

New Mexico

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April 8, 2011

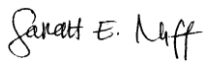
To the Reader:

The *Compendium of State HIV Testing Laws* describes key state HIV testing laws and policies. Each state's HIV testing laws are unique and many have undergone revision or supplementation since the release of the [CDC's 2006 HIV testing recommendations](#). The *Compendium* is designed to help clinicians understand HIV testing laws and to implement sound HIV testing policies. It should not, however, be used as an official legal document.

The NCCC provides clinical consultation for healthcare providers as part of the HRSA [AIDS Education and Training Centers](#) program. Clinicians with questions about HIV testing are encouraged to call the *National HIV Telephone Consultation Service (Warmline)* at (800) 933-3413. The Warmline also provides advice on HIV management, including antiretroviral treatment. Other NCCC consultation services include: the National Clinicians' Post-Exposure Prophylaxis Hotline ([PEPline](#)) at (888) 448-4911 for advice on managing occupational exposures to HIV and hepatitis; and the National Perinatal Consultation and Referral Service ([Perinatal HIV Hotline](#)) at (888) 448-8765 for consultation on preventing mother-to-child transmission of HIV.

We update the *Compendium* periodically, but it is beyond the scope of the project to perform updates and verification concurrent with all changes. We encourage readers to send updates (with citations when possible) and comments to Sarah Neff at neffs@nccc.ucsf.edu.

Thank you,



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Director of Research and Evaluation

&



Ronald H. Goldschmidt, MD
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The Warmline, PEPline, and Perinatal Hotline are part of the National HIV/AIDS Clinicians' Consultation Center (NCCC) based at San Francisco General Hospital/ UCSF. The NCCC is a component of the **AIDS Education and Training Centers (AETC) Program** funded by the Ryan White CARE Act of the **Health Resources and Services Administration (HRSA)** HIV/AIDS Bureau in partnership with the **Centers for Disease Control and Prevention (CDC)**.

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Definitions and Helpful Resources

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Definitions Commonly Used Nationally

- **Anonymous Testing** – Patient’s name is not recorded with test results.
- **Confidential** – Patient’s name is recorded with test results.
- **HIV Prevention Counseling** – Refers to an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV and developing a plan to take specific steps to reduce risks.¹
 - **Pre-test counseling** can include: (1) discussing HIV, risk factors and prevention methods; (2) explaining the meaning of positive and negative test results and their implications; (3) assessing the patient’s personal and social supports; (4) determining the patient’s readiness to cope with test results; (5) discussing disclosure of test results to others; and (6) advising the patient if reporting positive test results to health authorities is required.
 - **Post-test counseling** can include: (1) informing the patient of the results and meaning of the test results; (2) providing education about avoiding risks of sexual and injection drug exposures; and, for patients who test positive, (3) assessing the impact of test results for the patient and family; (3) explaining treatment options; (4) discussing partner counseling and disclosure of test results to others; and (5) initiating a support and treatment plan.
- **General Consent** – Consent for HIV screening is included in the general medical consent.
- **HIV** – Human Immunodeficiency Virus.
- **Informed Consent** – A process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions.¹
- **Name-based reporting** – Cases are reported by patient name (required in all states except (HI and VT).
- **Opt-in** – Patients typically are provided pre-HIV test counseling and must consent specifically to an HIV-antibody test, either orally or in writing.²
- **Opt-out** – Performing HIV screening after notifying the patient that: the test will be performed; and the patient may elect to decline or defer testing. Assent is inferred unless the patient declines testing.¹
- **Routine Testing** – HIV screening that is performed routinely during health-care encounters.
- **Rapid Testing** – Testing with any of the six FDA-approved rapid HIV tests that produce results in 30 minutes or less.³
- **Specific Consent** – Consent for the HIV screening is separate from the general medical consent.

Helpful Resources

CDC Recommendations and Guidelines: <http://www.cdc.gov/hiv/topics/testing/guideline.htm>

Emergency Department Implementation Guide: <http://edhivtestguide.org/>

Prenatal HIV Testing Website: <http://www.cdc.gov/hiv/topics/perinatal/1test2lives/>

For questions or comments about the compendium, contact NCCC: neffs@nccc.ucsf.edu

Clinicians with questions about HIV testing can call the Warmline at 800-933-3413.

¹ Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings. MMWR Recomm Rep. 2006 Sep 22;55(RR-14):1-17; quiz CE1-4. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

² <http://www.cdc.gov/mmwr/PDF/wk/mm5145.pdf>

³ <http://www.cdc.gov/hiv/topics/testing/resources/factsheets/rt-lab.htm>

New Mexico

A Quick Reference Guide for Clinicians to New Mexico HIV Testing Laws

April 8, 2011

This Quick Reference Guide for clinicians is a summary of relevant New Mexico state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of New Mexico HIV testing laws, please refer to the section of the Compendium that follows this Quick Reference Guide.

Informed Consent

- Informed consent required; may be oral or in writing (see *State Policies Relating to HIV Testing, 2011*, below, for exceptions); may be included in routine medical care.

Counseling

- Post-test counseling is required with HIV positive test results.

Provisos of Testing

- **Anonymous**
 - No specific provisions regarding anonymous testing were found.
- **Rapid**
 - No specific provisions regarding rapid testing were found.
- **Routine**
 - HIV testing may be included as part of routine panel of tests for pregnant women.

Disclosure

- No specific provisions regarding the notification of partners and contacts were found.

Minor/Adolescent Testing

- Minors may consent to HIV testing.

New Mexico

Perinatal Quick Reference Guide:

A Guide to New Mexico Perinatal HIV Testing Laws for Clinicians

April 8, 2011

This Perinatal Quick Reference Guide for clinicians is a summary of relevant New Mexico perinatal state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of New Mexico HIV testing laws, please refer to the corresponding section of the *State HIV Testing Laws Compendium* (www.nccc.ucsf.edu), “Testing of pregnant women and/or newborns.”

Prenatal

- Testing of pregnant women in prenatal care is through the opt-out process; declination must be in writing.
- Pre-test counseling not required for routine prenatal testing with informed consent and test explanation.

Labor & Delivery

- No specific provisions regarding labor & delivery testing were found.

Neonatal

- No specific provisions regarding neonatal testing were found.

Other

- **Counseling**
 - Post-test counseling is required with HIV positive test results and must include the following:
 - (A) the meaning of the test results;
 - (B) the possible need for additional testing;
 - (C) the availability of appropriate health care services, including mental health care, social and support services; and
 - (D) the benefits of locating and counseling any individual by whom the infected person may have been exposed to HIV and any individual whom the infected person may have exposed to HIV.

New Mexico State Policies Relating to HIV Testing, 2011

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New Mexico Statutes [NMS]

Chapter 24: Health and Safety Pages 4-15
Chapter 28: Human Rights Page 16

New Mexico Administrative Code [NMAC]

Title 1: General Government Administration Page 17
Title 6: Primary and Secondary Education Page 18
Title 7: Health Pages 19-20
Title 8: Social Services Pages 21-23
Title 16: Occupational and Professional Licensing Page 24

	Policy Category	Type	Section Code(s)
RESTR.ICTIONS/ MANDATES	Restrictions on use of HIV test	Testing or disclosure of test results prohibited for employment/hiring/promoting purposes	NMS § 28-10A-1 NMAC 1.7.5.12
	Mandatory testing within the criminal justice system	Convicted sex offenders – victim may petition court if consent not obtained voluntarily	NMS § 24-2B-5.1
		Persons charged with a sex offense – victim may petition court if consent not obtained voluntarily, provided victim receives same test as offender	NMS § 24-2B-5.2
	Mandatory testing outside of the criminal justice system	Blood/anatomical/semen donations	NMS § 24-2B-5
		General exposures – occupational, etc - no consent required for testing of source individual	NMS § 24-2B-5.3
		Procedures for refused consent – court orders, provided that the exposed receives same test as source	NMS § 24-2B-5.3
		Wards of CYFD may be tested if medically indicated	NMAC 8.8.2.14
TESTIN	Mandatory offering of HIV/AIDS information and/or testing	Opioid treatment programs must notify patients of availability of HIV testing and treatment	NMAC 7.32.8.19

		Needle exchange sites must provide HIV education to participants	NMS § 24-2C-5	
		Medicaid managed care must provide counseling and offer voluntary testing to women in prenatal care	NMAC 8.305.8.16	
		Medicaid managed care must offer counseling to all asymptomatic members	NMAC 8.305.8.16	
		Medicaid managed care must provide counseling to patients seeking family planning services	NMAC 8.305.8.16	
		HIV counseling and testing recommended for any dentistry provider	NMAC 16.5.1.16	
		School districts must provide instruction about HIV	NMAC 6.12.2.10	
	Informed consent		Informed consent required – verbal or written; may be included in routine medical care	NMS § 24-2B-2
			Exceptions to informed consent	NMS § 24-2B-5
			Consent not required when testing convicted or charged sex offenders	NMS § 24-2B-5.1 NMS § 24-2B-5.2
			Consent not required when testing source individual in cases of exposure	NMS § 24-2B-5.3
	Counseling requirements		Mandatory post-test counseling upon positive test results	NMS § 24-2B-4
			Mandatory offering of counseling to sex offender and victim upon positive test results for offender	NMS § 24-2B-5.1 NMS § 24-2B-5.2
			Opioid treatment programs must notify patients of availability of HIV counseling	NMAC 7.32.8.19
Anonymous testing		No related laws found		
POST-TESTING	Disclosure/confidentiality	HIV records as confidential	NMS § 24-1-20 NMS § 24-2B-6	
		Exceptions to confidentiality – including the DOH for purposes of providing partner services	NMS § 24-2B-6	
		Disclosure of HIV status of sex offender to victim	NMS § 24-2B-5.1 NMS § 24-2B-5.2	

		Penalties for unauthorized disclosure of HIV results	NMS § 24-2B-9
	Reporting	HIV diagnoses must be reported weekly – name-based reporting	NMS § 24-1-7 NMS § 24-1-8 NMS § 24-1-15 NMAC 7.4.3.13
OTHER	Testing of pregnant women and/or newborns	Pregnant women in prenatal care – opt-out testing; declination must be in writing	NMS § 24-2B-2
		Pre-test counseling not required for routine prenatal testing with informed consent and test explanation	NMS § 24-2B-2
	Testing of minors/adolescents	Minors may consent to STD services	NMS § 24-1-9
		Minors may consent to HIV testing and treatment	NMS § 24-2B-3
	Rapid HIV testing	No related laws found	
	Training and education of health care providers	Department of health responsible for education	NMS § 24-1F-3

Recommended Resources

New Mexico Legislature

<http://legis.state.nm.us/lcs/default.asp>

New Mexico Administrative Code

<http://www.nmcpr.state.nm.us/NMAC/>

New Mexico Department of Health

<http://www.health.state.nm.us/>

Chapter 24: Health and Safety

NM Chapter 24 Code §	Code Language
§ 24-1-7	<p>Sexually transmitted diseases; reports of cases</p> <p>A. Every physician who makes a diagnosis of or treats or prescribes for a case of a sexually transmitted disease, every superintendent or manager of a clinic, dispensary or charitable or penal institution in which there is a case of a sexually transmitted disease and every laboratory performing a positive laboratory test for a sexually transmitted disease shall report the case immediately, in writing, on a form supplied by the department to the district health officer in the district in which they are located.</p> <p>B. All district health officers shall make weekly reports to the department on forms supplied by the department of all cases of a sexually transmitted disease reported to them during the preceding week.</p>
§ 24-1-8	<p>Communication regarding sexually transmitted diseases</p> <p>If any attending physician knows or has good reason to suspect that a person having a sexually transmitted disease may conduct himself so as to expose other persons to infection, he shall notify the district health officer of the name and address of the diseased person and the facts of the case.</p>
§ 24-1-9	<p>Capacity to consent to examination and treatment for a sexually transmitted disease</p> <p>Any person regardless of age has the capacity to consent to an examination and treatment by a licensed physician for any sexually transmitted disease.</p>
§ 24-1-15	<p>Reporting of contagious diseases</p> <p>A. When a physician or other person knows that a person is infected with a threatening communicable disease, he shall promptly notify a public health official or his authorized agent.</p> <p>B. A public health official who has knowledge that a person is infected with a threatening communicable disease and has refused voluntary treatment, detention or observation shall petition the court for an order to detain the person who is infected with the threatening communicable disease until the person is no longer a contagious threat to the public or the person voluntarily complies with the appropriate treatment and contagion precautions.</p> <p>C. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing that the person is infected with a threatening communicable disease.</p> <p>D. The petition shall state that the person to be detained:</p>

NM Chapter 24 Code §	Code Language
	<p>(1) is actively infectious with a threatening communicable disease or presents a substantial likelihood of having a threatening communicable disease based on credible medical evidence;</p> <p>(2) poses a substantial likelihood of transmission of the threatening communicable disease to others because of inadequate separation from others; and</p> <p>(3) after being advised of his condition and the risks posed thereby, has refused voluntary treatment.</p> <p>E. Upon the filing of a petition the court shall:</p> <p>(1) immediately grant ex parte a temporary order of protection to isolate the person infected with the threatening communicable disease if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that the person infected with a threatening communicable disease poses a substantial threat to the public health and safety;</p> <p>(2) cause the temporary order of protection, notice of hearing and an advisement of the terms of the temporary protective order, including his right to representation and re-petition for termination of any protective order that removes and detains the infected person, to be immediately served on the allegedly infected person; and</p> <p>(3) within five days after the granting of the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order.</p> <p>F. A person held pursuant to a temporary protective order as set forth in Subsection E of this section shall be:</p> <p>(1) entitled to representation by counsel at the evidentiary hearing and at all hearings thereafter for the duration of the period of removal and detention; and</p> <p>(2) permitted to communicate on any matter, including his removal and detention, with persons by telephone, or other reasonably available means, that do not expose other persons to the risk of infection for the duration of the period of removal and detention.</p> <p>G. Counsel may be retained by the person held or shall be appointed by the court if the court determines that the person held cannot afford legal representation or if the court determines that appointment of counsel is required in the interest of justice.</p> <p>H. At the evidentiary hearing the court shall review the circumstances surrounding the temporary order and, if the petitioner can show by clear and convincing evidence that the person being held has not voluntarily complied or will not voluntarily comply with appropriate treatment and contagion precautions, the court may continue the detention of the person infected with a threatening communicable disease. The court shall order regular review of the order to detain by providing the person being held with a subsequent hearing within ninety days of the temporary order's issuance and every ninety days thereafter. The detention order shall be terminated and the person shall be released if:</p>

NM Chapter 24 Code §	Code Language
	<p>(1) the person being held is certified by a public health official to pose no further risk of infecting others;</p> <p>(2) at a hearing, the petitioner, whose burden of proof continues under a clear and convincing standard, can no longer show that the person being held is infected with a threatening communicable disease and that he will not comply with appropriate treatment and contagion precautions voluntarily; or</p> <p>(3) exceptional circumstances exist warranting the termination of the temporary protective order.</p> <p>I. The provisions of this section do not permit the forcible administration of medications.</p> <p>J. The proceedings shall be recorded stenographically, electronically, mechanically or by other appropriate means. The proceedings shall be closed to the general public and the records shall be sealed from public inspection.</p> <p>K. A person who in good faith reports another person infected with a threatening communicable disease shall not be held liable for civil damages as a result of the report; provided that the person reported as being infected with a threatening communicable disease shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.</p> <p>L. For purposes of this section:</p> <p>(1) "court" means the district court of the judicial district where the person who is alleged to be infected with a threatening communicable disease resides or is found;</p> <p>(2) "public health official" means a district health officer, the director of the public health division of the department of health, a chief medical officer or a person designated by the secretary of health to carry out the duties provided in this section; and</p> <p>(3) "threatening communicable disease" means a disease that causes death or great bodily harm, passes from one person to another and for which there is no means by which the public reasonably can avoid the risk of contracting the disease.</p>
§ 24-1-20	<p>Records confidential</p> <p>A. The files and records of the department giving identifying information about individuals who have received or are receiving from the department treatment, diagnostic services or preventive care for diseases, disabilities or physical injuries, are confidential and are not open to inspection except where permitted by rule of the department, as provided in Subsection C of this section and to the secretary of health and environment [secretary of health] or to an employee of the health and environment department [department of health] authorized by the secretary to obtain such information, but the information shall only be</p>

NM Chapter 24 Code §	Code Language
	<p>revealed for use in connection with a governmental function of the secretary or the authorized employee. Both the secretary and the employees are subject to the penalty contained in Subsection F of this section if they release or use the information in violation of this section.</p> <p>B. All information voluntarily provided to the director or his agent in connection with studies designated by him as medical research and approved by the secretary of health and environment [secretary of health], either conducted by or under the authority of the director for the purpose of reducing the morbidity or mortality from any cause or condition of health, is confidential and shall be used only for the purposes of medical research. The information shall not be admissible as evidence in any action of any kind in any court or before any administrative proceeding or other action.</p> <p>C. The human services department and the office of the state long-term care ombudsman shall have prompt access to all files and records in the possession of the licensing and certification bureau of the department that are related to any health facility investigation. Officers and employees of those agencies with such access are subject to the penalty in Subsection F of this section if they release or use the information in violation of this section.</p> <p>D. The files and records of the department are subject to subpoena for use in any pending cause in any administrative proceeding or in any of the courts of the state, unless otherwise provided by law.</p> <p>E. No person supplying information to the department for use in a research project or any cooperating person in a research project shall be subject to any action for damages or other relief as a result of that activity.</p> <p>F. Any person who discloses confidential information in violation of this section is guilty of a petty misdemeanor.</p>
§ 24-1-21	<p>Penalties</p> <p>Any person violating any of the provisions of the Public Health Act [24-1-1 NMSA 1978] or any order, rule or regulation adopted pursuant to the provisions of the Public Health Act is guilty of a petty misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$ 100) or imprisonment in the county jail for a definite term not to exceed six months or both such fine and imprisonment in the discretion of the court. Each day of a continuing violation of Subsection A of Section 24-1-5 NMSA 1978 after conviction shall be considered a separate offense. The department also may enforce its rules and orders by any appropriate civil action. The attorney general shall represent the department.</p>
§ 24-1F-3	Department of health; duties

NM Chapter 24 Code §	Code Language
	<p>The department of health shall serve as the state's human immunodeficiency virus and acquired immune deficiency syndrome service coordinator among all state agencies, providing direct and contract education and prevention and treatment services for eligible persons, subject to the availability of funds. The department shall serve as the state contract administrator for federal Ryan White services funding as well as for all federal centers for disease control and prevention human immunodeficiency virus and acquired immune deficiency syndrome programs. Services shall include prevention, clinical services, a drug assistance and insurance assistance program to eligible individuals and programs appropriate for Native Americans, including traditional medicine services. Services shall be delivered in a consumer-oriented model. The department of health shall include a quality assurance component in all services and shall ensure that all clients are educated about their rights and responsibilities and the department's grievance procedures.</p>
§ 24-2B-2	<p>Informed consent</p> <p>No person shall perform a test designed to identify the human immunodeficiency virus or its antigen or antibody without first obtaining the informed consent of the person upon whom the test is performed, except as provided in Section 24-2B-5, 24-2B-5.1, 24-2B-5.2 or 24-2B-5.3 NMSA 1978. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses and limitations and the meaning of its results. Consent need not be in writing if there is documentation in the medical record that the test has been explained and the consent has been obtained. The requirement for full pre-test counseling may be waived under the following circumstances:</p> <p>A. the performance of a prenatal test to determine if the human immunodeficiency virus or its antigen is present in a pregnant woman; provided that the woman, or her authorized representative, after having been informed of the option to decline the human immunodeficiency virus test, may choose not to have the human immunodeficiency virus test performed as a part of the routine prenatal testing if she or her authorized representative provides a written statement as follows:</p> <p>"I am aware that a test to identify the human immunodeficiency virus or its antigen or antibody is a part of routine prenatal testing. However, I voluntarily and knowingly choose not to have the human immunodeficiency virus test performed.</p> <p>_____</p> <p>(Name of patient or authorized representative)</p> <p>_____</p> <p>(Signature and date)."; or</p> <p>B. when human immunodeficiency virus testing is part of routine medical care."</p>

NM Chapter 24 Code §	Code Language
§ 24-2B-3	<p>Substituted consent</p> <p>Informed consent shall be obtained from a legal guardian or other person authorized by law when the person is not competent. A minor shall have the capacity to give informed consent to have the human immunodeficiency virus test performed on himself.</p>
§ 24-2B-4	<p>Mandatory counseling</p> <p>No positive test result shall be revealed to the person upon whom the test was performed without the person performing the test or the health facility at which the test was performed providing or referring that person for individual counseling about:</p> <ul style="list-style-type: none"> A. the meaning of the test results; B. the possible need for additional testing; C. the availability of appropriate health care services, including mental health care, social and support services; and D. the benefits of locating and counseling any individual by whom the infected person may have been exposed to the human immunodeficiency virus and any individual whom the infected person may have exposed to the human immunodeficiency virus.
§ 24-2B-5	<p>Informed consent not required</p> <p>Informed consent for testing is not required and the provisions of Section 24-2B-2 NMSA 1978 do not apply for:</p> <ul style="list-style-type: none"> A. a health care provider or health facility performing a test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part, including tissue and blood or blood products, donated for a purpose specified under the Uniform Anatomical Gift Act or for transplant recipients or semen provided for the purpose of artificial insemination and the test is necessary to ensure medical acceptability of a recipient or the gift or semen for the purposes intended; B. the performance of a test in bona fide medical emergencies when the subject of the test is unable to grant or withhold consent and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that post-test counseling or referral for counseling shall nonetheless be required when the individual is able to receive that post-test counseling. Necessary treatment shall not be withheld pending test results; C. the performance of a test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or D. the performance of a test done in a setting where the identity of the test subject is not known, such as in public health testing programs and

NM Chapter 24 Code §	Code Language
	sexually transmitted disease clinics.
§ 24-2B-5.1	<p>Informed consent not required; testing of persons convicted of certain criminal offenses; responsibility to administer and pay for test</p> <p>A. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed, without the offender's consent, on an offender convicted pursuant to state law of any criminal offense:</p> <ol style="list-style-type: none"> (1) involving contact between the penis and vulva; (2) involving contact between the penis and anus; (3) involving contact between the mouth and penis; (4) involving contact between the mouth and vulva; (5) involving contact between the mouth and anus; or (6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of blood, semen or vaginal secretions from the offender to the victim. <p>B. If consent to perform a test on an offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other prosecutorial authority shall, upon the request of the victim of a criminal offense described in Subsection A of this section, petition the court to order that a test be performed on the offender. not later than forty-eight hours from the date of the court order. If the victim of the criminal offense is a minor or incompetent, the parent or legal guardian of the victim may request the district attorney or other prosecutorial authority to petition the court to order that a test be performed on the offender. The petition and all proceedings in connection with the petition shall be under seal. The results of the test shall be disclosed as soon as practicable and only to the offender and to the victim or the victim's parent or legal guardian. If the offender has a positive test result, both the offender and victim shall be provided with counseling, as described in Section 24-2B-4 NMSA 1978.</p> <p>C. If the offender is sentenced to imprisonment in a state corrections facility, the court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p> <p>D. If the offender is convicted of a misdemeanor or petty misdemeanor offense or is convicted of a felony offense that is suspended or deferred, the court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p> <p>E. If the offender is a minor adjudicated as a delinquent child pursuant to the provisions of the Children's Code [32A-1-1 NMSA 1978] and the court transfers legal custody of the minor to the children, youth and families department, the court's order shall direct the children, youth and families department to be responsible for the administration of and payment for</p>

NM Chapter 24 Code §	Code Language
	<p>the test and the lawful distribution of the test results.</p> <p>F. If the offender is a minor adjudicated as a delinquent child pursuant to the provisions of the Children's Code [32A-1-1 NMSA 1978] and the court does not transfer legal custody of the minor to the children, youth and families department, the court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p>
§ 24-2B-5.2	<p>Informed consent not required; testing of persons formally charged for allegedly committing certain criminal offenses; responsibility to administer and pay for test</p> <p>A. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed, without the person's consent, on a person upon the filing of a complaint, information or an indictment alleging that the person committed a state criminal offense:</p> <ol style="list-style-type: none"> (1) involving contact between the penis and vulva; (2) involving contact between the penis and anus; (3) involving contact between the mouth and penis; (4) involving contact between the mouth and vulva; or (5) involving contact between the mouth and anus. <p>B. If consent to perform a test on an alleged offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other prosecutorial authority shall, upon the request of the victim of the alleged criminal offense described in Subsection A of this section, petition the court to order that a test be performed on the alleged offender not later than forty-eight hours from the date of the court order; provided that the same test is first performed on the victim of the alleged criminal offense. If the victim of the alleged criminal offense is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may request the district attorney or other prosecutorial authority to petition the court to order that a test be performed on the alleged offender. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged offense.</p> <p>C. The court may issue an order based on a finding of good cause after a hearing at which both the victim of the alleged criminal offense and the alleged offender have the right to be present. During the hearing, only affidavits, counter affidavits and medical reports regarding the facts that support or rebut the issuance of an order shall be admissible. The hearing shall be conducted within seventy-two hours after the district attorney or other prosecutorial authority petitions the court for the order. The petition and all proceedings in connection therewith shall be under seal.</p> <p>D. The results of the test shall be disclosed as soon as practicable and only to the alleged offender and to the victim of the alleged criminal</p>

NM Chapter 24 Code §	Code Language
	<p>offense or the victim's parent or legal guardian. When the victim of the alleged criminal offense or the alleged offender has a positive test result, both the alleged offender and the victim of the alleged criminal offense shall be provided with counseling, as described in Section 24-2B-4 NMSA 1978.</p> <p>E. The court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p> <p>F. A prosecuting attorney may not use in a criminal proceeding arising out of the alleged criminal offense the fact that a test was administered to the alleged offender, or the results of the test.</p> <p>G. The provisions of this section shall not affect the rights and remedies available to the victim of the alleged criminal offense and alleged offender in any civil action.</p> <p>H. The administration of a test to an alleged offender pursuant to the provisions of this section shall not preclude the subsequent administration of follow-up tests pursuant to the provisions of Section 24-2B-5.1 NMSA 1978.</p>
§ 24-2B-5.3	<p>Informed consent not required; testing of persons who are source individuals</p> <p>A. As used in this section:</p> <p>(1) "exposed individual" means a health care provider, first responder or other person, including an employee, volunteer or independent contracted agent of a health care provider or law enforcement agency, while acting within the scope of his employment; or a person who, while receiving services from a health care provider, is significantly exposed to the blood or other potentially infectious material of another person, when the exposure is proximately the result of the activity of the exposed individual or receipt of health care services from the source individual;</p> <p>(2) "significantly exposed" means direct contact with blood or other potentially infectious material of a source individual in a manner that is capable of transmitting the human immunodeficiency virus; and</p> <p>(3) "source individual" means a person whose blood or other potentially infectious material may have been or has been the source of a significant exposure.</p> <p>B. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed without the consent of a source individual when an exposed individual is significantly exposed.</p> <p>C. If consent to perform a test on a source individual cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the exposed individual may petition the court to order that a test be performed on the source individual; provided that the same test shall</p>

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	<p>first be performed on the exposed individual. The test may be performed on the source individual regardless of the result of the test performed on the exposed individual. If the exposed individual is a minor or incompetent, the parent or guardian may petition the court to order that a test be performed on the source individual.</p> <p>D. The court may issue an order based on a finding of good cause after a hearing at which both the source individual and the exposed individual have the right to be present. The hearing shall be conducted within seventy-two hours after the petition is filed. The petition and all proceedings in connection with the petition shall be under seal. The test shall be administered on the source individual within three days after the order for testing is entered.</p> <p>E. The results of the test shall be disclosed only to the source individual and the exposed or the exposed individual's parent or guardian. When the source individual or the exposed individual has a positive test result, both shall be provided with counseling as provided in Section 24-2B-4 NMSA 1978.</p>
§ 24-2B-6	<p>Confidentiality</p> <p>A. No person or the person's agents or employees who require or administer the test shall disclose the identity of any person upon whom a test is performed or the result of such a test in a manner that permits identification of the subject of the test, except to the following persons:</p> <ul style="list-style-type: none"> (1) the subject of the test or the subject's legally authorized representative, guardian or legal custodian; (2) any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative; (3) an authorized agent, a credentialed or privileged physician or employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information; (4) the department of health in accordance with reporting requirements established by regulation; (5) the department of health for the purpose of providing partner services; (6) a health facility or health care provider that procures, processes, distributes or uses: <ul style="list-style-type: none"> (a) a human body part from a deceased person, with respect to medical information regarding that person; (b) semen provided prior to the effective date of the Human Immunodeficiency Virus Test Act [24-2B-1 NMSA 1978] for the purpose of artificial insemination; (c) blood or blood products for transfusion or injection; or (d) human body parts for transplant with respect to medical

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	<p>information regarding the donor or recipient;</p> <p>(7) health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, so long as any identity remains confidential;</p> <p>(8) authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and</p> <p>(9) for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.</p> <p>B. For the purposes of this section:</p> <p>(1) "partner services" means a protocol that the department of health establishes by regulation for contacting individuals whom it identifies to be at risk of human immunodeficiency virus infection due to contact with an individual whom it has identified, through reporting made pursuant to Paragraph (4) of Subsection A of this section, as having been infected with human immunodeficiency virus; and</p> <p>(2) "test" means a procedure that definitively diagnoses the presence of human immunodeficiency virus infection, either through the detection of the virus itself or the detection of antibodies against the virus."</p>
§ 24-2B-7	<p>Disclosure statement</p> <p>No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by the Human Immunodeficiency Virus Test Act [24-2B-1 NMSA 1978]. Whenever disclosure is made pursuant to that act, it shall be accompanied by a statement in writing that includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A person who makes an unauthorized disclosure of this information is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars (\$ 500), or both."</p>
§ 24-2B-8	<p>Disclosure</p> <p>Nothing in the Human Immunodeficiency Virus Test Act [24-2B-1 NMSA 1978]] shall be construed to prevent a person who has been tested from disclosing in any way to any other person his own test results. Any victim of an alleged criminal offense who receives information pursuant to Section 24-2B-5.2 NMSA 1978 may disclose the test results as is reasonably necessary to protect his health and safety or the health and safety of his family or sexual partner.</p>
§ 24-2B-9	<p>Penalty</p>

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	A person who makes an unauthorized disclosure of the results of a test designed to identify the human immunodeficiency virus or its antigen or antibody is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars (\$ 500), or both.
§ 24-2C-2	<p>Purpose</p> <p>The purpose of the Harm Reduction Act [24-2C-1 NMSA 1978] is to:</p> <ul style="list-style-type: none"> A. prevent the transmission of the human immunodeficiency virus, hepatitis B and C viruses and other blood-borne diseases; and B. encourage intravenous drug users to seek substance abuse treatment and ensure that participants receive individual counseling and education to decrease the risk of transmission of blood-borne diseases.
§ 24-2C-5	<p>Program</p> <p>The program shall provide:</p> <ul style="list-style-type: none"> A. sterile hypodermic syringes and needles in exchange for used hypodermic syringes, needles or other objects used to inject controlled substances or controlled substance analogs into the human body; B. education to participants on the transmission of the human immunodeficiency virus, hepatitis B and C and prevention measures; and C. referral to substance abuse treatment services for participants.

Chapter 28: Human Rights

NM Chapter 28 Code §	Code Language
§ 28-10A-1	<p>Human immunodeficiency virus related test; limitation</p> <p>A. No person may require an individual to disclose the results of a human immunodeficiency virus related test as a condition of hiring, promotion or continued employment, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.</p> <p>B. A person who asserts that a bona fide occupational qualification exists for disclosure of an individual's human immunodeficiency virus related test results shall have the burden of proving that:</p> <p>(1) the human immunodeficiency virus related test is necessary to ascertain whether an individual is currently able to perform in a reasonable manner the duties of the particular job or whether an individual will present a significant risk of transmitting human immunodeficiency virus to other persons in the course of normal work activities; and</p> <p>(2) there exists no reasonable accommodation short of requiring the test.</p>

New Mexico Administrative Code – Title 1: General Government Administration

Title 1 NMAC	Code Language
1.7.5.12	<p>STATE PERSONNEL ADMINISTRATION – SELECTION</p> <p>K. Human Immunodeficiency Virus -Related (AIDS) Test:</p> <p>No agency shall require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. Agencies must adhere to the provisions of the <i>Human Immunodeficiency Virus Test Act NMSA 1978 Sections 24-2B-1 to 24-2B-8 Cum. Supp. 1993</i>).</p>

New Mexico Administrative Code – Title 6: Primary and Secondary Education	
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Title 6 NMAC	Code Language
6.12.2.10	<p>HUMAN IMMUNODEFICIENCY VIRUS (HIV)</p> <p>A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to students and school employees infected with HIV, provides for appropriate curricula regarding HIV, and requires community involvement in the development of policies and the review of instructional materials.</p> <p>B. Each school district shall implement a policy that will ensure that all students infected with HIV have appropriate access to public education and that their rights to privacy are protected and to further ensure that the rights to privacy of all school employees infected with HIV are protected.</p> <p>C. Curricula:</p> <p>(1) Each school district shall provide instruction about HIV and related issues in the curriculum of the required health education content area to all students in the elementary grades, in the middle/junior high school grades, and in the senior high school grades.</p> <p>(2) Educational materials and grade levels of instruction shall be determined by the local school district and shall be appropriate to the age group being taught.</p> <p>(3) The instructional program shall include, but not necessarily be limited to:</p> <p>(a) definition of HIV and acquired immune deficiency syndrome (AIDS);</p> <p>(b) the symptoms and prognosis of HIV and AIDS;</p> <p>(c) how the virus is spread;</p> <p>(d) how the virus is not spread;</p> <p>(e) ways to reduce the risks of getting HIV/AIDS, stressing abstinence;</p> <p>(f) societal implications for this disease;</p> <p>(g) local resources for appropriate medical care; and</p> <p>(h) ability to demonstrate refusal skills, overcome peer pressure, and use decision-making skills.</p> <p>D. Community involvement.</p> <p>Each local board of education shall insure the involvement of parents, staff; and students in the development of policies and the review of instructional materials.</p>

New Mexico Administrative Code – Title 7: Health	
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Title 7 NMAC	Code Language
7.4.3.13	<p>NOTIFIABLE DISEASES OR CONDITIONS IN NEW MEXICO:</p> <p>A. All reports must include:</p> <ul style="list-style-type: none"> (1) the disease or problem being reported; (2) patient's name, date of birth/age, gender, race/ethnicity, address, telephone number, and occupation; (3) physician or licensed healthcare professional (or laboratory) name and telephone number; (4) laboratory or clinical samples for conditions marked with (*) are required to be sent to the scientific laboratory division; (5) the epidemiology and response division will provide guidance about what information to include for laboratory-confirmed influenza cases. <p>C. Routine reporting:</p> <ul style="list-style-type: none"> (5) HIV (human immunodeficiency virus) and AIDS (acquired immunodeficiency syndrome). Report to HIV/AIDS epidemiology program, 1190 St. Francis Dr., N1350, Santa Fe, NM 87502, fax 505-476-3544 or call 505-476-3515. <ul style="list-style-type: none"> (a) HIV: (1) confirmed positive HIV antibody test (screening test plus confirmatory test), or (2) any test for HIV RNA or HIV cDNA ('viral load'), or (3) any test to detect HIV proteins, or (4) any positive HIV culture, or (5) any other test or condition indicative of HIV infection as defined by the United States centers for disease control and prevention. (b) AIDS: Opportunistic infections, cancers, CD4 lymphocyte count (<200 per uL or <14 percent of total lymphocytes), or any condition indicative of AIDS.
7.32.8.18	<p>Opioid Treatment Programs - Administration: The program sponsor shall ensure that:</p> <p>D. written policies and procedures are developed, implemented, complied with and maintained at the OTP and include:</p> <ul style="list-style-type: none"> (2) procedures to meet the unique needs of diverse populations, such as pregnant women, children, individuals with communicable diseases, (e.g. hepatitis C, tuberculosis, HIV or AIDS), or individuals involved in the criminal justice system;
7.32.8.19	<p>ADMISSION:</p> <p>C. The OTP shall ensure that each patient at the time of admission:</p> <ul style="list-style-type: none"> (3) is informed of the following: <ul style="list-style-type: none"> (i) testing and treatment available for HIV and other communicable diseases, the availability of immunization for hepatitis A and B, and the availability of harm reduction services; (j) availability of counseling on preventing exposure to and transmission of human immunodeficiency virus (HIV), sexually transmitted diseases, and blood-borne pathogens;

Title 7 NMAC	Code Language
	<p>D. A program sponsor shall ensure that the program medical director or medical practitioner designee conducts a complete, fully documented physical examination of an individual who requests admission to the program before the individual receives a dose of opioid dependency treatment medication, and that the physical examination includes:</p> <p>(2) obtaining a medical and family history and documentation of current information to determine chronic or acute medical conditions such as diabetes, renal diseases, hepatitis, HIV infection, tuberculosis, sexually transmitted disease, pregnancy or cardiovascular disease;</p> <p>(5) recommending additional tests based upon the individual's history and physical condition, such as:</p> <p>(d) HIV testing.</p>
7.32.8.26	<p>DIVERSE POPULATIONS:</p> <p>A. The program sponsor shall ensure that:</p> <p>(6) HIV testing and education are available to patients either at the provider or through referral;</p> <p>(7) a patient who is HIV-positive and who requests treatment for HIV or AIDS:</p> <p>(a) is offered treatment for HIV or AIDS either at the provider or through referral; and</p> <p>(b) has access to an HIV- or AIDS-related peer group or support group and to social services either at the provider or through referral to a community group; and</p> <p>(8) for patients with a communicable disease such as HIV, AIDS, or hepatitis C, the provider has a procedure for transferring a patient's opioid treatment to a non-program medical practitioner treating the patient for the communicable disease when it becomes the patient's primary health concern;</p>

New Mexico Administrative Code – Title 8: Social Services	
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Title 8 NMAC	Code Language
8.8.2.14	<p>PROTECTIVE SERVICES GENERAL POLICIES - COMMUNICABLE DISEASES:</p> <p>Protective services provides services to individuals at risk of being, or who are determined to be, abused, neglected and/or exploited who are also infected with a communicable disease.</p> <p>A. Decision to release information regarding HIV positive/AIDS</p> <p>(1) For children under the age of 14 years in CYFD's custody, an authorized representative is required to consent to and release results of AIDS/HIV testing. CYFD requests to be the authorized representative for children in CYFD's custody through an application to the court.</p> <p>(2) Protective services promptly provides testing results to the child's foster parents, and/or prospective foster parents, and adoptive parents.</p> <p>(3) Protective services provides testing results to the individual responsible for the child's medical care when the child is placed in an institution such as correctional, treatment or shelter facilities.</p> <p>(4) For children under the age of 14 when CYFD is the authorized representative, the social and community services coordinator in consultation with the supervisor decides which individuals, based upon the "need to know" standard, are provided with confidential information.</p> <p>(5) For children under the age of 14 when CYFD is not the authorized representative, the court-appointed authorized representative decides which individuals, based upon the "need to know" standard, are provided with confidential information.</p> <p>(6) Children 14 years old and older decide which individuals are provided with confidential information.</p> <p>C. Testing for HIV/AIDS</p> <p>(1) An adult may be required to be tested for the presence of HIV/AIDS pursuant to the Health and Safety Code, Section 24-2B-1.</p> <p>(2) A child 14 years old and older in CYFD's custody may be tested for the presence of HIV/AIDS when testing is medically indicated and the child consents.</p> <p>(3) A child under the age of 14 in CYFD's custody may be tested for the presence of HIV/AIDS when the testing is medically indicated and the authorized representative consents.</p> <p>(4) If CYFD is unable to obtain required consent for testing a child, and testing is medically indicated, CYFD may seek an order from the children's court to conduct testing.</p> <p>(5) Children adjudicated delinquent based on offenses involving high risk sexual contact are tested in accordance with Health and Safety Code, Section 24-2B-5.1(E).</p>
8.14.4.25	<p>JUVENILE JUSTICE – MEDICAL AND BEHAVIORAL HEALTH SERVICES - CLIENT AND FAMILY PARTICIPATION; REFUSAL OF CARE:</p>

Title 8 NMAC	Code Language
	<p>C. Whenever treatment is provided without documented consent, the reasons for providing the treatment are documented. However, consent is not required to perform an HIV test in accordance with NMSA 1978 Section 24-2B-2, and to administer medications.</p>
8.305.6.15	<p>MEDICAID MANAGED CARE – PROVIDER NETWORKS - PUBLICLY SUPPORTED PROVIDERS:</p> <p>The MCO/SE shall demonstrate how it incorporates and utilizes certain publicly supported providers who serve many of the special needs of medicaid members and are considered important in maintaining continuity of care.</p> <p>B. Local department of health offices: The MCO shall contract with public health providers for services described below in Paragraph (2) of Subsection B of 8.305.6.15 NMAC and those defined by state law as public health services.</p> <p>(3) Shared responsibility between MCO and public health offices: The MCO shall coordinate with public health offices regarding the following services:</p> <ul style="list-style-type: none"> (a) screening, diagnosis, treatment, follow-up and contact investigations of sexually transmitted disease; (b) HIV prevention counseling, testing and early intervention;
8.305.8.16	<p>MEDICAID MANAGED CARE – QUALITY MANAGEMENT - STANDARDS FOR PREVENTIVE HEALTH SERVICES:</p> <p>The MCO/SE shall follow current national standards for preventive health services including behavioral health preventive services. These standards are derived from several sources, including the U.S. preventive services task force, the centers for disease control and prevention; and the American college of obstetricians and gynecologists. Any preventive health guidelines developed by the MCO/SE under these standards shall be adopted, reviewed at least every two years, updated when appropriate and disseminated to practitioner and member. Unless a member refuses and the refusal is documented, the MCO/SE shall provide the following preventive health services or document that the services (with the results) were provided by other means. The MCO/SE shall document medical reasons not to perform these services for an individual member. Member refusal is defined to include refusal to consent to and refusal to access care.</p> <p>C. Screens: The MCO shall adopt policies which will ensure that, to the extent possible, within six months of enrollment or within six months of a change in screening standards, asymptomatic members receive at least the following preventive screening services.</p> <p>(8) Screening for tuberculosis: Routine tuberculin skin testing shall not be required for all members. The following high-risk persons shall be screened or previous screening noted: persons who immigrated from</p>

Title 8 NMAC	Code Language
	<p>countries in Asia, Africa, Latin America or the Middle East in the preceding five years; persons who have substantial contact with immigrants from those areas; migrant farm workers; and persons who are alcoholic, homeless or injecting drug users. HIV-infected persons shall be screened annually. Persons whose screening tuberculin test is positive (>10 mm of induration) must be referred to the local public health office in their community of residence for contact investigation.</p> <p>(12) Prenatal screening: All pregnant members shall be screened for preeclampsia, D(Rh) incompatibility, down syndrome, neural tube defects, hemoglobinopathies, vaginal and rectal group B streptococcal infection and screened and counseled for HIV in accordance with the most current recommendations of the American college of obstetricians and gynecologists.</p> <p>D. Counseling: The MCO/SE shall adopt policies that shall ensure that applicable asymptomatic members are provided counseling on the following topics unless recipient refusal is documented:</p> <p>(8) prevention of HIV infection and other sexually transmitted diseases (MCO only); and</p> <p>F. Family planning: The MCO must have a family planning policy. This policy must ensure that members of the appropriate age of both sexes who seek family planning services are provided with counseling and treatment, if indicated, as it relates to the following:</p> <p>(2) HIV and other sexually transmitted diseases and risk reduction practices.</p> <p>G. Prenatal care: The MCO shall operate a proactive prenatal care program to promote early initiation and appropriate frequency of prenatal care consistent with the standards of the American college of obstetrics and gynecology. The program shall include at least the following:</p> <p>(4) counseling that strongly advises voluntary testing for HIV;</p>

New Mexico Administrative Code – Title 16: Occupational and Professional Licensing

Title 16 NMAC	Code Language
16.5.1.16	<p>OCCUPATIONAL AND PROFESSIONAL LICENSING – DENTISTRY - CONTROL AND PREVENTION OF BLOODBORNE INFECTIONS:</p> <p>The following Rules are enacted to prevent transmission of the Human Immunodeficiency Virus (HIV), Hepatitis B infectious state (i.e. acute infection and chronic carriers only) (HBV), the Hepatitis C Virus (HCV), and other blood borne infections.</p> <p>D. Evaluation of Provider with Blood borne Infection: (1) Counseling and Testing Recommended: The Board and Committee strongly recommend counseling and testing of any provider for HIV, HBV, HCV and other blood borne infections.</p>