

MONTANA ADMINISTRATIVE CODE

37-27-312. Screening procedures. In addition to meeting the eligibility criteria for client screening established by the board pursuant to 37-27-105, a direct-entry midwife shall recommend that patients secure the following services by an appropriate health care provider:

- (1) the standard serological test as defined in 50-19-101(2) for women seeking prenatal care;
- (2) screening for hepatitis B and, when appropriate, human immunodeficiency virus;
- (3) maternal serum alpha-fetoprotein test and ultrasound, upon request;
- (4) Rh antibody and glucose screening at 28 weeks' gestation, upon request;
- (5) nonstress testing by a fetal monitor of a fetus at greater than 42 1/2 weeks' gestation or if other reasons indicate the testing;
- (6) screening for phenylketonuria;
- (7) Rh screening of the infant for RhoGAM treatment if the mother is Rh negative; and
- (8) screening for premature labor and other risk factors.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.

50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.
- (2) "Communicable disease" means a disease designated communicable by the department.
- (3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

50-1-102. Legal adviser to board and department. The attorney general is legal adviser to the board and department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department.

50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department.

50-1-104. General penalty. Anyone who violates a rule adopted by the board or the department for which no penalty is specified is guilty of a misdemeanor.

Part 2

Department

5-1-201. (Temporary) Administration of state health plan. The department is hereby established as the sole and official state agency to administer the state program for comprehensive health planning and is hereby authorized to prepare a plan for comprehensive state health planning. The department is authorized to confer and cooperate with any and all other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The department, while acting in this capacity as the sole and official state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the sole and official state agency to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, bequeathed, or appropriated to it for the preparation and administration and the supervision of the preparation and administration of the comprehensive state health plan.

50-1-201. (Effective July 1, 1996) Administration of state health plan. The Montana health care authority created in 50-4-201 is the state agency to administer the state program for comprehensive health planning and shall prepare a plan for comprehensive state health planning. The authority may confer and

cooperate with other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The authority, while acting in this capacity as the state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the state agency to accept, receive, expend, and administer funds donated, granted, bequeathed, or appropriated to it for the preparation, administration, and supervision of the preparation and administration of the comprehensive state health plan.

50-1-202. General powers and duties. The department shall:

- (1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;
- (2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;
- (3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;
- (4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;
- (5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of corrections and human services or commissioner of higher education and include recommendations for improvement in conditions if necessary;
- (6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;
- (7) organize laboratory services and provide equipment and personnel for those services;
- (8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;
- (9) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;
- (10) conduct health education programs;
- (11) provide consultation to school and local community health nurses in the performance of their duties;
- (12) consult with the superintendent of public instruction on

health measures for schools;

(13) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) after consultation with the board, adopt rules imposing fees for the tests and services performed by the laboratory of the department. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees shall be deposited in the state special revenue fund for the use of the department in performing tests and services.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies.

50-1-203. Sanitary inspections. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

50-1-204. Quarantine measures. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$10 or more than \$100.

Receipts from fines, except justice's court fines, shall be deposited in the state general fund.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

Part 3

Board

50-1-301. Duties of board. The board shall:

- (1) advise the department in public health matters;
- (2) hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2) the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficiency or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.

(5) This section does not preclude a hospital from limiting

membership or privileges based on education, training, or other relevant criteria.

50-5-106. Records and reports required of health care facilities -confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department.

The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

Part 5

Uniform Health Care Information

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".

50-16-502. Legislative findings. The legislature finds that:

- (1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;
- (2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;
- (3) in order to retain the full trust and confidence of

patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different Purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care", means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care

provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and
(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

50-16-505 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

50-16-512 Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in

substantially the following form:

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

50-16-513 Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41 - 1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or, as otherwise specifically provided by law or the Montana Rules of Civil

Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

- (a) be in writing, dated, and signed by the patient;
- (b) identify the nature of the information to be disclosed; and
- (c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

50-16-527. Patient authorization - retention - effective period - exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-

party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is claiming benefits.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

- (1) to a person who is providing health care to the patient;
- (2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:
 - (a) not use or disclose the health care information for any other purpose; and

- (b) take appropriate steps to protect the health care information;
- (3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;
- (4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;
- (5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;
- (6) for use in a research project that an institutional review board has determined:
 - (a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;
 - (b) is impracticable without the use or disclosure of the health care information in individually identifiable form;
 - (c) contains reasonable safeguards to protect the information from improper disclosure;
 - (d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and
 - (e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;
- (7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:
 - (a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and
 - (b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;
- (8) to an official of a penal or other custodial institution in which the patient is detained; and
- (9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

50-16-530. Disclosure without patient's authorization - other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

- (1) directory information, unless the patient has instructed the health care provider not to make the disclosure;
- (2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;
- (3) to federal, state, or local law enforcement authorities to the extent required by law;
- (4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;
- (5) in response to a request of the division of crime control for information under 53-9-104(2)(b); or
- (6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536.

50-16-531. Immunity of health care providers pursuant to written authorization - form required. A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to _____(named person) for _____(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

(Signature of patient)"

50-16-532 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

- (a) the patient has consented in 'writing to the release of the health care information in response to compulsory process or a discovery request;
- (b) the patient has waived the right to claim confidentiality for the health care information sought;
- (c) the patient is a party to the proceeding and has placed his physical or mental condition in issue;
- (d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;
- (e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;
- (f) a patient's health care information is to be used in the patient's commitment proceeding;
- (g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (i);
- (h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;
- (i) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or
- (j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535 (1)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of

the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535 (1)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) Where access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

50-16-537 through 50-16-540 reserved.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

- (a) make the information available to the patient for examination during regular business hours or provide a copy, if requested, to the patient;
- (b) inform the patient if the information does not exist or cannot be found;
- (c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;
- (d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or
- (e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

- (a) knowledge of the health care information would be injurious to the health of the patient;
- (b) knowledge of the health care information could reasonably be

expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might disclose birth out of wedlock or provide information from which knowledge of birth out of wedlock might be obtained and which information is protected from disclosure pursuant to 50-15-206;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct

or amend its record of the patient's health care information, the health care provider shall:

- (a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;
- (b) inform the patient if the record no longer exists or cannot be found;
- (c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;
- (d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or
- (e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

- (a) add the amending information as a part of the health record; and
 - (b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.
- (2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:
- (a) permit the patient to file as a part of the record of his health care mark a concise statement of the correction or amendment requested and the reasons therefor; and
 - (b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

5-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide

copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

Part 6

Government Health Care Information

50-16-601. Short title. This part may be cited as the "Government Health Care Information Act".

50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease. The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

- (2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;
- (3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;
- (4) as allowed by Title 50, chapters 17 and 18;
- (5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;
- (6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.
- (7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

50-16-604. Secondary release of health care information. Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

50-16-605. Judicial, legislative, and administrative proceedings -testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(7).

56-16-606. Correlation with Uniform Health Care Information Act. Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the

Uniform Health Care Information Act and not subject to this part.

50-16-607 through 56-16-610 reserved.

56-16-611. Penalty. A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

Part 7

Report of Exposure to Infectious Disease

50-16-701. Definitions. As used in this part, the following definitions apply:

- (1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.
- (2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.
- (3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.
- (4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.
- (5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.
- (6) "Health care facility" means a health care facility as defined in 50-5-101.
- (7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.
- (8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as

provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

50-16-702. Notification of exposure to infectious disease - report of exposure to disease. (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the required form to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. A designated officer shall submit the form verifying that there was an exposure.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of a request from a designated officer, the health care facility shall notify the designated officer in writing:

(i) whether or not the patient was infected with an infectious disease;

(ii) whether or not a determination has been made; and

(iii) the name of the disease and the date of transport if the patient was infected.

(d) The designated officer shall then notify the emergency services provider.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall notify the designated officer and the department within 48 hours after the determination has been made. The department shall, within 24 hours, notify the designated officer of the emergency services provider who transported the patient.

50-16-703. Notification of precautions after exposure to infectious disease. (1) After a patient is transported to a health care facility, a physician shall inform the health care facility within 24 hours if the physician determines that the

transported patient has an infectious disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis the designated officer of the emergency services provider who attended the patient prior to or during transport or who transported the patient with the infectious disease.

(3) The notification must state the disease to which the emergency services provider was exposed and the appropriate medical precautions and treatment that the exposed person needs to take.

50-16-704. Confidentiality - penalty for violation - immunity from liability. (1) The names of the person who suffered the exposure and the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, except as required by department rule concerning reporting of communicable disease or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

50-16-705. Rulemaking authority. The department shall adopt rules to:

(1) define what constitutes an exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an exposure that must be included in a report of exposure; and

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part.

50-16-706 through 50-16-710 reserved.

50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease. (1) The health care facility and the emergency services organization shall develop internal procedures for implementing

the provisions of this chapter and department rules.

(2) The health care facility shall have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this chapter and the rules promulgated under this chapter.

(4) The emergency services organization shall name a designated officer and an alternate.

Parts 8 and 9 reserved

Part 10

AIDS Education and Prevention

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in

a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the

department.

(16) "Release of test results means a written authorization for disclosure of HIV-related test results that:

- (a) is signed and dated by the person tested or the person authorized to act for the person tested; and
- (b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and that includes at least the following:

- (i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;
 - (ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;
 - (iii) an explanation of whether and to whom the subject's name and test results may be disclosed;
 - (iv) a statement that the test may be obtained anonymously if the subject wishes;
 - (v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and
 - (vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.
- (b) The department shall develop a form agreement that may be used for purposes of this subsection.

50-16-1004 through 50-16-1006 reserved.

50-16-1007. Testing - counseling - informed consent - penalty.

(1) An HIV-related test may be ordered only by a health care provider and only after receiving the written informed consent of:

- (a) the subject of the test;

- (b) the subject's legal guardian;
 - (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated;
 - (ii) there is no legal guardian;
 - (iii) there are medical indication of an HIV - related condition;and
 - (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
 - (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
 - (i) the subject is in a hospital; and
 - (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.
- (2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.
- (3) Before the subject of the test executes an informed consent agreement, the health care provider ordering the test or the provider's designee must give pretest counseling to:
- (a) the subject;
 - (b) the subject's legal guardian;
 - (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated; and
 - (ii) there is no guardian; or
 - (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
 - (i) the subject is in the hospital; and
 - (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.
- (4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.
- (5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, as part of a written informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.
- (6) At the time the subject of a test or the subject's

representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company must ensure that:

(a) negative results can be obtained by the subject or the subject's representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related 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;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek written informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If written informed consent cannot be obtained, the health care facility, in accordance with the

infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection, "written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of \$1,000 or imprisonment for up to 6 months, or both.

50-16-1008. Testing of donors of organs, tissues, and semen required - penalty. (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.

50-16-1009. Confidentiality of records - notification of contacts - penalty for unlawful disclosure. (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6,

unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.

(3) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(4) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of \$5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision this part, damages of \$20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

SEXUALLY TRANSMITTED DISEASES

Part 1

General Provisions

50-18-101. Sexually transmitted diseases defined. Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

50-118-102. Powers and duties of department. The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose.

50-18-103. Cooperation with federal agencies - federal funds. (1) The department of health and environmental sciences shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds.

50-18-104. Serological test for syphilis. (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

(2) On request the department shall make laboratory tests required by this chapter.

50-18-105. Rules of department binding. Rules adopted by the department of health and environmental sciences for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

50-18-106. Duty to report cases. If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

50-18-17. Powers and duties of health officers. (1) If found

necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

- (a) examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;
 - (b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;
 - (c) isolate or quarantine persons who refuse examination or treatment;
 - (d) investigate sources of infection of a sexually transmitted disease.
- (2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

50-18-108. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

- (a) to personnel of the department of health and environmental sciences;
 - (b) to a physician who has written consent of the person whose record is requested;
 - (c) to a local health officer; or
 - (d) by the department of health and environmental sciences or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.
- (2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work, and such personnel are privileged.
- (3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all sexually transmitted disease eradication work and endeavor, and

to require that the principle of confidentiality in such work remain inviolate.

50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease. It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of a sexually transmitted disease except upon prescription signed by a person legally authorized to do so by the pharmacy laws of this state.

50-18-111. Certificate of freedom from sexually transmitted disease not to be issued. No person shall issue a certificate of freedom from a sexually transmitted disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

50-18-112. Infected person not to expose another to sexually transmitted disease. A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of health and environmental sciences concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.