

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 64CSR64, AIDS-RELATED MEDICAL TESTING AND CONFIDENTIALITY

Type of Rule: X Legislative Interpretive Procedural

Agency: Bureau for Public Health

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Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

An increase cost to state government will occur implementing section 4.3., mandated HIV Testing of persons charged with or convicted of a sex-related crime.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2011 Increase/Decrease (use "-")	2012 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	1,872	1,872
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other			
2. Estimated Total Revenues	0	0	0

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Mandating HIV testing of all persons charged with a sex-related crime will increase cost to the state. In 2009, according to the CRIMES report on the State Police website 1,336 offenders were reported to the Police. Of those, 312 were arrested for sexual offenses. HIV testing is processed at the Office of Laboratory Services. Their estimate on cost per test is \$6.00. The total cost to the state if all persons arrested for a sexual offense were tested would be \$1,872. This figure might go higher if more of the persons reported were taken into custody or if persons arrested for prostitution were also tested. the Bureau for Public Health wasn't able to find an annual count of how many people are charged with prostitution in West Virginia.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

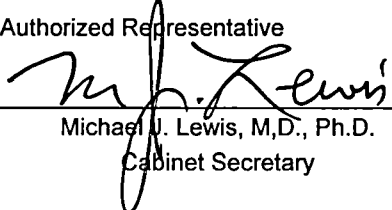
Date

6.16.11

Agency

Department of Health and Human Resources

Authorized Representative

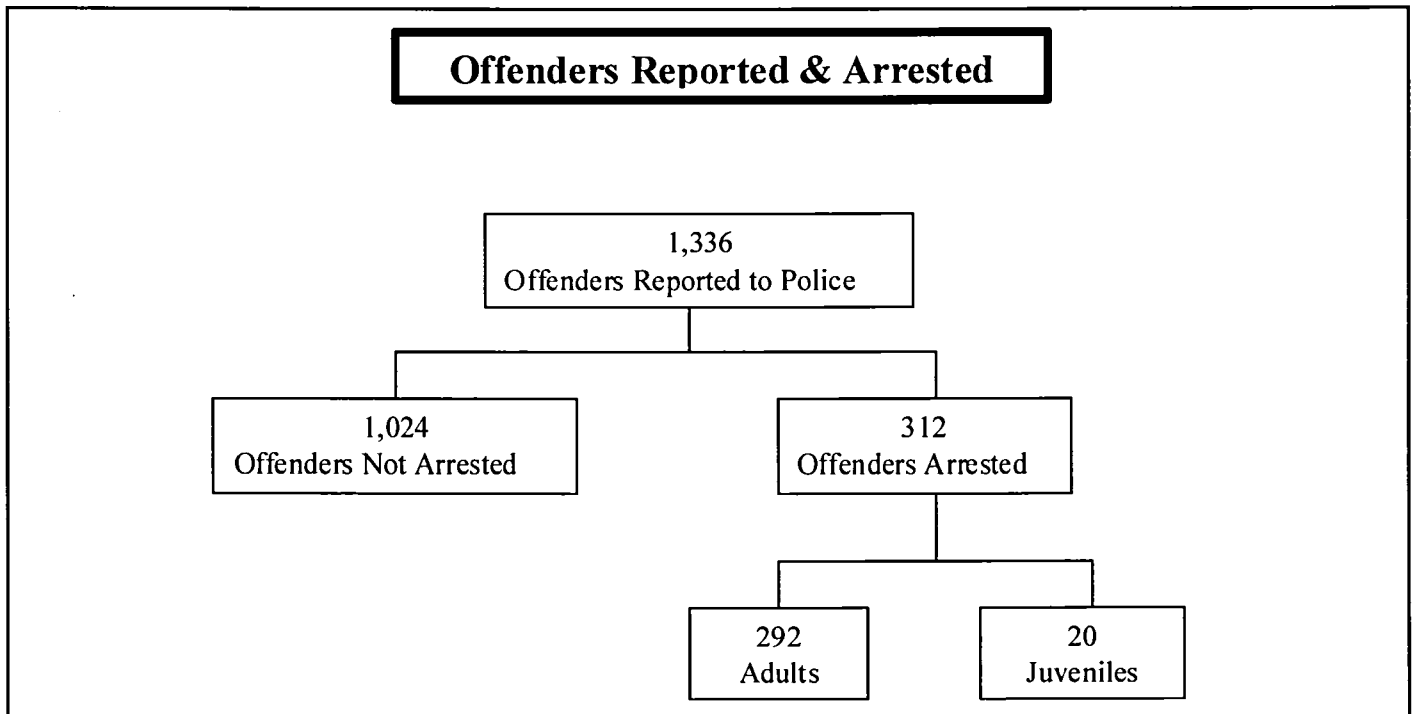


Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

Sexual Assaults - Offender Status by Offenses Reported

2009

<u>OFFENSE</u>	<u>ADULT OFFENDERS</u>	<u>JUVENILE OFFENDERS</u>
Forcible Rape	32 %	20 %
Forcible Sodomy	5 %	13 %
Sexual Assault With An Object	20 %	11 %
Forcible Fondling	34 %	47 %
Statutory Rape	7 %	8 %
Incest	2 %	1 %



Legislative Rule, 64CSR64
Department of Health and Human Resources
Bureau for Public Health
Office of Epidemiology and Prevention Services
AIDS-Related Medical Testing and Confidentiality

BRIEF SUMMARY

The rule removes the requirement for a separate consent for HIV testing and makes the HIV test a routine part of patient's medical care. The rule requires mandatory testing in certain specific circumstances and it allows for disclosure to limited people or entities for narrowly defined purposes. The State Hygienic Laboratory made a significant contribution to the revisions of this rule in the section that deals with lab testing procedures and some obsolete provisions were deleted.

STATEMENT OF CIRCUMSTANCES

The Centers for Disease Control and Prevention (CDC) has issued guidance to states on how to update and modernize state statutes governing the testing and confidentiality of HIV. The Bureau for Public Health supported SB 488 which passed in the 2011 legislative session to make changes to the statute which has led to the promulgation of this revised rule.

TITLE 64
LEGISLATIVE RULE
DIVISION OF BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

2011 JUN 17 AM 9:53

OFFICE OF THE SECRETARY OF STATE

SERIES 64
AIDS-RELATED MEDICAL TESTING AND CONFIDENTIALITY

§64-64-1. General.

1.1. Scope. -- This legislative rule establishes specific standards and procedures concerning AIDS-related medical testing; record confidentiality and disclosure; consent for testing by a legal representative; exclusion from schools; reporting requirements for physicians, laboratories and other health care providers; the approval of laboratories for HIV testing; and other matters pertinent and necessary for the implementation of the AIDS-Related Medical Testing and Records Confidentiality Act, W.—Va. Code §16-3C-1, et seq.

This rule supplements the AIDS-Related Medical Testing and Records Confidentiality Act, W.—Va. Code §16-3C-1 et seq., and should be read in conjunction with the Act.

1.2. Authority. -- W.—Va. Code §§16-1-4, 16-3C-8, ~~16-1-7~~ and 16-5J-3.

1.3. Filing Date. -- ~~April 13, 2000~~.

1.4. Effective Date. -- ~~May 15, 2000~~.

~~1.5. Supersession and Repeal of Former Rules—This rule repeals and replaces “AIDS-Related Medical Testing and Confidentiality,” 64 CSR 64, effective April 26, 1996.~~

§64-64-2. Application and Enforcement.

2.1. Application. -- This rule applies to:

2.1.1a. Health facilities;

2.1.2b. Health care providers;

2.1.3c. Funeral service providers and personnel;

~~2.1.1. Persons issuing marriage licenses;~~ 2.1.4d. Schools;

2.1.5e. Persons with access to or in charge of medical records or other sources of information regarding AIDS-related testing information;

2.1.6f. Laboratories seeking approval to conduct AIDS-related tests to be utilized in this State;

2.1.7g. ~~Medical~~ Health care providers or emergency responders and their employers; and

2.1.8h. Spouses, sexual contacts and intravenous (IV) drug contacts who may be at risk of having acquired the HIV infection as a result of the possible exchange of body fluids.

2.2. Enforcement. -- This rule is enforced by the commissioner of the bureau of for public health or his or her lawful designee.

§64-64-3. Definitions.

The following definitions of terms are in addition to ~~the definitions of terms~~ those in W-Va. Code §16-3C-1.

3.1. Anonymous HIV Testing. -- HIV testing performed on a voluntary patient by a health provider with no knowledge of the person's identity.

3.2. Body Fluids. -- Substances that have been implicated in the transmission of HIV that include:

3.2.a. Blood, semen, vaginal secretions or other body fluids contaminated with visible blood; and

3.2.b. Cerebrospinal, oral, synovial, pleural, peritoneal, pericardial, and amniotic fluids, which have an undetermined risk for transmitting HIV.

3.3. Bureau. -- The Bureau for of Public Health in the Department of Health and Human Resources Division of health.

3.4. Charged with a sex-related crime -- Any person charged with a sexual offense, which triggers a mandatory HIV test to be performed in accordance with WV Code §16-3C-2(f)(2), including, persons charged with; prostitution, sexual abuse, sexual assault, rape, incest or sexual molestation.

3.45. CLIA-88. -- Clinical Laboratory Improvement Amendments of 1988 (Public Law 100-578) to Section 353 of the Public Health Service Act (Title 42 United States Code Section 263a).

3.56. Commissioner. -- Commissioner of the Bureau of for Public Health. ~~Director of the division of health.~~

3.67. Confidential HIV Testing. -- HIV testing performed by a health care provider identifying the patient by name. The use of test results is limited by law.

3.78. Contact. --When used as a noun, a sexual or needle-sharing partner.

3.89. Convicted. -- Pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial to a court, and a juvenile delinquent or status offender as defined in W-Va. Code §49-1-4.

3.9. ~~Director. -- The director of the division of health of the department of health and human resources or his or her lawful designee.~~

3.10. ~~Division. -- The division of health of the state department of health and human resources.~~

3.110. Funeral Director. -- Any person engaged, or holding himself or herself out as engaged, in the business of funeral directing as defined in W-Va. Code §30-6-4-30-6-3(o) and (p), and who uses in connection with his or her name or business the words or terms "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate himself or herself as a funeral director, undertaker, or mortician.

~~3.1211.~~ Funeral Establishment. -- ~~A place of business maintained and operated by a person, partnership, association, corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to activities incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies~~ A licensed place of business devoted to: the care, preparation and arrangements for the transporting, embalming, funeral, burial or other disposition of a deceased. A funeral establishment may include a licensed crematory.

~~3.1312.~~ HIV-Infected Person. -- A person who has been diagnosed with AIDS ~~or ARC~~ or who has a positive confirmatory test for HIV.

~~3.1413.~~ Legal Representative. -- A person from whom substituted consent may be obtained as provided for in W-Va. Code §16-3C-4 for HIV-related testing or for the authorization of the release of test results.

~~3.1514.~~ Physician. -- A person licensed under Chapter 30 of the W-Va. Code to practice medicine and surgery.

~~3.1615.~~ Post-Exposure Care. -- Care including an initial HIV test following exposure and United States Centers for Disease Control and Prevention (CDC) currently recommended follow-up HIV testing, counseling, medical evaluation and provision for post-exposure prophylactic treatment.

~~3.1716.~~ Source Patient. -- Any person whose body fluids have been the source of a significant exposure to a ~~medical~~ health care provider or emergency responder or other person.

§64-64-4. Testing.

4.1. Voluntary Consent.

4.1.a. HIV-related testing on a voluntary basis shall be recommended by all health-care providers in any health facility as part of a routine screening for treatable conditions and as a part of routine prenatal and perinatal care. The HIV-related testing provided for in W-Va. Code §§16-3C-2(a) through (d) may also be requested by a health care provider acting within the scope of his or her professional license.

4.1.b. The provisions of W-Va. Code §§16-3C-2(b) through (d) shall also be followed when a patient, without a request from a physician, dentist, other health care provider acting within the scope of his or her professional ~~license~~ practice, or the ~~division~~ bureau, voluntarily seeks an HIV test from any physician, dentist, other health care provider, or from the ~~division~~ bureau.

4.1.b.1. Patients shall be informed either orally or in writing that HIV-related testing is performed as a part of routine care, that HIV-related testing is voluntary and that the patient may decline HIV-related testing (opt-out); or

4.1.b.2. Patients shall be informed that their general consent for medical care includes consent for HIV-related testing.

4.1.c. Nothing in this rule shall be construed to provide grounds for any physician, dentist, other health care provider or the ~~director~~ commissioner to refuse to treat a patient, nor shall the testing provisions of this rule be used by health care providers to screen patients.

4.1.d. HIV screening for pregnant women and their infants.

4.1.d.1. All pregnant women in the state shall be routinely screened for HIV infection.

4.1.d.2. Health care providers are encouraged to notify all pregnant patients that HIV screening is recommended and that she will be tested for HIV as part of the routine panel of prenatal tests, unless she declines through the mechanism of opting out.

4.1.d.3. HIV testing of pregnant women should be voluntary and free from coercion. No woman shall be tested without her knowledge, unless in accordance with subdivision 4.2.c. of this section.

4.1.d.4. Pregnant women shall receive oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meanings of positive and negative test results and shall be offered an opportunity to ask questions and to decline testing.

4.1.d.5. Health care providers shall test women as early as possible during each pregnancy. Women who decline the test early in prenatal care shall be encouraged to be tested at subsequent visits.

4.1.d.6. A second HIV test during the third trimester, preferably prior to the 36th week of gestation, is cost-effective even in areas of low HIV prevalence and may be considered for all pregnant women. A second HIV test during the third trimester is also recommended for women who meet one or more of the following criteria:

4.1.d.6.A. Women who receive health care in facilities in which prenatal screening identifies at least one HIV-infected pregnant woman per 1,000 women screened;

4.1.d.6.B. Women who are known to be at high risk for acquiring HIV, for example, injection- drug users and their sexual partners, women who exchange sex for money or drugs, women who are sex partners of HIV-infected persons and women who have had a new or more than one sex partner during this pregnancy; or

4.1.d.6.C. Women who have signs or symptoms consistent with acute HIV infection.

4.2. Consent Not Required.

4.2.a. No consent for testing is required and the provisions of W-~~Va~~: Code §16-3C-2(b) and Subsection 4.1 of this rule do not apply for the performance of an HIV test:

4.2.a.1. On a human body part as provided in W-~~Va~~: Code §16-3C-2(e)(1). If a test is required of the donor or recipient of the human body part, reasonable efforts shall be made to obtain consent and otherwise follow the procedures of W-~~Va~~: Code §§16-3C-2(b) through (d).

4.2.a.1.A. All confidentiality restrictions contained in Section 9 8 of this rule and in W-~~Va~~: Code §16-3C-3 apply to information obtained through the testing of human body parts, tissue, blood, blood products, or semen;

4.2.a.1.B. Consent for HIV-related testing is required for donors of routine blood transfusions, and the provisions of W-~~Va~~: Code §16-3C-2(e)(1) do not apply to those transfusions;

4.2.a.2. In documented bona fide medical emergencies as provided for in ~~W-Va. Code §16-3C-2(e)(2)~~ and as determined by a treating physician taking into account the nature and extent of the exposure to another person, whether the source patient's blood is to be obtained or is already available: Provided, That:

4.2.a.2.A. The source patient is unable or unwilling to grant or withhold consent, and if the source patient is unable to grant or withhold consent, substituted consent is not obtained after a reasonable attempt (such as telephoning or personal contact) is made to obtain consent from a legal representative of the source patient in accordance with ~~W-Va. Code §16-3C-4~~;

4.2.a.2.B. The test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, and the HIV testing for a source patient is conducted only after a health care provider, as qualified in Subsection ~~§ 7.1~~ of this rule, documents in the medical record of a medical health care provider or emergency responder or another person who has come into contact with a source patient that there has been a significant exposure of the responder or person and that in the medical judgment of the above described health care provider the results are medically necessary to determine the course of treatment for the exposed responder or person; and

~~4.2.a.2.B.1. Attempts to counsel the source patient for obtaining consent for the performance of the test and release of the results are documented on a form provided by the division and reported to the division in a confidential envelope;~~

4.2.a.2.B.21. A reasonable attempt, such as telephoning or personal contact, is made to contact the source patient, or the source patient's legal representative if the source patient is unable to grant or withhold consent, to inform him or her that the test will be performed using a pseudonym;

4.2.a.2.B.32. The test results are offered to the source patient, and any refusal of acceptance is documented only in the medical record of the exposed medical health care provider or emergency responder or other exposed person;

~~4.2.a.2.B.4. Post-test counseling is provided in accordance with W. Va. Code §16-3C-2(d). Necessary treatment shall not be withheld pending HIV test results; and~~

4.2.a.2.B.53. None of the activities set forth in this subsection are documented in the source patient's medical record. Confidentiality shall be maintained by the health care facility and the medical health care provider or emergency responder. If any improper disclosure occurs, the source patient may invoke the remedies and penalties of ~~W-Va. Code §16-3C-5~~; and

4.2.a.3. For the purpose of research in accordance with ~~W-Va. Code §16-3C-2(e)(3)~~.

4.2.b. For a test performed under the authority of ~~W-Va. Code §16-3C-2(f)(9)~~, the director commissioner may, at his or her discretion, release the test result to the physician or other health care provider who requested the test: Provided, That the provisions of Section ~~9~~ 8 of this rule and ~~W-Va. Code §16-3C-3~~ regarding confidentiality and disclosure apply. The ~~director commissioner~~ may establish a list of health care providers who are approved to authorize HIV testing in emergency medical aid circumstances.

4.2.c. No consent for testing is required under the provisions of WV Code 16-3C-2(a)(4) for any pregnant woman when there is no record of any HIV-related testing or bloodborne pathogen during the pregnancy and the woman presents for labor and delivery.

4.2.c.1. Any woman with undocumented HIV status at the time of labor or delivery shall be tested via the most rapid and immediate test available in order to provide the best possible and timely care to the mother and infant if the test result is positive.

4.2.c.2. If a woman's HIV status is still unknown at the time of delivery, the health care provider shall screen her immediately postpartum with a rapid HIV test.

4.2.c.3. When the mother's HIV status is unknown postpartum, rapid testing of the newborn as soon as possible after birth is recommended so antiretroviral prophylaxis can be offered to HIV-exposed infants. The woman shall be informed that identifying HIV antibodies in the newborn indicates that the mother is infected.

4.2.c.4. For infants whose HIV exposure status is unknown and who are in foster care, the person legally authorized to provide consent shall be informed that rapid HIV testing is recommended for infants whose biologic mothers have not been tested.

4.3. Mandated HIV Testing of Sexual Offenders and Management of Victims:

4.3.a. The testing of persons charged with or convicted of a sex-related crime as specified in W-Va. Code §16-3C-2(f) does not require consent of the subject and is under the direction of the court having jurisdiction of the criminal prosecution. Counseling may be offered.

4.3.b. The director shall recommend guidelines for courts to follow in referring convicted sexual offenders for medical testing, sharing HIV test results of convicted sex offenders with victims, and advising victims or alleged victims of HIV counseling and testing services. The court having jurisdiction of the criminal prosecution or the prosecuting attorney of the county shall order that an HIV-related test be performed on any persons charged with a sexual-related crime or offense, including; prostitution, sexual abuse, sexual assault, rape, incest or sexual molestation. The testing shall occur as follows:

4.3.b.1. Testing of persons charged with a sexual crime shall be done within 48 hours, upon the request of the victim;

4.3.b.1.A. Persons charged with a sexual crime may be tested for HIV by qualified personnel in the jail or correctional facility where they are detained or by the local health department.

4.3.b.2. As soon as practical, the victim, or the parent or guardian of the victim and the defendant shall be notified of the test result;

4.3.b.3. Medically appropriate follow up tests for HIV, and their results, shall be made available to the victim or parent/guardian of the victim and the defendant as soon as possible.

4.3.c. The ~~director~~ commissioner shall request access to all convicted sex offenders who test HIV positive for the purposes of contact notification consultation under the direction of the ~~director~~ commissioner. Contact notification information obtained from the convicted sex offender is protected information and shall be used by the ~~director~~ commissioner solely for referring individuals with a potential HIV exposure to HIV counseling and testing sources.

4.3.d. The ~~director~~ commissioner shall set the level of reimbursement the ~~division~~ bureau shall pay for the mandated HIV testing and counseling and pre- and post-conviction HIV-related testing and counseling for which it is responsible pursuant to the provisions of W-Va. Code §16-3C-2(f).

§64-64-5. Cease and Desist Orders.

5.1. A cease and desist order issued under the authority of ~~W. Va. Code §16-3C-2(f)(4)~~ shall be in writing, and shall set forth the name of the person to be restricted, and the initial period of time during which the order remains effective, the terms of the restrictions and other conditions that are warranted to protect the public health.

5.2. If any person violates a cease and desist order issued pursuant to this rule and the WV Code §16-3C-2(f)(5) and the person is a danger to the health of others, the ~~director~~ commissioner shall apply to the circuit court of Kanawha County to enforce the cease and desist order by imposing any restrictions upon the person that are necessary to prevent the specific conduct which endangers the health of others.

5.3. Any person who violates a cease and desist order issued pursuant to this section or who has shared needles without divulging their positive HIV status may be prosecuted for murder or attempted murder, under WV Code §§61-2-1 and 61-11-8, of the person or persons with whom they have had unprotected sexual contact or undisclosed needle sharing.

~~§64-64-6. Review of Marriage License.~~

~~The division shall periodically review marriage licenses in order to determine compliance with the requirements of W. Va. Code §16-3C-2(g) regarding documentation of the provision of information concerning AIDS and HIV related testing and counseling.~~

~~§64-64-76. Charting Information.~~

~~Health care providers may only shall enter the confirmed positive results of an HIV-related test in each the chart of a patient's if the statement in W. Va. Code §16-3C-3(e) is printed on the test report in the chart or in the patient's electronic health record through the Health Information Exchange (HIE).~~

~~§64-64-87. Post-Exposure Care and Treatment.~~

~~87.1. A health facility shall have access to a knowledgeable trained health care provider to assess the HIV exposure risk of medical health care provider or emergency responders or others during all working hours, including nights and weekends. The assessment of HIV exposure risk and initiation of basic post-exposure care regimen requires knowledge or experience in clinical epidemiology, infection control, occupational health, or the clinical treatment of HIV. Consultation on the facility's currently accepted practice, when prescribing post-exposure prophylaxis, is strongly encouraged.~~

~~87.2. A health facility shall have a written post-exposure HIV management plan patterned after current recommendations of the United States Centers for Disease Control and Prevention (CDC).~~

~~87.3. A laboratory shall not determine a test result to be positive, and a health care provider shall not reveal a positive test result to any person, without corroborating or confirmatory testing being conducted. However, a laboratory may release preliminary test results to the health care provider assessing the significant exposure for the purposes of determining post-exposure management of the medical health care provider or emergency responder or other person.~~

~~87.4. Health care providers shall report all confirmed positive test results to the division bureau in compliance with Section ~~13~~ 12 of this rule.~~

~~87.5. The employer of a medical health care provider or emergency responder who was exposed~~

while performing a duty of his or her employment shall bear the costs of HIV tests of blood or oral samples of the source patient and the responder, unless a workers' compensation or other benefit program affords coverage for the testing. For a responder who tested negative for HIV antibodies immediately following the exposure, the employer shall also bear the costs of the ~~United States centers for disease control and prevention's~~ CDC's recommended initial prophylactic treatment and additional HIV testing at three and six months after exposure, unless a workers' compensation or other job-related employee benefit program affords coverage for the treatment and testing.

~~87.6.~~ Relative to the management of source patient medical information, the medical health care provider or emergency responder reporting a significant exposure is subject to the requirements of the disclosure statement contained in W-Va. Code §16-3C-3(c) and to the remedies and penalties specified in W-Va. Code §16-3C-5.

§64-64-98. Confidentiality and Disclosure.

~~9.1.~~ Any laboratory performing an HIV related test in West Virginia shall have the statement of confidentiality in W. Va. Code §16-3C-3(e) appear on the report form or as an attachment to the report form returned to the health care provider or facility.

~~9.2.~~ No person who obtains information protected by the provisions of W. Va. Code §16-3C-1 et seq. and this rule may convey the protected information to any other person except in strict compliance with W. Va. Code §16-3C-1 et seq. and this rule. Unauthorized disclosure will subject the person to all of the penalties available.

~~9.3~~ 8.1. The victims or alleged victims of sexual crimes are eligible for HIV counseling and testing at public health HIV testing sites in West Virginia. The provisions of this rule and ~~W. Va. Code~~ W-Va. Code §16-3C-1 et seq. regarding voluntary testing ~~and counseling~~ apply to testing and counseling these individuals. All victim testing information is subject to the confidentiality requirements of this rule and W-Va. Code §16-3C-1 et seq. for voluntary testing.

~~9.4.~~ 8.2. An agent or employee of a health facility or health care provider has a need to know HIV test results under the provisions of W-Va. Code §16-3C-3(a)(4) when the information is medically necessary to protect the individual from a significant risk of transmission or will have an impact on the treatment modality.

~~9.5.~~ 8.3. HIV test results may be disclosed to medical health care provider or emergency responders or others who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties. The medical health care provider or emergency responder is subject to the requirements of the disclosure statement contained in W-Va. Code §16-3C-3(c) and to the remedies and penalties provided in W-Va. Code §16-5C-5.

8.4. HIV test results may be disclosed to claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer or any other payer of health care claims solely for the purpose of prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection is confidential and shall not be released or available to persons who are not involved in handling or determining medial claims payment.

8.5. HIV test results may be disclosed to facilitate health information exchanges and to legally authorized public health authorities.

8.6. HIV test results may be disclosed to persons allowed access to the record by a court order issued in accordance with the provisions of WV Code §16-3C-3(11).

§64-64-109. Contact/Partner Notification.

~~109.1.~~ Notification made by the ~~director~~ commissioner under W-~~Va.~~ Code §16-3C-3(d) shall include an explanation of exposure to HIV, HIV prevention messages and information on accessibility to HIV counseling and testing services to the contact with a reported HIV exposure. The confidentiality rules that apply to the names of HIV-infected persons shall apply to the names of their contacts.

~~109.2.~~ In contact notification situations, the ~~division~~ bureau recommends that private health care providers refer contact notification activities to the ~~division~~ bureau rather than attempt notification themselves. The ~~division~~ bureau has an established program for notifying partners of persons with infectious conditions; including but not limited to Internet Partner Services Protocol available at: <http://www.dhhr.wv.gov/oeps/std-hiv-hep>.

§64-64-~~110~~. Consent by Legal Representative.

~~110.1.~~ Substituted consent for HIV-related testing or for the authorization of the release of test results shall be obtained in accordance with W-~~Va.~~ Code §16-3C-4 and this rule.

~~110.2.~~ Minors shall be treated as established under W-~~Va.~~ Code §16-4-10.

§64-64-~~1211~~. School Exclusion.

School exclusions shall be in accordance with W-~~Va.~~ Code §16-3C-6. If the student is under the jurisdiction of a protection or advocacy agency, a representative from that agency may be included in consultation. The provisions of this rule and of W-~~Va.~~ Code §16-3C-1 et seq. regarding the confidentiality and the release of information are applicable in the school setting.

§64-64-~~1312~~. Requirement for All Health Care Providers to Report Positive Serologic and Other Tests for the Human Immunodeficiency Virus.

~~1312.1.~~ In accordance with the Bureau for Public Health's rule, Reportable Diseases, Events and Conditions, 64CSR7, All all health care providers in West Virginia who perform, or cause to have performed, serologic or other tests for HIV shall ~~make a report of~~ all HIV infection associated with laboratory tests that are positive or results that are either indicative of or a progression toward the HIV infection to the ~~director~~ commissioner on forms provided by the ~~director~~ commissioner ~~for that purpose or via electronic reporting as follows:~~

~~1312.1.1.~~ All positive (reactive) laboratory test results; and

~~1312.1.2.~~ All clinical status data.

~~1312.2.~~ These health care provider reports shall include:

~~1312.2.1.~~ The name and full address of the laboratory;

~~1312.2.2.~~ The name of the tests performed, the date each test was performed and the results of the tests;

~~4312.2.3.~~ The legibly printed or typed name and location of the health care provider reporting the positive HIV laboratory results;

~~1312.2.4.~~ The name of the confidentially-tested ~~or the identification code of the anonymously-tested~~ individual;

~~4312.2.5.~~ Patient demographic information including the patient's age, sex, race and address, unless the patient requests anonymous reporting;

~~4312.2.6.~~ Social and risk factor information of the patient relative to HIV infection; and

~~4312.2.7.~~ Other information concerning HIV infection judged necessary by the ~~director~~ commissioner.

~~4312.3.~~ Reports of HIV shall be submitted within thirty ~~(30)~~ days of the receipt of confirmed positive (reactive) test results.

~~4312.4.~~ Health care providers performing anonymous HIV testing on individuals shall use confidential reporting of HIV infection for patients revealing their identity in HIV infection consultation. If an individual who has been tested anonymously, either makes his or her identity known to the provider or rescinds the request for anonymity, the provider shall report the name to the ~~director~~ commissioner.

~~4312.5.~~ The ~~director~~ commissioner shall work with an individual's health care provider in any follow-up of reported positive laboratory tests or HIV infection.

~~4312.6.~~ Health care providers who provide HIV care to patients on the basis of a medical or a self referral shall submit an HIV infection report form to the ~~division~~ bureau.

~~4312.7.~~ The reports of all HIV infection submitted in compliance with this rule are protected and are exempt from public disclosure under the exemption for medical records contained in W.-Va. Code §29B-1-1 et seq., the Freedom of Information Act: Provided, That the reports are subject to the provisions of W.-Va. Code §16-3C-1 et seq. This information shall not be used except as is necessary to enforce State public health laws and rules and to analyze the magnitude of HIV infection in the State for assisting in the development of adequate safeguards against its spread.

§64-64-~~1413~~. Requirement for Laboratories to Report Positive Serologic and Other Tests for the Human Immunodeficiency Virus.

~~4413.1.~~ All laboratories conducting HIV testing in West Virginia or providing HIV testing results for use in this State shall make a report on the first and fifteenth days of each month of all laboratory tests that are positive or results that are indicative of the HIV infection to the ~~director~~ commissioner on forms provided by the ~~director~~ commissioner or by electronic transmittal for that purpose as follows:

~~4413.1.1.~~ All CLIA certified tests that are intended to diagnose or document HIV infection, including, but not limited to, viral load, P24 antigen and western blot tests ~~positive (reactive) serologic antibody tests for HIV;~~

~~4413.1.2.~~ All positive (reactive) laboratory tests for known positive patients, all CD4+ test results on peripheral blood with counts less than 200/mm³ or less than fourteen percent (14%) ~~for the identification of HIV;~~

~~1413.1.3. All CD4+ test results on peripheral blood with counts less than 200/mm or less than fourteen per cent (14%); and~~

~~1413.1.4. All other positive laboratory test results which identify the presence of HIV or the progression of an HIV infection.~~

1413.2. These reports shall include:

1413.2.1. The name and full address of the laboratory;

1413.2.2. The name of the test, the date performed, and the result;

1413.2.3. The name and location of the health care provider who submitted the specimen;

1413.2.4. The name of the patient, if known, or an identification code, if the name is not known, and the patient's sex, age and address, if available;

1413.2.5. Other information concerning HIV infection management and control judged necessary by the ~~director~~ commissioner; and

1413.2.6. The signature of the supervisor of the laboratory.

1413.3. The laboratory shall submit the results of the laboratory reports related to ~~Subdivisions subsections 14.1.a. through 14.1.d~~ 13.1.1 and 13.1.2. of this rule on the first and fifteenth days of each month.

1413.4. If no reportable tests are performed during a reporting period, a statement to this effect shall be submitted by the supervisor of the laboratory.

1413.5. The ~~director~~ commissioner shall work with an individual's health care provider in any follow-up of the reports of confirmed positive laboratory tests.

1413.6. The reports of all positive tests submitted in compliance with this rule are protected and are exempt from public disclosure under the exemption for medical records contained in W-Va. Code §29B-1-1 et seq., the Freedom of Information Act: Provided, That the reports are subject to the provisions of W-Va. Code §16-3C-1 et seq. The information shall not be used except as is necessary to enforce State public health laws and rules and to analyze the magnitude of HIV infection in the State for assisting in the development of adequate safeguards against its spread.

§64-64-1514. Quality Control Assessment of Laboratories Conducting HIV Tests.

1514.1. Laboratories Required to be Approved.

1514.1.1. All laboratories conducting HIV testing in this State or providing HIV testing results for use in this State shall be approved by the ~~division~~ bureau.

1514.1.2. A laboratory located in West Virginia and seeking approval shall:

1514.1.2.a. Show that it complies with the applicable requirements of W-Va. Code §16-3C-1 et seq. and this rule;

~~14.1.1.2.b.~~ Complete application forms when seeking initial approval or when there is a change of ownership, the laboratory administrator in director, owner, or location and/or testing method; and

14.1.2.c. Be certified to perform waived or non-waived (moderate or high) complexity HIV testing following at a minimum the test categorization requirements in accordance with the provisions of the federal regulations promulgated pursuant to the Clinical Laboratory Improvement Amendment (CLIA-1988) 42 CFR Part 493, as revised October 1, 2006.

~~15.1.2.c.~~ Be certified for moderate or high complexity tests under CLIA-88.

~~14.1.1.3.~~ A laboratory located outside of West Virginia conducting HIV related testing on West Virginia patients is eligible for approval only if it is approved for non-waived (moderate or high complexity) laboratory testing by the federal government regulations promulgated pursuant to CLIA-88 (42 CFR Part 493, Laboratory Requirements, as amended in the April 24, 1995, edition of the Federal Register (60 FR 20035) as revised October 1, 2006 and/or a Centers for Medicare and Medicaid Services (CMS) approved accreditation agency. The laboratory shall complete an application when seeking initial approval or when there is a change in director, owner, location and/or test method.

~~14.2.~~ Laboratory Director and Personnel Qualifications.

14.2.1. The laboratory director and personnel shall at a minimum meet the qualifications set forth by the federal government pursuant to CLIA for certification of laboratories ~~for participation in Medicare, and the relevant provisions of the October 1, 1994, edition of 42 CFR Part 493, Laboratory Requirements, as amended in the April 24, 1995~~ October 1, 2006, edition of the Federal Register (60 FR 20035), are hereby incorporated by reference.

14.2.2. The person specified as the laboratory director on the CMS issued CLIA certificate is ultimately responsible for the reliability of HIV testing. The laboratory director shall be a licensed medical professional acting within the scope of their license.

14.2.3. For waived HIV testing methods only, while there are no formal educational requirements for testing personnel, the director is responsible for assuring the testing personnel are properly trained and competent.

~~14.3.~~ Quality Control Assessment Standards.

A laboratory requesting approval shall demonstrate that a quality ~~control~~ assessment program acceptable to the ~~division~~ bureau is in effect for verification and assessment of accuracy, measurement, of precision, and detection of laboratory errors. The demonstration shall be evidenced, when applicable, in part by:

~~14.3.1.~~ Selection of test methods appropriate to the needs of those served by the laboratory;

~~14.3.2.~~ Use of quality controls and calibrating standards;

~~14.3.3.~~ Recording of the acceptable limits and the results of controls and calibrating standards;

~~14.3.4.~~ Recording of ~~maintenance and calibration of equipment and instruments~~ quality assessment activities; including, but not limited to, calibration, quality control, corrective action, preventative maintenance and patient test management;

~~1514.3.5.~~ Labeling and dating of all reagents, solutions, standards, and quality control materials; and

~~14.3.6.~~ Following HIV test method manufacturer requirements as approved by the Federal Food and Drug Administration (FDA).

~~15.3.6.~~ ~~14.3.7.~~ Maintaining a site specific manual containing all procedures and policies currently in use, which shall include action to be taken when control results are outside the acceptable limits and the procedure for reporting positive HIV test results to the ~~division~~ bureau along with protocols for reporting HIV testing to the Bureau.

~~1514.4.~~ Proficiency Testing, Personnel Competency Assessment. Laboratories shall participate in a CLIA approved HIV proficiency testing survey and/or an alternative HIV testing personnel competency assessment program approved by the division bureau and in accordance with CLIA-88 Proficiency testing requirement by test complexity. The ~~testing~~ assessment shall be conducted ~~on a regular basis~~ biannually and satisfactory performance by the laboratory is mandatory. The laboratory is responsible for forwarding proficiency testing survey results to the ~~division~~ bureau.

~~1514.5.~~ On-site Inspection. The ~~director~~ commissioner or his or her designee may conduct an on-site inspection or a paper/electronic survey to determine compliance with this rule initially prior to approval, and thereafter as frequently as the ~~director~~ commissioner considers necessary to insure compliance with this subsection. The ~~division~~ bureau has the right of entry upon proper identification at times judged necessary during operating hours in order to conduct the inspections.

~~1514.6.~~ Certificate of Approval; Revocation.

~~1514.6.1.~~ The ~~director~~ commissioner shall issue certificates of approval for a laboratory to perform HIV testing upon initial approval and on an annual basis thereafter pursuant to the conditions listed in this rule. Certificates issued shall contain the name and location of the laboratory, a laboratory code number, the name of the laboratory director and the date of expiration of the certificate.

~~1514.6.2.~~ Laboratories shall notify the ~~division~~ bureau when there is a change in ownership, laboratory director, ~~technical personnel testing method~~ or location of the testing laboratory. In the case of mobile laboratory programs, the certificate shall be issued to the home-based address.

~~1514.6.3.~~ The ~~director~~ commissioner may revoke or suspend a laboratory's approval if the laboratory:

~~1514.6.3.a.~~ Performs unsatisfactorily in on-site inspections;

~~1514.6.3.b.~~ Fails to comply with this rule and all applicable provisions of W-Va. Code §16-3C-1, et seq.;

~~1514.6.3.c.~~ Fails to report positive test results to the ~~division~~ bureau in accordance with ~~according to~~ W-Va. Code §16-3C-8B and this rule; or

~~1514.6.3.d.~~ Closes.

~~§64-64-16. Banking Blood.~~

~~Banking of blood is permitted in accordance with W. Va. Code §16-3C-9.~~

§64-64-1715. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Bureau for Public Health rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.