

## CHAPTER 61

## ACQUIRED IMMUNODEFICIENCY SYNDROME

## Authority

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

## Source and Effective Date

R.1996 d.509, effective November 4, 1996.  
See: 28 N.J.R. 4019(a), 28 N.J.R. 4202(a), and 28 N.J.R. 4787(a).

## Executive Order No. 66(1978) Expiration Date

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

## Chapter Historical Note

Chapter 61, Acquired Immunodeficiency Syndrome, was adopted as R.1986 d.407, effective October 6, 1986. 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. The concurrent proposal of R.1987 d.437 was adopted as R.1988 d.6. 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, 1991 See: Source and Effective Date. 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, also, section annotations.

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## SUBCHAPTER 1. PARTICIPATION AND ATTENDANCE AT SCHOOL BY INDIVIDUALS WITH HIV INFECTION

## 8:61-1.1 Attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV), also known as HTLV-III or LAV

(a) For purposes of this chapter, the following words shall have the following meanings:

“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 Classifications 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 “1994 Revised Classification System for Human Immunodeficiency Virus Infection in Children Less than 13 Years of Age,” as published by the Centers for Disease Control and Prevention in the Morbidity and Mortality Weekly Report 1994, volume 43, No. RR-12 (1-7), as appropriate.

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

“HIV” means human immunodeficiency virus, the causative agent of AIDS.

“Pupil” means an individual who is entitled to attendance at school in grades K-12, as well as a pre-kindergarten child who is entitled to attendance at school.

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

(b) Pupils with HIV infection shall not be excluded from attending school for reason of the HIV infection. Exclusion of HIV-infected pupils can only be for reasons that would lead to exclusion of any other pupil.

(c) Adults with HIV infection in all school settings shall not be restricted from their normal employment for reason of the HIV infection unless they have another illness which would restrict that employment.

(d) No pupil or adult shall be excluded from school solely by virtue of the fact of living with or being related to an HIV-infected individual.

(e) Any pupil or adult, with or without HIV infection, shall be removed from school if and when the individual has weeping skin lesions that cannot be covered.

(f) All schools and day care facilities, regardless of whether pupils or adults with HIV are present, shall adopt routine procedures for handling blood and body fluids. District boards of education shall develop written policies and procedures for sanitation and hygiene when handling body fluids and make available training and appropriate supplies to all school personnel, in conformance with N.J.A.C. 6:29-2.5. All schools and day care facilities, regardless of whether pupils or adults with HIV are present, shall adopt written policies and procedures for post-exposure evaluation and follow-up. 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, and the Public Employees Occupational Safety and Health Standards at N.J.A.C. 12:100-4.2.

(g) It is not necessary that anyone in the school be specially notified that an HIV-infected individual is registered to attend school or is an employee of the school. Should school officials receive notification of the presence of an HIV-infected individual, records containing identifying information regarding the HIV status of the individual must be kept confidential as required by N.J.S.A. 26:5C-5 et seq. Such information can be shared, only with the written consent of the pupil's parent or guardian, with those who need to know the status to determine the educational program for the pupil.

Correction: N.J.A.C. cites in (c) and (f) changed from 6:29-4.4 to 6:29-2.4.

Amended by R.1991 d.538, effective November 4, 1991.

See: 23 N.J.R. 2245(b), 23 N.J.R. 3332(a).

Exclusion of AIDS-infected pupils must be based on same standards as any other exclusion; written policies, education required for personnel handling body fluids; special notification not required; all AIDS information identified with a specific person to be held confidential.

Amended by R.1996 d.509, effective November 4, 1996.

See: 28 N.J.R. 4019(a), 28 N.J.R. 4202(a), and 28 N.J.R. 4787(a).

#### Case Notes

Commissioner could override power of boards of education to exclude students from public schools due to health reasons; regulation establishing procedures for any exclusion from schools of Human Immunodeficiency Virus infected children were valid. Bd. of Educ., Plainfield v. Cooperman, 105 N.J. 587, 523 A.2d 655 (1987).

## SUBCHAPTER 2. ELIGIBILITY CRITERIA TO PARTICIPATE IN THE AIDS DRUG DISTRIBUTION PROGRAM

### 8:61-2.1 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.

Amended by R.1991 d.539, effective November 4, 1991.

See: 23 N.J.R. 2247(a), 23 N.J.R. 3334(a).

Drugs other than retrovir included in program.

### 8:61-2.2 Definitions

The following term, as used in this subchapter, shall have the following meaning:

"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.

1. The medications designated for coverage will be determined administratively within the Division of AIDS Prevention and Control based on considerations of cost, efficacy and frequency of use.

Amended by R.1991 d.539, effective November 4, 1991.

See: 23 N.J.R. 2247(a), 23 N.J.R. 3334(a).

Drugs other than retrovir included in program.

### 8:61-2.3 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 physician.

Amended by R.1991 d.539, effective November 4, 1991.

See: 23 N.J.R. 2247(a), 23 N.J.R. 3334(a).

Stylistic changes.

### 8:61-2.4 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 a long-term 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. 10:69A-6.2.

Amended by R.1989 d.275, effective May 15, 1989.

See: 21 N.J.R. 606(b), 21 N.J.R. 1429(a).

Income categories redefined.

Amended by R.1999 d.308, effective September 7, 1999.

See: 31 N.J.R. 988(a), 31 N.J.R. 2617(b).

In (a), rewrote introductory language.

### 8:61-2.5 Residence

Residence shall be determined in accordance with the standards delineated at N.J.A.C. 10:69A-6.4.

### 8:61-2.6 Third party coverage

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

Recodified by R.1991 d.539, effective November 4, 1991.

See: 23 N.J.R. 2247(a), 23 N.J.R. 3334(a).

Application process recodified to 2.7.

### 8:61-2.7 Application process

(a) Applications to enroll in the program can be obtained by calling the Department of Health AIDS HOTLINE, at 1-800-624-2377.

(b) Once the application is received by an interested individual, the form should be completed and returned to the address indicated on the application.

(c) If approved for participation in the Program, the Department or its designee will notify the individual, his or her physician, and the pharmacy from which the prescription will be filled.

Amended by R.1991 d.539, effective November 4, 1991.

See: 23 N.J.R. 2247(a), 23 N.J.R. 3334(a).

Drugs other than retrovir included in program; Department's designee may also notify.

## SUBCHAPTER 3. HIV COUNSELING AND TESTING OF PREGNANT WOMEN

### 8:61-3.1 HIV counseling and testing of pregnant women

(a) A physician, or other duly licensed health care provider, shall provide information on HIV and AIDS and offer testing for HIV infection to all women to whom he or she is providing care, unless it is known by the physician that the woman has already been given the required information and

has been offered testing for HIV infection. The physician may allow a registered nurse, licensed health care professional, or a trained HIV counselor to provide such information, but such delegation of duties shall not relieve the physician from the ultimate responsibility to see that this information is provided.

(b) A physician 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.

(c) A physician 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.

(d) A physician shall make every reasonable effort to provide the woman with the results of the test for HIV infection, and the meaning of those results. Women who have a negative test result shall be advised about measures to prevent acquisition of HIV infection. Women who test positive or indeterminate shall be advised about:

1. Further testing;
2. Methods to prevent transmission of HIV;
3. Appropriate medical care for the woman;
4. Recommended treatment to diminish the risk of mother-to-infant transmission of HIV; and
5. Appropriate social and other necessary services.

(e) A physician who cannot follow through with counseling or further care of a woman with a positive or indeterminate test shall make an appropriate referral of the woman to a physician who will provide such counseling and care.

(f) Information and test results about a woman which are obtained pursuant to this section shall be held confidential in accordance with N.J.S.A. 26:5C-5 et seq. However, as provided at N.J.S.A. 26:5C-1 et seq., in the interest of protection of public health, the physician caring for the woman may make her test results known to the physician caring for her infant. The physician caring for the infant shall also keep this information confidential.

SUBCHAPTER 4. DISCLOSURE OF  
INFORMATION TO PROSPECTIVE FOSTER  
OR ADOPTIVE PARENTS BY DYFS OR  
LICENSED AGENCY

**8:61-4.1 Disclosure of information to prospective foster or adoptive parents by DYFS or licensed agency**

The contents of a child's HIV/AIDS record 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 to private adoption and foster care agencies licensed by the Division of Youth and Family Services on a need-to-know basis. The Division of Youth and Family Services and private adoption and foster care agencies licensed by the Division of Youth and Family Services may disclose the contents of a child's HIV/AIDS record to foster parents and pre-adoptive parents on a need-to-know basis, for care and treatment of the child. Individuals receiving such information shall keep the information confidential, pursuant to N.J.S.A. 26:5C-10.