

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, 26:2-111.2, 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.

Subchapter 4, HIV Counseling and Testing of Pregnant Women, was repealed and Subchapter 4, Testing of Pregnant Woman and Newborns for HIV or Human Immunodeficiency Virus, was adopted as new rules by R.2010 d.139, effective July 6, 2010. See: 41 N.J.R. 3354(a), 42 N.J.R. 1375(a).

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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.

Amended by R.2010 d.139, effective July 6, 2010.

See: 41 N.J.R. 3354(a), 42 N.J.R. 1375(a).

Rewrote definitions “AIDS” and “HIV”; and added definition “Clinical practitioner”.

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.