

CHAPTER 61

ATTENDANCE AND PARTICIPATION AT SCHOOL BY PERSONS WITH HIV INFECTION; AIDS DRUG DISTRIBUTION PROGRAM; HIV/AIDS COUNSELING AND TESTING OF PREGNANT WOMEN FOR HIV; AND DISCLOSURE OF CHILDREN'S HIV/AIDS STATUS

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SUBCHAPTER 1. HIV SERVICES—DEFINITIONS

8:61-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Adult" means a teacher, administrator, food service employee or other school staff member.

"AIDS" means acquired immune deficiency syndrome, a condition affecting an individual who has a reliably diagnosed disease that meets the criteria for AIDS specified by the Centers for Disease Control and Prevention of the United States Public Health Service in the following volumes of the

Morbidity and Mortality Weekly Review (MMWR): Volume 41 RR-17 of the MMWR published on December 18, 1992; Volume 43 No. RR-17 of the MMWR published on September 30, 1994; Volume 48 No. RR-13 of the MMWR published on December 10, 1999; Volume 57 No. RR-10 of the MMWR published on December 5, 2008; and, updates found at www.cdc.gov/mmwr.

“AIDS Drug Distribution Program” means the program by which eligible individuals will receive designated medications approved by the Federal Food and Drug Administration which have been recognized as either prolonging or enhancing the life of individuals with HIV infection from funds appropriated to the State from the Federal government.

“Clinical practitioner” shall mean any of the following acting within his or her scope of practice: physician, advanced practice nurse, physician assistant, registered professional nurse or certified nurse midwife.

“Department” means the New Jersey Department of Health and Senior Services.

“Full-time caregiver” means a foster parent(s), prospective adoptive parent(s), group home and treatment home parent(s), the medical director or other individual in other congregate care facilities responsible for the medical care and management of the child. This list is not exhaustive and may include relatives and family friends who are actively engaged in caring for the needs of the HIV/AIDS child.

“Need-to-know basis” means that a disclosure will occur only when necessary for the treatment, care, and overall health needs of the HIV/AIDS-infected child.

“HIV” means human immunodeficiency virus, the virus that causes AIDS and that meets the case definitions of HIV specified by the Centers for Disease Control and Prevention of the United States Public Health Service in the following volumes of the Morbidity and Mortality Weekly Review (MMWR): Volume 41 No. RR-17 of the MMWR published on December 18, 1992; Volume 43 No. RR-17 of the MMWR published on September 30, 1994; Volume 48 No. RR-13 of the MMWR published on December 10, 1999; Volume 57 No. RR-10 of the MMWR published on December 5, 2008; and, updates found at www.cdc.gov/mmwr.

“Physician” means an individual currently licensed to practice medicine and surgery pursuant to N.J.S.A. 45:9-1 et seq.

“Student” means an individual entitled to enrollment in a public preschool, elementary, secondary or adult high school program, charter school, or a licensed school acting under contract to provide educational services on behalf of a public school district within the State of New Jersey and school programs operated by or under contract with the New Jersey Departments of Corrections and Human Services and the Juvenile Justice Commission.

SUBCHAPTER 2. PARTICIPATION AND
ATTENDANCE AT SCHOOL BY INDIVIDUALS
WITH HIV INFECTION

8:61-2.1 Attendance at school by students or adults with HIV infection

(a) No student with HIV infection shall be excluded from attending school for reason of the HIV infection. Exclusion of an HIV-infected student can only be for reasons that would lead to the exclusion of any other student.

(b) No student with HIV infection shall be restricted from his or her normal employment at school for reason of the HIV infection, unless the student has another illness that would restrict that employment.

(c) No student shall be excluded from school services, including transportation, extra-curricular activities, and athletic activities, or assigned to separate services, such as home instruction, for reason of HIV infection or living with or being related to someone with HIV infection, as required by N.J.A.C. 6A:16-1.4.

(d) Any person shall be removed from the school setting if the person has uncovered weeping skin lesions.

(e) Any public or nonpublic school or day care facility, regardless of whether students or adults with HIV are present, shall adopt written policies and routine procedures for handling blood and body fluids and make available training and appropriate supplies to all school personnel, in conformance with N.J.A.C. 6A:16-1.3 and 2.3(e).

(f) Any public or nonpublic school and day care facility shall adopt written policies and procedures for post-exposure evaluation and follow up for any employee exposed to blood or body fluids. District boards of education shall develop written policies and procedures for post-exposure management, in conformance with the Occupational Safety and Health Administration (OSHA) Safety and Health Standards for Occupational Exposure to Bloodborne Pathogens, 29 C.F.R. § 1910.1030, as amended and supplemented, and the Safety and Health Standards for Public Employees provided at N.J.A.C. 12:100-4.2.

(g) Any employee of a district board of education or school shall share information that identifies a student as having HIV infection or AIDS only with prior written informed consent of the student age 12 or greater, or of the student's parent or guardian, as required by N.J.S.A. 26:5C-5 et seq., except as may be authorized or required under other laws.

PERSONS WITH HIV/AIDS—SCHOOL PARTICIPATION**8:61-4.2****SUBCHAPTER 3. ELIGIBILITY CRITERIA TO PARTICIPATE IN THE AIDS DRUG DISTRIBUTION PROGRAM****8:61-3.1 Purpose; scope**

The purpose of this subchapter is to describe the clinical and financial criteria which individuals must meet, in order to become enrolled in the AIDS Drug Distribution Program.

8:61-3.2 Coverage

The medications designated for coverage shall be based on considerations of cost, efficacy and frequency of use as determined by the Division of HIV/AIDS Services.

8:61-3.3 Clinical eligibility

To be considered clinically eligible to participate in the AIDS Drug Distribution Program, an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a licensed physician or other licensed health care practitioner acting within his or her scope of practice.

8:61-3.4 Income eligibility

(a) In order to be eligible for this program, the individual(s) shall be a permanent resident of New Jersey and must have an annual income that does not exceed 500 percent of the Federal Poverty Level in accordance with the provisions of 42 U.S.C. § 9902(2) as amended and supplemented.

1. An applicant and spouse shall be considered separated when each maintains a separate residence and the applicant does not have access to or receive support from the spouse's income.

2. An applicant and spouse shall be considered separated when the spouse has been institutionalized in an assisted living facility, long-term care facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.

(b) Income shall be determined in accordance with the standards delineated at N.J.A.C. 8:83-6.2.

8:61-3.5 Residence

Residence shall be determined in accordance with the standards delineated at N.J.A.C. 8:83-6.4.

8:61-3.6 Third party coverage

Individuals who are eligible to receive the covered medications from entitlement programs or third party payers are not eligible to receive benefits under this program.

8:61-3.7 Application process

(a) Applications to enroll in the program can be obtained by calling toll free, at 1-877-613-4533.

(b) Once an interested individual receives the application, the form should be completed and returned to the address indicated on the application. The application requires personal information on residency, immigration status, race/ethnicity, marital status, household income, employment status, insurance coverage, certification by a pharmacist and physician.

(c) If approved for participation in the Program, the Department or its designee will notify the individual, his or her physician or other licensed health care practitioner acting within his or her scope of practice, and the pharmacy from which the prescription will be filled.

SUBCHAPTER 4. TESTING OF PREGNANT WOMEN AND NEWBORNS FOR HIV OR HUMAN IMMUNODEFICIENCY VIRUS**8:61-4.1 Purpose; scope**

(a) The purpose of this subchapter is to implement the requirements of P.L. 1995, c. 174 (N.J.S.A. 26:5C-15 et seq.) and set standards in accordance with the revised recommendations of the Centers for Disease Control and Prevention (CDC) on routine screening and testing of pregnant women and newborns for Human Immunodeficiency Virus.

(b) This subchapter applies to clinical practitioners, hospitals and ambulatory care facility birth centers that provide prenatal care, newborn care, screening and order diagnostic tests for HIV or AIDS, diagnose individuals with HIV or AIDS or provide treatment for individuals diagnosed with HIV or AIDS.

8:61-4.2 Incorporated and referenced materials

(a) The Department incorporates by reference, as amended and supplemented, in this subchapter the Centers for Disease Control and Prevention of the United States Public Health Service HIV screening and testing recommendations for pregnant women and their infants available in Volume 55 No. RR-14 of the Morbidity and Mortality Weekly Report (MMWR) published on September 22, 2006, and updates found at www.cdc.gov/mmwr.

(b) The Department incorporates by reference, as amended and supplemented, in this subchapter the Centers for Disease Control and Prevention of the United States Public Health Service practical guide and model protocol on rapid HIV antibody testing during labor and delivery for women of unknown HIV status available on the perinatal HIV site at www.cdc.gov/hiv/projects/perinatal and the rapid HIV testing site at www.cdc.gov/hiv/rapid_testing.

(c) The Department incorporates by reference, as amended and supplemented, in this subchapter the Public Health Task Force Recommendations for the use of Antiretroviral Drugs in Pregnant HIV Infected Women for Maternal Health and Interventions to Reduce Perinatal HIV Transmission in the

United States, July 8, 2008, and updates found at www.aidsinfo.nih.gov.

(d) The Department incorporates by reference, as amended and supplemented, in this subchapter the Centers for Disease Control and Prevention of the United State Public Health Services case definitions of HIV and AIDS in Volume 41 No. RR-17 of the Morbidity and Mortality Weekly Review (MMWR) published on December 18, 1992 and in Volume 43 No. RR-17 of the MMWR published on September 30, 1994 and in Volume 48 No. RR-13 of the MMWR published on December 10, 1999 and in Volume 57 No. RR-10 of the MMWR published on December 5, 2008, and updates found at www.cdc.gov/mmwr.

8:61-4.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Birthing facility” means a hospital or ambulatory care facility birth center licensed by the Department of Health and Senior Services that provide birthing and newborn care services.

“Hospital” means an institution, whether operated for profit or not, whether maintained, supervised or controlled by an agency of the government of the State or any county or municipality or not, which maintains and operates facilities for the diagnosis, treatment or care of two or more non-related individuals suffering from illness, injury or deformity and where emergency, out-patient, surgical, obstetrical, convalescent or other medical and nursing care is rendered for periods exceeding 24 hours.

“Perinatally exposed” means that an infant is born to a woman who is known to be HIV infected at the time of delivery, either through HIV testing prior to or during her pregnancy, or diagnosed by a clinical practitioner.

8:61-4.4 HIV screening procedures for pregnant women

(a) A clinical practitioner who is the primary care provider for a pregnant woman or who makes a diagnosis of pregnancy shall recommend and provide a woman with an HIV test as early as possible in her pregnancy and during the third trimester, unless she objects verbally or in writing, or is known to be HIV positive.

(b) A clinical practitioner shall document in the medical record:

1. A woman’s refusal to be tested for HIV; and
2. The date of each HIV test and the test result.

(c) A clinical practitioner acting as the primary care provider shall offer a woman early in the course of her pregnancy, and during the third trimester, information about HIV including, but not limited to, the following:

1. Routine HIV testing is part of prenatal testing unless a woman declines;
2. How HIV is transmitted;
3. Information about the meaning of an HIV test and test results including, but not limited to, the purpose of the test, rapid HIV test results both positive and negative, and the possible need for additional testing;
4. The benefits of HIV testing as early in pregnancy as possible and in the third trimester, including the importance of knowing whether she is infected with HIV;
5. The benefits of HIV testing for newborns, including interventions to prevent HIV transmission;
6. The medical treatment available to treat HIV infection if diagnosed early;
7. The reduced rate of HIV transmission to a fetus if an HIV infected pregnant woman receives treatment for HIV;
8. The protection and confidentiality provisions pertaining to HIV; and
9. The right to refuse an HIV test without prejudice, fear or denial of appropriate prenatal care due to this refusal.

(d) A clinical practitioner shall provide the information required by (c) above prior to HIV testing to a woman verbally, through the use of brochures, video or through any other type of media, and shall offer the pregnant woman an opportunity to ask questions upon receipt of this information.

(e) A clinical practitioner shall document a woman’s receipt of the information required by (c) above in the medical record.

(f) A clinical practitioner acting as the woman’s primary care provider may assign the responsibilities of (a) through (e) above for providing HIV information and routine HIV testing to another clinical practitioner whose scope of practice includes these tasks, or the clinical practitioner acting as a woman’s primary care provider may delegate these tasks to a trained HIV counselor.

(g) A clinical practitioner acting as the woman’s primary care provider shall ensure that the assigned or delegated tasks are performed in the manner required by this section, and that the performance of the assigned or delegated tasks is within either:

1. The scope of practice of the clinical practitioner to whom the tasks are assigned; or
2. The level of capabilities in which the HIV counselor has been trained.

(h) A clinical practitioner shall not:

1. Deny appropriate prenatal care or other medical care to a pregnant woman who refuses to be tested for HIV;

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2. Offer an HIV test if the woman's positive HIV status is already documented in her medical record; or

3. Deny a pregnant woman or newborn an HIV test on the basis of economic status.

8:61-4.5 HIV screening and testing procedures in labor and delivery

(a) A birthing facility shall adopt written procedures for HIV testing and screening in labor and delivery that require the following:

1. Upon admission, information regarding a woman's HIV status shall be documented in the medical record and the medical record shall be transferred to the labor and delivery site;

2. A clinical practitioner shall provide a pregnant woman who is admitted in labor with unknown, undocumented HIV status or no HIV test during the third trimester, with information on HIV in accordance with N.J.A.C. 8:61-4.4(c) and shall test the woman for HIV using a rapid HIV test, as soon as medically appropriate, unless the woman objects;

3. A woman shall be provided with the results of the rapid HIV test immediately;

4. The results of the test shall be explained to the woman in accordance with N.J.A.C. 8:61-4.4(c)3; and

5. A woman's refusal to be tested for HIV shall be documented in the medical record.

(b) A clinical practitioner in a birthing facility who cannot follow through with providing HIV information in accordance with N.J.A.C. 8:61-4.4(c), or who cannot provide care for a woman with a positive HIV test or a perinatally exposed newborn, shall initiate a referral to another clinical practitioner who, within the scope of practice of the clinical practitioner, is able and willing to provide information on HIV and care for the woman and newborn.

(c) A clinical practitioner in a birthing facility shall not deny appropriate care and treatment to a pregnant woman who refuses to be tested for HIV during labor and delivery and shall not deny a pregnant woman or newborn an HIV test on the basis of the pregnant woman's or newborn's economic status.

8:61-4.6 HIV Screening and rapid testing procedures of a newborn infant post-delivery

(a) A birthing facility shall inform the parents or legal guardian of a newborn in its care that a newborn infant shall be given a rapid HIV test when the mother's HIV status is undocumented or untested in the third trimester, unless the parents or legal guardian object in writing based upon religious tenets and practices.

(b) If the parents or legal guardian refuse to allow a rapid HIV test to be performed on a newborn infant due to religious tenets and practices, the birthing facility shall obtain a written statement signed by the parents or legal guardian that HIV testing conflicts with their religious tenets or practices, and the birthing facility shall document the objection and include the written statement in the newborn's medical record.

(c) When a newborn infant receives a rapid HIV test, the birthing facility shall provide the parents or legal guardian with the following:

1. An explanation of the recommended antiretroviral preventive treatment for the infant;

2. Appropriate medical care and treatment for the woman and newborn; and

3. The availability of appropriate referrals for her and her newborn to physicians or health care facilities with experience and expertise in providing medical care and services to women with HIV and other social services as necessary.

(d) A birthing facility shall:

1. Perform an HIV test on a newborn infant, as soon as possible after birth, unless the parents or legal guardian object in accordance with (a) above;

2. Document the date of a positive HIV test on the newborn in the medical record; and

3. Arrange and initiate the provision of follow-up testing of a perinatally exposed newborn in accordance with the most recent Public Health Task Force Recommendations for the use of Antiretroviral Drugs in Pregnant HIV Infected Women for Maternal Health and Interventions to reduce perinatal HIV transmission in the United States.

(e) For the purposes of this section, "parents" shall include both parents when available or a legally responsible parent when only one parent is available.

8:61-4.7 HIV test results, confidentiality and reporting

(a) A clinical practitioner or birthing facility that orders an HIV test or receives the results of a positive HIV test shall advise a pregnant woman who tests HIV positive on the following:

1. Recommended treatment to reduce the risk of mother-to-infant HIV transmission;

2. The appropriateness of and need for further testing;

3. Methods to prevent the transmission of HIV;

4. Appropriate medical care and treatment for the woman; and

5. The availability of appropriate referrals for her and her newborn to prevention services, physicians or facilities with experience and training in providing services and treatment to women with HIV and other social services as necessary.

(b) A clinical practitioner or birth birthing facility shall maintain the confidentiality of HIV information and test results in accordance with the requirements of N.J.S.A. 26:5C-5 through 14 and N.J.A.C. 8:57-1.14, but shall release information and results as follows:

1. For purposes of disease prevention and control, a woman's test results may be provided to the clinical practitioner caring for the woman's infant;

2. HIV positive test results and perinatal exposure shall be reported to the Department in accordance with N.J.A.C. 8:57-2;

3. The medical records of a perinatally exposed newborn and the newborn's mother shall be made available to the Department for audit for epidemiologic purposes; and

4. In accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1301 et seq. and the rules promulgated thereunder by the United States Secretary of Health and Human Services, which are incorporated herein by reference, as amended and supplemented.

(c) The Department or its designee may contact an infant's health care provider to follow-up on the HIV status and HIV related care of the infant.

8:61-4.8 Policies and procedures for routine HIV testing of pregnant women and newborns

(a) In addition to the written procedures required by N.J.A.C. 8:61-4.5, birthing facilities shall adopt and implement written policies and procedures on HIV screening and testing of pregnant women and newborns, which shall be reviewed at least once every three years, and revised more frequently as needed, and which shall include at least the following:

1. Procedures for communicating rapid HIV test results to the labor and delivery site;

2. The designation of a staff member to be responsible for receiving verbal and written positive HIV screening test results and documenting the results in the newborn infant's medical record; and

3. Procedures on prenatal, newborn and labor and delivery HIV screening, which shall include a protocol for rapid HIV testing.

(b) Birthing facilities shall provide training and education for labor and delivery staff on providing the information required by N.J.A.C. 8:61-4.4(c) and on HIV testing, including manufacturer's instructions on using HIV test kits.

(c) Birthing facilities shall follow the most recent Centers for Disease Control and Prevention guidelines on HIV screening and testing of Adults, Adolescents, and Pregnant Women incorporated by reference in N.J.A.C. 8:61-4.2, and these guidelines shall be used for establishing policies and procedures.

8:61-4.9 Quality improvement for rapid HIV testing of pregnant women and newborns

(a) A birthing facility shall develop a plan by which to collect and analyze HIV data in order to evaluate outcomes, which shall focus on corrective action and improving performance.

(b) A birthing facility shall have a quality assurance plan for rapid HIV testing.

SUBCHAPTER 5. DISCLOSURE OF INFORMATION TO FULL-TIME CAREGIVERS

8:61-5.1 Disclosure of information to full-time caregivers

The contents of a child's HIV/AIDS records may be disclosed by health care providers to the Division of Youth and Family Services. The Division of Youth and Family Services may disclose such information on a need-to-know basis to private adoption agencies certified by the Division of Youth and Family Services and to foster care agencies with which the Division of Youth and Family Services contracts. The Division of Youth and Family Services, private adoption agencies certified by the Division of Youth and Family Services, and foster care agencies with which the Division of Youth and Family Services contracts may disclose the contents of a child's HIV/AIDS record on a need-to-know basis for the care and treatment of the child to any full-time caregiver. Individuals receiving such information shall keep the information confidential, pursuant to N.J.S.A. 26:5C-10.