

*/\* New Jersey has enacted statutes concerning education, testing, and privacy, as well as establishing a resource center. \*/*

## CHAPTER 5C

### ACQUIRED IMMUNE DEFICIENCY SYNDROME

#### Section

26:5C-1. Short title.

26:5C-2. Legislative findings.

26:5C-3. Programs to educate public, health care professionals and people in contact with AIDS victims, and of departmental and local support.

26:5C-4. Resource center.

26:5C-5. Definitions.

26:5C-6. Report of diagnosed cases of AIDS or HIV infection; anonymous testing,

26:5C-7. Record of identifying information; confidentiality.

26:5C-8. Disclosure of content of record; consent; conditions.

26:5C-9. Disclosure by order of court pursuant to showing of good cause.

26:5C-10. Confidentiality of record after cessation as patient or participant in program.

26:5C-11. Confidentiality of record by recipient of disclosure.

26:5C-12. Consent for disclosure of record of deceased or legally incompetent person.

26:5C-13. Consent for disclosure of record of minor.

26:5C-14. Violations; civil action for damages, equitable relief, attorney fees and costs.

26:5C-1. Short title

This act shall be known and may be cited as the "AIDS Assistance Act."

## 26:5C-2. Legislative findings

The Legislature finds that:

- a. The effective identification, diagnosis, care and treatment of persons who have contracted acquired immune deficiency syndrome, commonly known as "AIDS," is of paramount public importance;
- b. AIDS is thought to be the result of a virus or other highly infectious agent which may be spread through body secretions, especially blood and semen, or through an as yet unidentified method of transmission;
- c. The AIDS organism is responsible for the near total collapse of the body's immune system, resulting in the susceptibility to cancer and other fatal infections;
- d. AIDS although first diagnosed in homosexual men is now striking so many groups such as drug users, hemophiliacs, persons who have received blood transfusions and Haitians, that its course is currently unpredictable;
- e. The spread of AIDS may be impossible to stop because the AIDS organism can be dormant for months before it manifests symptoms and because the incubation period ranges from six months to two years;
- f. People who have already been infected might not be aware of their exposure and may unknowingly infect hundreds more individuals;
- g. Resultantly, the outbreak of AIDS has reached alarming proportions because of its highly contagious nature with New Jersey ranking fourth in the nation of the number of reported cases.

The Legislature further finds that researchers have no conclusive evidence regarding the detection, treatment, cure or prevention of AIDS; that many health care professionals are not yet familiar with the symptoms or treatment techniques of AIDS; that most victims are not aware that they have been exposed to AIDS and therefore infect others; that accordingly, the magnitude of the AIDS outbreak has not yet been realized.

Therefore, the Legislature declares that it is imperative that programs be established for diagnosing and treating persons who have been exposed to AIDS, referring AIDS victims and their families to sources of treatment and counseling, and providing an educational program to health care professionals to heighten their awareness of the latest diagnostic procedures and treatment. The Legislature further declares that a task force be established to coordinate the medical and social services needed by AIDS victims.

## 26:5C-3. Programs to educate public, health care professionals and people in

contact with AIDS victims, and of departmental and local support

The Commissioner of the State Department of Health shall establish:

- a. A program to educate the public, which shall include a public information campaign encouraging persons who suspect exposure to AIDS to seek medical testing and counseling, and a Statewide telephone hotline to answer requests for information and referral;
- b. A program to educate health care professionals and others who are required to have contact with people who have contracted AIDS about the diagnosis and treatment of AIDS; and
- c. Departmental and local support programs to provide early detection, counseling, social services, and referrals for those who suspect exposure to AIDS.

#### 26:5C-4. Resource center

The University of Medicine and Dentistry of New Jersey shall, in coordination with the State Department of Health, serve as a resource center and may offer diagnostic procedures, medical treatment, counseling, as well as any other services that may be necessary to assist AIDS victims and their families.

#### 26:5C-5. Definitions

As used in this act:

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

"Commissioner" means the Commissioner of Health.

"Department" means the Department of Health.

"Diagnosis and treatment" means services or activities carried out for the purpose of, or as an incident to, diagnosis, prevention and treatment of AIDS and HIV infection and includes interviewing and counseling.

"HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

"HIV related illness" means an illness that may result from, or may be associated with, HIV infection.

"HIV related test" means any laboratory test or series of tests for any virus,

antibody, antigen or etiologic agent thought to cause or to indicate the presence of AIDS.

"Identifying information" means the name, address, Social Security number, or similar information by which the identity of a person who has or is suspected of having AIDS or HIV infection may be determined with reasonable accuracy either directly or by reference to other publicly available information.

"Informed consent" means consent obtained pursuant to policies and procedures prescribed in 42 C.F.R. 2.31.

"Minor" means a person under the age of 12.

"Program" means either an individual or an organization furnishing diagnosis and treatment of AIDS and conditions related to HIV infection.

#### 26:5C-6. Report of diagnosed cases of AIDS or HIV infection; anonymous testing

All diagnosed cases of AIDS and all diagnosed cases of HIV infection shall be reported to the department along with the identifying information for the person diagnosed. However, the department may select up to six counseling and testing sites throughout the State to offer anonymous testing. These sites shall be required to report all diagnosed cases of AIDS and all diagnosed cases of HIV infection but shall not be required to request or report identifying information. The commissioner shall determine those individuals who shall be required to make the reports and the manner in which the report shall be made to the department.

#### 26:5C-7. Record of Identifying information; confidentiality

A record maintained by:

- a. the department;
- b. a local health department;
- c. an organization pursuant to a contract with, grant from, or regulation by the department in connection with this act;
- d. a provider of health care or a health care facility as defined by section 2 of P.L.1971, c. 136 (C.26:2H-2);
- e. a laboratory;

- f. a blood bank;
- g. a third-party payor; or
- h. any other institution or person;

which contains identifying information about a person who has or is suspected of having AIDS or HIV infection is confidential and shall be disclosed only for the purposes authorized by this act.

#### 26:5C-8. Disclosure of content of record; consent; conditions

a. The content of a record referred to in section 3 of this act may be disclosed in accordance with the prior written informed consent of the person who is the subject of the record or if the person is legally incompetent or deceased, in accordance with section 8 of this act.

b. If the prior written consent of the person who is the subject of the record is not obtained, the person's records shall be disclosed only under the following conditions:

(1) To qualified personnel for the purpose of conducting scientific research, but a record shall be released for research only following review of the research protocol by an Institutional Review Board constituted pursuant to federal regulation 45 C.F.R. 46.101 et seq. The person who is the subject of the record shall not be identified, directly or indirectly, in any report of the research and research personnel shall not disclose the person's identity in any manner.

(2) To qualified personnel for the purpose of conducting management audits, financial audits or program evaluation, but the personnel shall not identify, directly or indirectly, the person who is the subject of the record in a report of an audit or evaluation, or otherwise disclose the person's identity in any manner. Identifying information shall not be released to the personnel unless it is vital to the audit or evaluation.

(3) To qualified personnel involved in medical education or in the diagnosis and treatment of the person who is the subject of the record. Disclosure is limited to only personnel directly involved in medical education or in the diagnosis and treatment of the person.

(4) To the department as required by State or federal law.

(5) As permitted by rules and regulations adopted by the commissioner for the purposes of disease prevention and control.

(6) In all other instances authorized by State or federal law.

26:5C-9. Disclosure by order of court. pursuant to showing of good cause

a. The record of a person who has or is suspected of having AIDS or HIV infection may be disclosed by an order of a court of competent jurisdiction which is granted pursuant to an application showing good cause therefor. At a good cause hearing the court shall weigh the public interest and need for disclosure against the injury to the person who is the subject of the record, to the physician-patient relationship, and to the services offered by the program. Upon the granting of the order, the court, in determining the extent to which a disclosure of all or any part of a record is necessary, shall impose appropriate safeguards to prevent an unauthorized disclosure.

b. A court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a prosecution for a crime of which the person is suspected, only if the crime is a first degree crime and there is a reasonable likelihood that the record in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

c. Except as provided in subsections a. and b. of this section, a record shall not be used to initiate or substantiate any criminal or civil charges against the person who is the subject of the record or to conduct any investigation of that person.

d. The court shall deny an application for disclosure of a person's record unless the court makes a specific finding that the program was afforded the opportunity to be represented at the hearing. A program operated by a federal, State or local government agency or department shall be represented at the hearing.

e. Nothing in this section shall be construed to authorize disclosure of any confidential communication which is otherwise protected by statute, court rule or common law.

26:5C-10. Confidentiality of record after cessation as patient or participant in program

The limits on disclosure set forth in this act shall continue to apply to a record relating to AIDS and HIV infection concerning a person who has been a patient or a participant in a program, whether that person remains a patient or participant or ceases to be a patient or participant.

26:5C-11. Confidentiality of record by recipient of disclosure

Any record disclosed under this act shall be held confidential by the recipient of the record and shall not be released by said recipient unless the conditions of this act are met.

#### 26:5C-12. Consent for disclosure of record of deceased or legally incompetent person

When consent is required for disclosure of the record of a deceased or legally incompetent person who has or is suspected of having AIDS or HIV infection, consent may be obtained:

- a. From an executor, administrator of the estate, or authorized representative of the legally incompetent or deceased person;
- b. From the person's spouse or primary caretaking partner or, if none, by another member of the person's family; and
- c. From the commissioner in the event that a deceased person has neither an authorized representative or next of-kin.

#### 26:5C-13. Consent for disclosure of record of minor

When consent is required for disclosure of the record of a minor who has or is suspected of having AIDS or HIV infection, consent shall be obtained from the parent, guardian, or other individual authorized under State law to act in the minor's behalf.

#### 26:5C-14. Violations; civil action for damages, equitable relief, attorney fees and costs

- a. A person who has or is suspected of having AIDS or HIV infection who is aggrieved as a result of a violation of this act may commence a civil action against the individual or institution who committed the violation to obtain appropriate relief, including actual damages, equitable relief and reasonable attorney's fees and court costs. Punitive damages may be awarded when the violation evidences wantonly reckless or intentionally malicious conduct by the person or institution who committed the violation.
- b. Each disclosure made in violation of this act is a separate and actionable offense.