

/\* New Hampshire has passed laws dealing with education, prevention and control; EMS personnel exposure; and testing for insurance purposes. \*/

## CHAPTER 141-F

### HUMAN IMMUNODEFICIENCY VIRUS EDUCATION, PREVENTION, AND CONTROL

141-F:1 Statement of Purpose. It is the purpose of this chapter to designate the division of public health services, department of health and human services, as the state agency responsible for preparing information on the transmission and prevention of the human immunodeficiency virus.

It is also the purpose of this chapter to require the division of public health services to provide testing for the human immunodeficiency virus, to assure the quality of similar testing by other laboratories in the state, and to carry out epidemiological analysis and follow-up. Finally, it is the purpose of this chapter to protect individuals from unauthorized disclosure of human immunodeficiency virus test results.

141-F:2 Definitions. In this chapter:

I. "Antibody" means a protein produced by the body in response to specific foreign substances such as bacteria or viruses.

II. "Antigen" means a substance that stimulates the production of antibodies.

III. "Director" means the director, division of public health services or his designee.

IV. "Division" means the division of public health services, department of health and human services.

V. "Human immunodeficiency virus" means the virus, or its variants, which are the causative agents of acquired immune deficiency syndrome (AIDS), AIDS related conditions, and other clinical manifestations.

VI. "Serologic positive" means the presence in an individual, as detected by laboratory testing, of an antibody or antigen to the human immunodeficiency virus.

141-F:3 Powers and Duties of the Division. The division shall:

I. Provide information and guidance to the department of education for their development of courses and programs relative to the human immunodeficiency virus which meet the requirements of RSA 186:11, IX and XXVII.

II. Develop training courses and materials on the human immunodeficiency virus and related issues, for police, fire, and emergency medical services personnel and provide assistance on the development and implementation of such courses and materials to the relevant state and local agencies.

III. Distribute informational materials on the human immunodeficiency virus to health care providers, health care institutions, local health and social service agencies, local units of government, and, upon request, to other public and private agencies and organizations.

IV. Provide information to persons at high risk of acquiring the human immunodeficiency virus.

V. Provide assistance to government agencies, school districts, health care institutions, businesses, and industries to establish policies and practices for coping with the human immunodeficiency virus

VI. Disseminate information to the general public, using print and broadcast media, on the human immunodeficiency virus, its causes and effects, and on methods of prevention and control.

VII. Conduct training sessions and workshops, upon request, for educators, physicians, and the staff and volunteers of hospitals and other health care agencies, licensed under RSA 151, on the human immunodeficiency virus, methods of prevention and control, methods for pre-test and post-test counseling for infected persons and their families, and management of medical care and treatment of infected persons.

VIII. Within the limits of appropriated funds, augment community efforts by providing, directly or by contract, with local health or social service agencies or with any other relevant agency or organization, services relating to the human immunodeficiency virus.

IX. Provide laboratory testing services in accordance with RSA

141-F:6 to detect the presence of the human immunodeficiency virus in samples submitted by health care providers.

X. Certify facilities in accordance with RSA 141-F:6 who offer or otherwise make available laboratory testing services to detect the presence of the human immunodeficiency virus.

XI. Conduct follow-up investigations in accordance with RSA 141-F:9.

XII. Apply for, receive, and expend funds made available to the state by the federal government or other sources and use such funds to carry out the provisions of this chapter.

XIII. Provide an informational brochure relative to the human immunodeficiency virus to persons applying for a marriage license and make such brochure available to town and city clerks for distribution under RSA 457:23, III.

141-F:4 Rulemaking. The director shall adopt rules under RSA 541-A relative to:

I. Procedures for testing blood samples under RSA 141-F:5, I.

II. Procedures for testing body parts, tissues, or fluids under RSA 141-F:5, II.

III. Procedures for confidentially testing body parts, tissues, or fluids under RSA 141-F:5, III.

IV. Procedures for conducting tests under RSA 141-F:5, IV.

V. Procedures for certification under RSA 141-F:6, II.

141-F:5 Informed Consent for Testing; Exceptions. Except as provided in this section, no physician or advanced registered nurse practitioner licensed or registered to practice in this state, no employee of a health care facility licensed under RSA 151, whether paid or unpaid, and no employee of a blood bank, blood center, plasma center, or agency which receives blood donations, whether paid or unpaid, may test for the presence of an antibody or antigen to a human immunodeficiency virus unless the person being tested consents after being informed about the medical interpretations of positive and negative test findings and the applicable provisions of RSA 141-F:7 and 141-F:8. Testing

without consent may occur in the following situations:

I. Any blood bank, blood center, plasma center, or agency which purchases or receives donated whole blood, blood plasma, a blood product, or a blood derivative shall, prior to its distribution or use, subject such blood to a test which conforms to rules adopted by the director under RSA 141-F:4.

II. A physician or advanced registered nurse practitioner licensed or registered to practice in this state who procures, processes, distributes, or uses a human body part, tissue, or fluid donated under RSA 291-A may, without obtaining consent to the testing, test for the presence of an antibody or antigen to the human immunodeficiency virus, in accordance with rules adopted by the director under RSA 141-F:4 in order to assure medical acceptability of the gift for the purpose intended.

III. A health care facility engaged in medical research may, without first obtaining consent to the testing, subject any body parts, fluids, or tissues to a test for the presence of an antibody or antigen to a human immunodeficiency virus in accordance with rules adopted by the director under RSA 141-F:4 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.

IV. Individuals convicted and confined to a correctional facility pursuant to the order of a court, or committed to New Hampshire hospital, may be tested without obtaining written consent to the testing, when the results of such tests are necessary for the placement and management of such individuals in the facility, pursuant to the written policies and procedures of the chief administrator of the facility.

V. A physician licensed to practice in this state, or a person authorized by the physician, may, without obtaining consent to the testing, test for the presence of an antibody or antigen to a human immunodeficiency virus when the person being tested is incapable of giving informed consent and when a test for the presence of an antibody or antigen to a human immunodeficiency virus is immediately necessary to protect the health of the person.

141-F:6 Testing; Certification.

I. The division shall offer laboratory testing, in accordance

with RSA 131, for the presence or absence of antibodies or antigens of the human immunodeficiency virus. Each sample for testing shall be submitted with a statement signed by a physician, or by a person authorized by a physician to sign, attesting that the person has consented to the test in accordance with RSA 141-F:5.

II. All other laboratories, public or private, which test human blood or any other business or organization, public or private, which tests human blood, tissue, or other samples as part of its operations may offer to test samples for the presence or absence of antibodies or antigens of the human Immunodeficiency virus if such laboratories are annually certified by the division. The director shall adopt rules under RSA 141-F:4 relative to the certification process. Such laboratories shall require that any sample for testing be submitted with a written statement signed by a physician, or a person authorized by a physician to sign, attesting that such person has given informed consent as required under RSA 141-F:5. Certification under this paragraph shall be in addition to any other certification, registration, or licensure required for such laboratories under state law.

#### 141-F:7 Reporting of Test Results.

I. Except as provided in this section, test results of samples submitted for laboratory analysis under RSA 141-F:6 shall not be disclosed to any person or agency except:

(a) The physician ordering the test or the person authorized by the physician; and

(b) The director, in accordance with RSA 141-C:7.

II. Test results shall be disclosed by the physician or the person authorized by the physician to the person who was tested. Such person shall be provided with appropriate counseling at the time of notification.

III. If the person with a serologic positive test result is less than 18 years of age or is mentally incapable of understanding the ramifications of a Positive test result, the physician or the person authorized by the physician may disclose the test results to a parent or legal guardian. In such cases, the parent or legal guardian shall be entitled to appropriate counseling.

IV. If the person with a serologic positive test is confined to

a facility pursuant to an order of a court, or committed to a mental health facility, the results of the tests shall be disclosed by the physician or the person authorized by the physician to the medical director or chief medical officer of such facility. The medical director or chief medical officer of the facility shall provide to the administrator in charge of the facility whatever medical data is necessary to properly assign, treat, or manage the affected individual. The administrator may disclose this information only to those individuals who require such information to properly assign, treat, or manage the affected individual.

141-F:8 Confidentiality; Release of Information.

I. The identity of a person tested for the human immunodeficiency virus shall not be disclosed except as provided in RSA 141-F:7 and RSA 141-F:8, III and IV.

II. All records and any other information pertaining to a person's testing for the human immunodeficiency virus shall be maintained by the division, health care provider, health or social service agency, organization, business, school, or any other entity, public or private, as confidential and protected from inadvertent or unwarranted intrusion. Such information obtained by subpoena or any other method of discovery shall not be released or made public outside of the proceedings.

III. Notwithstanding RSA 141-C:10 and paragraph I of this section, the identity of a person tested for the human immunodeficiency virus may be disclosed in response to a written request if such person has given written authorization for such disclosure. Such written request shall state the reasons for the request and shall contain only the identity of the infected person.

IV. Notwithstanding RSA 141-C:10 and paragraph I of this section, a physician licensed to practice in this state or other health care provider may disclose information pertaining to the identity and test results of a person tested for a human immunodeficiency virus to other physicians and health care providers directly involved in the health care of the person when the disclosure of such information is necessary in order to protect the health of the person tested. Information thus disclosed shall be maintained as provided in paragraph II of this section.

141-F:9 Disease Control. The director or his designee shall conduct follow-up activities when reports of individuals found serologic positive are provided under RSA 141-C:7.

I. Such activities shall be conducted with due regard to the personal and property rights of the individual person and shall be limited to discovering the potential source of the infection and to identifying persons who may have been infected by such individual.

II. The director shall, if possible, do contact referral and shall encourage the individual person to notify any persons who may be or have been infected and urge such persons to undergo testing pursuant to the provisions of this chapter.

III. During the course of an investigation under this section, the director shall not disclose the identity of the individual found serologically positive.

141-F:10 Civil Liability. Any person who purposely violates RSA 141-F:7, I or RSA 141-F:8, I and thereby discloses the identity of a person infected by a human immunodeficiency virus shall be liable to such person for actual damages, court costs and attorneys' fees, plus a civil penalty of up to \$5,000 for such disclosure.

141-F:11 Penalty. Any person who purposely violates the provisions of RSA 141-F:5-141-F:8 or any rules adopted pursuant to them shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

## CHAPTER 141-G

### NOTIFICATION OF FIREFIGHTERS, EMERGENCY CARE PROVIDERS AND POLICE OFFICERS AFTER EXPOSURE TO INFECTIOUS DISEASE

141-G:1 Definitions. In this chapter:

I. "Blood or other potentially infectious material" means human blood, human blood components, products made from human blood, sputum or any such other body fluid, tissue, or organ that may be

designated by the director by rule adopted under RSA 141-G:6.

II. "Director" means the director of the division of public health services.

III. "Division" means the division of public health services, department of health and human services.

IV. "Emergency response/public safety worker" means firefighters, police officers and emergency care providers licensed under RSA 151-B, and other similar care providers, whether paid or volunteer.

V. "Exposed worker" means an emergency response/public safety worker who sustains or suspects he has sustained an unprotected exposure.

VI. "Infectious disease" means any infectious disease that is designated by the director by rule adopted under RSA 141-G:6.

VII. "Source individual" means any person whose blood, body fluids, tissue, or organs were specifically identified as the source of an exposure to an emergency response/public safety worker.

VIII. "Unprotected exposure" includes instances of direct mouth-to-mouth resuscitation or the commingling of blood or other potentially infectious material of a source individual and an emergency response/ public safety worker, which is capable of transmitting an infectious disease or any other such type of exposure that may be designated by the director by rule adopted under RSA 141-G:6.

141-G:2 Medical Referral Consultant.

I. Each employer of emergency response/public safety workers shall identify a medical referral consultant who has agreed to accept referrals and to evaluate and follow up such workers' unprotected exposures. The medical referral consultant shall be a licensed physician, a registered nurse, advanced registered nurse practitioner or licensed physician assistant. If none of these is available the employer shall request written approval from the division for an alternate.

II. The medical referral consultant shall:

(a) Receive emergency response/public safety worker incident



report forms.

(b) Receive information from the infection control officer, the exposed worker's private physician, or both, regarding the worker's exposure to an infectious disease, as appropriate.

(c) Conduct a medical examination, evaluate the exposure, and give appropriate prophylactic treatment and follow-up treatment and advice, or, if the medical referral consultant is not a licensed physician, refer the exposed worker immediately to a licensed physician for such examination, evaluation, treatment and advice.

(d) Make all reasonable efforts to request and obtain a blood specimen from a source individual when, in the opinion of the medical referral consultant, a test on such blood specimen is necessary in order to determine the proper prophylactic treatment or advice for the exposed worker, provided that the source individual or his legal guardian consents to such test and the disclosure of such test results.

(e) Maintain a record relating to any emergency response/public safety worker's exposure to an infectious disease. The manner of recordkeeping shall assure the confidentiality of all information.

#### 14 1-G:3 Infection Control Officer.

I. The senior facility administrator of each health care facility licensed under RSA 151 shall designate an infection control officer for the purpose of carrying out this chapter. That person shall be the infection control practitioner, hospital epidemiologist, hospital infection control chairman or a licensed physician or registered nurse who is knowledgeable of the facility's infection control policies and procedures.

II. When the source individual is transported to a health care facility, the infection control officer shall:

(a) Receive copies of emergency response/public safety worker incident report forms and coordinate the acquisition of any source individual information required for evaluating an emergency care worker's possible exposure.

(b) Review the incident report form and source individual medical information.

(c) Notify the medical referral consultant, in accordance with RSA 141-G:5, of any source individual infection which, in the event that an unprotected exposure occurred, may place an emergency response/public safety worker at significant risk for disease.

141-G:4 Notification by Emergency Response/Public Safety Workers.

I. Any emergency response/public safety worker who, while in the line of duty, sustains an unprotected exposure or who suspects such an exposure, shall, as soon as possible, provide a copy of the emergency response/public safety worker incident report form to his medical referral consultant. If the source individual is transported to a health care facility licensed under RSA 151, the exposed worker shall also provide a copy of the incident report form to the infection control officer of the facility as soon as possible after arrival of the source individual at the facility.

II. The division shall prepare and distribute the emergency response/ public safety worker incident report form. The form shall include, at a minimum, the names of persons who believe they have sustained an unprotected exposure, the manner in which the exposure occurred, the name of the employer's medical referral consultant and such other relevant information that the division may require by rule adopted under RSA 141-G:6.

III. Nothing in this section shall be construed as negating whatever responsibility the fire department, police department or emergency medical services unit might have for the protection and care of its employees, or the responsibility of any emergency care worker to safeguard his health by using all appropriate protective equipment provided by the employer, by following appropriate procedures, and by seeking medical advice and attention when prudent.

140-G:5 Notification by Health Care Facilities; Duties of Division; Confidentiality.

I. When the source individual is transported to a health care facility licensed under RSA 151, the infection control officer shall receive and review a copy of the emergency response/public safety worker incident report form. If the transported source individual is diagnosed as having an infectious disease which

could have been transmitted via the unprotected exposure, the infection control officer shall orally notify within 48 hours and in writing notify within 72 hours of the determination, the medical referral consultant listed on the form. The notice shall include, but not be limited to, the finding, if any, that an unprotected exposure may have occurred and the identity of such infectious disease. The infection control officer or health care facility shall provide the source individual diagnosed as having the infectious disease with the names of persons who were informed of his condition.

II. The division shall determine the method by which the written notification of the incident report is conveyed to the medical referral consultant.

III. When the source individual is transported to a health care facility licensed under RSA 151, the testing performed on the transported source individual to complete the diagnosis under paragraph I shall not be in addition to any testing which would be conducted during the care and treatment of the individual, unless additional tests are determined as necessary by the infection control officer and the individual's attending physician because of the nature of the unprotected exposure, and the individual consents to the tests.

IV. Notwithstanding the provisions of this chapter, any drawing of blood and testing carried out under this chapter for the presence of the human immunodeficiency virus, any notifications of persons about such test results, and the confidentiality of such test results shall be in accordance with the provisions of RSA 141-F.

141-G:6 Rulemaking. The director shall adopt rules under RSA 541-A relative to:

I. Form, content and distribution of the standardized emergency response/public safety worker incident report form required under RSA 141-G:4.

II. A definition of blood or other potentially infectious material.

III. A definition of infectious disease.

IV. Manner of recordkeeping to ensure confidentiality under RSA 141-G:2, 11(e).

V. Further definition of an unprotected exposure.

VI. Content and format of all notices and forms required under this chapter.

VII. Minimal requirements for a medical referral consultant alternate as required under RSA 141-G:2, I.

VIII. Preparation and distribution of the incident report form as required under RSA 141-G:4, II.

141-G:7 Immunity From Civil Liability. No facility licensed under RSA 151 or agent, employee, administrator, physician, official, or other representative of such facility shall be held jointly or severally liable, either as a facility or personally, for reporting as required under this chapter, if such report was made in good faith and was in accordance with the confidentiality procedures of the facility and RSA 141-F. All such parties who have acted in good faith shall have total immunity from civil or criminal liability for any act performed in the fulfillment of the duties imposed by this chapter.

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IV. "Emergency response/public safety worker" means firefighters, police officers, emergency care providers licensed under RSA 151-B, persons using wreckers as defined in RSA 259:126 for towing purposes, and other similar care providers, whether paid or volunteer.

## CHAPTER 417

### UNFAIR INSURANCE TRADE PRACTICES

417:4 Unfair Methods, Acts, and Practices Defined. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

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XIX. HUMAN IMMUNODEFICIENCY VIRUS. No person engaged in the business of insurance in this state shall test for the presence of an antibody or antigen to a human immunodeficiency virus other than in accordance with the provisions of this paragraph. Such persons shall not be subject to any provision of RSA 141-F.

(a) No person may test any individual in connection with an application for insurance for the presence of an antibody or antigen to a human immunodeficiency virus unless such individual gives written consent on a form designed by the director, division of public health services, department of health and human services, with consultation and approval by the commissioner of insurance. The form shall contain information about the medical interpretations of positive and negative test findings, disclosure of test results, and the purpose for which the test results may be used.

(b) If the laboratory analysis is performed within this state, only laboratories certified by the division of public health services, department of health and human services, shall be used to test for the presence of an antibody or antigen to a human immunodeficiency virus. If the laboratory analysis is conducted without this state, only laboratories licensed by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, as amended, shall be used to perform such tests.

(c) In the event of a serologic positive test result, a person who tests for the presence of an antibody or antigen to a human immunodeficiency virus shall disclose the test results, but only to:

(1) The individual tested;

(2) Such other person or entity as the individual tested may authorize by written consent to receive the test results, which consent shall be clearly identifiable as part of the form described in subparagraph (a) of this paragraph.

(d) Notwithstanding the provisions of subparagraph (c), if the test results are positive or indeterminate and the individual tested has not given written consent authorizing a physician to receive the test results, such individual shall be urged, at the time the individual is informed of the positive or indeterminate test results, to contact the director, division of public health services, department of health and human services, for appropriate counseling.

(e) A person who requires the test for the presence of an antibody or antigen to a human immunodeficiency virus shall maintain all test results and records pertaining to test results as confidential and protected against inadvertent or unwarranted intrusion. Such test results obtained by subpoena or any other method of discovery shall not be released or made public outside the proceedings.

(f) The commissioner of insurance shall adopt rules, under RSA 541-A, relative to:

(1) Recordkeeping designed to maintain the confidentiality of an individual tested under this paragraph.

(2) Who may have access to such records and the conditions of such access.