to fight off disease. Being infected with HIV does not mean you have AIDS. It can take years for AIDS to develop in a HIV infected person, but if HIV is in your body, you can pass the virus to others.

The HIV antibody test is simple: a technician takes a blood sample from your arm and sends it to a laboratory.

The HIV antibody test is voluntary. Read all the information in this pamphlet and discuss it with your test counselor before you decide to have the test.

How Is HIV Spread?

Rich, Poor, Young, Old, Male, Female, Gay, Lesbian, Straight, Bisexual, Black, White, Asian, Hispanic, Multiracial, Married and Single. **It's not who you are that puts you at risk for HIV infection – it's what you do.**

HIV is passed from one person to another through blood, semen and vaginal fluids. Anyone who has unprotected sex or shares dirty needles with an infected person can be exposed to HIV. Infected mothers can pass the virus to their babies during pregnancy, childbirth or while breastfeeding.

You can't get HIV from mosquitoes or swimming pools. You can't get HIV by sharing dishes, toilets or workspace with an infected person. It's not spread by coughs or sneezes.

How Much Does The HIV Antibody Test Cost?

If you choose to have the HIV antibody test, there may be a charge. Be sure to ask about the cost before you agree to the testing, most health insurances cover the cost. The HIV antibody test is free to eligible individuals at locations funded by the Rhode Island Department of Health. Call (401) 222-2320 or go the web site <http://www.health.ri.gov/topics/aids.php> to find out which test site is closest to you.

Who Else Will Know About The Test?

The HIV antibody test can be anonymous or confidential.

Anonymous

When you have the test done at an anonymous site, you are given a private code number. No one asks for your name. Anonymous testing is the best way to protect your privacy. If you want an anonymous test, you must let your test counselor know.

Confidential

If you have the test done in your doctor's office, hospital, clinic or any other facility, your test results may be put in your medical record. Like all your medical information, your HIV antibody test results are confidential and cannot be given to anyone without your written permission.

However, you should be aware that insurance companies and employers could sometimes gain access to your medical records. If your test shows that you have the virus, Rhode Island law allows the results to be released to certain other people and agencies, for example:

- health care providers who are treating you and
- the Department of Health (with your name attached) to track rates of HIV in the state.

If you are concerned about the confidentiality of your medical records or about the possibility that you will be discriminated against if you take the test, talk to your test counselor. You can also call the Rhode Island Commission for Human Rights at (401) 222-2661 for more information.

If you choose to have an anonymous HIV antibody test, you will give the counselor your verbal consent. If you decide to have a confidential test or choose not to have the HIV antibody test, sign the form at the end of this pamphlet.

Getting the Results – How Long Does it Take?

If your test is negative, no HIV antibodies were found in your blood. This means that you are either not infected with HIV, or you have recently been infected and it's too soon for the antibodies to show up in your blood.

If you've had unprotected sex or shared needles with someone who might be infected, you may need to be tested again in three to six months. You can protect yourself while you're waiting for another test by using condoms and/or by not sharing needles.

If your test is positive, HIV antibodies were found in your blood. This means that you are infected with HIV. It does not necessarily mean that you have AIDS. It can take many years for AIDS to develop in an HIV-infected person.

How Will The HIV Antibody Test Help Me?

It will help you to know if you have HIV. If your test is negative, you can stop worrying and take steps to protect yourself from HIV.

If you are pregnant –

or thinking of becoming pregnant – it's important to find out if you've been infected by HIV. New studies have shown that taking HIV medications during pregnancy may greatly lower the chances of passing HIV to your baby.

If your test is positive, here's what to do:

- ♦ get medical treatment so you can live a longer, healthier life;
- ♦ find a support group to help you, your family and your partner deal with the stress;
- ♦ get information about services for HIV-positive people;
- ♦ protect your baby if you are pregnant or a new mother;
- ♦ avoid passing HIV to other by using condoms and not sharing needles; and
- ♦ ask your partner(s) to get tested and/or stay in treatment.

If you cannot afford to pay for medical care, you may qualify for free medicine. Ask your test counselor about the RI AIDS Drug Assistance Program (ADAP) or go to the web site <http://www.health.ri.gov/topics/aids.php>.

If your test is positive, it is very important that your contacts be tested, too. If you don't want to tell the people with whom you've had sex or shared needles about your test results yourself, the Partner Notification Program can help. A partner notification counselor will tell your partner(s) that they have been exposed to HIV without using your name.

For more information about this program, ask your test counselor, call the Rhode Island Department of Health at (401) 222-2320 or go to the web site <http://www.health.ri.gov/topics/aids.php>.

For More Information About HIV you can call:

The Rhode Island Department of Health
Office of HIV/AIDS & Viral Hepatitis

at 401-222-2320
or
go to the Rhode Island HIV/AIDS website at www.health.ri.gov/topics/AIDS
or
Rhode Island Project AIDS Hotlines
at 1-800-726-3010
or
one of the following National AIDS Hotline
1-800-342-2437 (English)
1-800-344-7432 (Spanish)
1-800-243-7889 (TDD/TTY)

INFORMED CONSENT FORM

I have been informed about HIV and the HIV antibody test. I have had an opportunity to talk with a test counselor about HIV and the HIV antibody test. I understand that no one can make me take the HIV antibody test without my consent.

☐ Yes, I give permission for my blood to be tested for the presence of HIV antibodies.

☐ No, I do not give permission for my blood to be tested for the presence of HIV antibodies.

Name: _____ Date: _____

Witness: _____ Date: _____