

Revised AIDS Prevention Act- Effective October 1, 2009

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the U.S. department of health and human services, centers for disease control and prevention.

(2) "Antiretroviral prophylaxis" means a specific drug regime preventing mother-to-child transmission of HIV infections.

(3) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the U.S. department of health and human services, centers for disease control and prevention.

(4) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(5) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(7) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(8) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(9) "HIV diagnostic test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Person" means an individual, corporation, organization, or other legal entity.

(12) "Rapid HIV diagnostic test" means a federally approved test designed to assist in time-sensitive diagnosis of HIV infections.

50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in [50-1-202](#), to reflect this policy.

50-16-1005 through 50-16-1006 reserved.

50-16-1007. Repealed. Sec. 9, Ch. 362, L. 2009.

50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty. (1) Prior to donation of an organ, semen, or tissues, HIV diagnostic testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV diagnostic test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.

50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV diagnostic test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an HIV diagnostic test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of \$5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of \$20,000 or actual damages, whichever is greater;

- (c) reasonable attorney fees; and
- (d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV diagnostic test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV diagnostic test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the U.S. department of health and human services, centers for disease control and prevention.

50-16-1014. Screening and pretest information. (1) Screening for HIV-related conditions must be considered routine and must be incorporated into the patient's general informed consent for medical care on the same basis as other screening and diagnostic tests.

(2) Screening for HIV-related conditions must be voluntary and undertaken with the patient's knowledge and understanding that HIV diagnostic testing is planned.

(3) Patients must be informed orally or in writing that HIV diagnostic testing will be performed.

(4) If a patient declines an HIV diagnostic test, this decision must be documented in the patient's medical record.

50-16-1015. Prenatal HIV screening. (1) Screening for HIV-related conditions must be considered routine and must be incorporated into the pregnant patient's general informed consent for medical care on the same basis as other routine prenatal screening and diagnostic tests.

(2) Screening for HIV-related conditions in pregnant patients must be voluntary and undertaken with the patient's knowledge and understanding that HIV diagnostic testing is planned.

(3) Pregnant patients must be informed orally or in writing that HIV diagnostic testing will be performed.

(4) If a pregnant patient declines an HIV diagnostic test, this decision must be documented in the patient's medical record.

(5) Physicians and other health care providers licensed to provide prenatal care to pregnant women may:

(a) offer an HIV diagnostic test in the third trimester to pregnant women who were not tested earlier in the pregnancy; and

(b) offer a repeat HIV diagnostic test in the third trimester of pregnancy, preferably before 36 weeks of gestation, to each of their pregnant patients at high risk for acquiring HIV-related conditions.

50-16-1016. Labor and delivery HIV screening. Physicians and other health care providers licensed to provide prenatal care to pregnant women shall, if medically indicated:

(1) offer a rapid HIV diagnostic test to pregnant women in labor with unknown or undocumented HIV status;

(2) offer antiretroviral prophylaxis without waiting for the results of the confirmatory test if a rapid HIV diagnostic test or a standard HIV diagnostic test is positive.