

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****Authority**

N.J.S.A. 26:1A-15, 26:5C-8 and 26:5C-20.

Source and Effective Date

R.2005 d.3, effective January 3, 2005.
See: 35 N.J.R. 5338(a), 37 N.J.R. 60(a).

Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from January 3, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 893(a).

Chapter Historical Note

Chapter 61, Acquired Immunodeficiency Syndrome, was adopted as R.1986 d.407, effective October 6, 1986. See: 18 N.J.R. 1512(a), 18 N.J.R. 2014(a).

Subchapter 2, Eligibility Criteria to Participate in the Retrovir Drug Program (now AIDS Drug Distribution Program), was adopted as emergency new rules by R.1987 d.437, effective October 7, 1987. See: 19 N.J.R. 2067(a). The provisions of R.1987 d.437 were readopted as R.1988 d.6, effective December 4, 1987. See: 19 N.J.R. 2067(a), 20 N.J.R. 89(b).

Pursuant to Executive Order No. 66(1978), Chapter 61 was readopted as R.1991 d.538, effective October 4, 1991. See: 23 N.J.R. 2245(b), 23 N.J.R. 3332(a).

Pursuant to Executive Order No. 66(1978), Chapter 61 was readopted as R.1996 d.509, effective October 4, 1996. As part of R.1996 d.509, Subchapter 3, HIV Counseling and Testing of Pregnant Women, and Subchapter 4, Disclosure of Information to Prospective Foster or Adoptive Parents by DYFS or Licensed Agency, were adopted as new rules, effective November 4, 1996. See: 28 N.J.R. 4019(a), 28 N.J.R. 4202(a), and 28 N.J.R. 4787(a).

Chapter 61, Acquired Immunodeficiency Syndrome, expired on October 4, 2001.

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, was adopted as R.2005 d.3, effective January 3, 2005. See: Source and Effective Date.

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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 immunodeficiency syndrome, a disease that meets the criteria for the diagnosis specified by the Centers for Disease Control and Prevention of the United States Public Health Service, in the “1993 Revised Classification System for HIV Infection and Expanded Surveillance Case Definition for AIDS Among Adolescents and Adults,” as published by the Centers for Disease Control and Prevention in the Morbidity and Mortality Weekly Report 1992, volume 41, No. RR-17, and in the Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome, as published by the Centers for Disease Control and Prevention in the Morbidity and Mortality Weekly Report 1999, volume 48, No. RR-13; 1-28 as appropriate, incorporated herein by reference, as amended and supplemented. That publication may be 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.

“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 causative agent of AIDS.

"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.

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. HIV COUNSELING AND TESTING OF PREGNANT WOMEN

8:61-4.1 HIV counseling and testing of pregnant women

(a) A physician or other licensed health care practitioner acting within his or her scope of practice who is the primary caregiver for a pregnant woman, or who makes a diagnosis of pregnancy, or who is the primary caregiver for a woman who seeks treatment relating to the pregnancy within four weeks of giving birth (hereinafter referred to as "provider"), shall provide information on HIV and AIDS and offer testing for HIV infection to all pregnant women or a woman who seeks treatment within four weeks of being postpartum

to whom he or she is providing care, unless it is known by the provider that the woman has already been given the required information and has been tested for HIV infection during her pregnancy or within four weeks of being postpartum. The provider may delegate the tasks of providing to the patient information on HIV and AIDS and offering the patient HIV testing to another licensed health care practitioner whose scope of practice would include these tasks, or to a trained HIV counselor.

1. The provider, as the patient's primary caregiver, shall retain the responsibility of ensuring that the delegated tasks are actually performed in the manner required under this section and that the performance of the delegated tasks is within either:

- i. The scope of practice of the health care practitioner to whom the tasks are delegated; or
- ii. The level of capabilities in which the HIV counselor has been trained.

(b) The provider shall comply with this section when the provider in the reasonable exercise of professional judgment and within the provider's licensed scope of practice knows or should know that a patient is pregnant.

(c) The provider shall ask that the woman sign a form, prepared by the Department, acknowledging that she has received the required information and indicated her preference regarding testing for HIV infection. Blank copies of this form will be made available to physicians, who may reproduce as many copies as necessary for use in their practice. In addition, the form shall be available for download from the Department's website at <http://nj.gov/health/forms/index.shtml>, and shall be available upon request by writing to the Division of HIV/AIDS Services, New Jersey Department of Health and Senior Services, 50 East State Street, 3rd Floor, PO Box 363, Trenton, NJ 08625-0363 or by telephoning (609) 984-5874.

1. If the woman refuses to sign the form, the provider shall enter a note into the woman's medical record. The note shall document the provider's provision in good faith of the required information and offer of testing in a manner that afforded informed consent, and shall describe the provider's efforts to address patient-specific needs and factors such as language barriers and comprehension ability.

(d) The provider may use a different form than the one provided by the Department, provided that the woman's signature is obtained and the physician's form contains, at a minimum, all of the information on the form prepared by the Department. Specifically, any substitute form shall contain a statement that the woman has received information concerning:

1. How HIV is transmitted;

2. The benefits of voluntary testing for HIV infection and of knowing whether or not she is infected with HIV;

3. The treatments that are available to her and her child should the test be positive; and

4. The right to refuse the test and without fear of denial of appropriate prenatal care due to this refusal. The form shall also indicate whether or not the woman has decided to be tested for HIV infection.

(e) The provider shall make every reasonable effort to provide the woman with the results of the test for HIV infection, and the meaning of those results. The provider shall advise women who have a negative test result of measures to prevent HIV infection. The provider shall advise women who test positive or indeterminate of:

1. The appropriateness of and need for further testing;
2. Methods to prevent transmission of HIV;
3. Appropriate medical care for the woman;
4. Recommended treatment to reduce the risk of mother-to-infant transmission of HIV; and
5. The availability of appropriate social and other necessary services.

(f) A provider who cannot follow through with counseling or further care of a woman with a positive or indeterminate test result shall initiate a referral to another health care practitioner who, within the scope of practice of the particular practitioner, is able to and will provide counseling and care for the woman.

(g) Information and test results obtained pursuant to this section shall be held confidential in accordance with N.J.S.A. 26:5C-5 et seq., as amended and supplemented, and N.J.A.C. 8:57-2, as amended and supplemented. For the purposes of disease prevention and control, the provider may make the woman's test results known to the health care practitioner caring for the woman's infant. The Department or its designee may contact an HIV-positive woman or her infant's health care practitioner to follow up on the HIV status and HIV-related care of the infant. The health care practitioner caring for the infant shall also keep this information confidential in accordance with N.J.S.A. 26:5C-5 et seq., as amended and supplemented, and N.J.A.C. 8:57-2, as amended and supplemented.

(h) The following guidance documents containing recommendations for counseling and treating pregnant women with respect to HIV are available upon request by writing to the Division of HIV/AIDS Services, New Jersey Department of Health and Senior Services, 50 East State Street, 3rd Floor, PO Box 363, Trenton, NJ 08625-0363 or by telephoning (609) 984-5874:

1. HIV Counseling and Testing in Pregnancy, Vol. 100, No. 9, New Jersey Medicine, Supplement at 22, (September 2003), downloaded at http://www.state.nj.us/health/aids/counseling_testing_pregnancy.pdf;

2. Updated Recommendations for Reducing Vertical HIV Transmission, Vol. 100, No. 9, New Jersey Medicine, Supplement at 27, (September 2003), downloaded at http://www.state.nj.us/health/aids/vertical_transmission.pdf; and

3. Standard of Care for Women who Present in Labor with Unknown HIV Serostatus, downloaded at <http://www.state.nj.us/health/aids/stdcare.pdf>.

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.