

/* NEW MEXICO's statutes address contagious disease control, physician reporting, and employment tests. */

24-1-8. Prevention of Communication of venereal disease. If any attending physician knows or has good reason to suspect that a person having a venereal disease may conduct himself so as to expose other persons to infection, he shall notify the district health officer of the name and address of the diseased person and the facts of the case.

24-1-9. Capacity to consent to examination and treatment for venereal disease. Any person, regardless of age, has the capacity to consent to an examination and treatment by a licensed physician for any venereal disease.

24-1-12. Health certificates; filing.

A. Any person who operates or is employed in a health facility shall, upon becoming employed or engaged in such occupation, present to the employer or, if self-employed, file at the place of business a health certificate from a licensed physician stating the person is free from communicable diseases in a transmissible state dangerous to the public health as defined by regulation of the health services division of the health and environment department [department of health]. The certificate shall be obtained not more than ninety days prior to the date of employment.

B. All certificates shall be kept on file and be subject to inspection by the licensing authority.

24-1-15. Reporting of contagious diseases.

A. whenever any physician or other person knows that any person is sick with any disease dangerous to the public health, he shall promptly notify the district health officer or his authorized agent.

B. Any health authority receiving notice that any person is infected with disease dangerous to the public health shall secure his voluntary isolation or, if such person refuses to submit to isolation, he shall file a complaint with any magistrate or district court judge having jurisdiction over the infected person. The complaint shall state the facts as related, under oath, by the health authority or the facts according to his information and belief. Any magistrate or district court judge having jurisdiction may, upon proper complaint, issue a warrant directed to an officer authorized to serve arrest warrants requiring such officer, under the direction of the complaining

health authority, to isolate the person.

24-1-18. Inspection searches.

A. Upon sufficient showing that consent to an inspectorial search has been refused or is otherwise unobtainable within a reasonable period of time, an inspection officer may make application for an inspection order. Such application shall be made to a district court judge having jurisdiction over the premises or vehicle to be searched or an administrative official authorized by statute or ordinance to issue inspection orders.

B. The application shall be granted and the inspection order issued upon a sufficient showing that inspection in the area in which the premises or vehicles in question are located, or inspection of the particular premises or vehicles, is in accordance with reasonable legislative or administrative standards, and that the circumstances of the particular inspection for which application is made are otherwise reasonable. The issuing authority shall make and keep a record of the proceedings on the application, and enter thereon his finding in accordance with the requirements of this section.

C. The inspection officer executing the order shall, if the premises or vehicle in question are unoccupied at the time of execution, be authorized to use such force as is reasonably necessary to effect entry and make the inspection.

D. The officer conducting the search shall, if authorized by the issuing authority on proper showing, be accompanied by one or more law enforcement officers authorized to serve search warrants who shall assist the inspection officer in executing the order at his direction.

E. After execution of the order or after unsuccessful efforts to execute the order, as the case may be, the inspection officer shall return the order to the issuing authority with a sworn report of the circumstances of execution or failure thereof.

24-1-19. Emergency inspectorial searches.

A. whenever it reasonably appears to an inspection officer that there may be a condition, arising under the laws he is authorized to enforce and imminently dangerous to health and safety, the detection or correction of which requires immediate access, without prior notice, to premises for purposes of inspectorial search, and if consent to such search is refused or cannot be promptly obtained, the inspection officer may make an emergency inspectorial search of the premises without an inspection order.

B. Upon completion of the emergency inspectorial search, the inspection officer shall make prompt report of the circumstances to the judicial or administrative authority to whom application

for an inspection order would otherwise have been made.

24-1-20. Records confidential.

A. The files and records of the department giving identifying information about individuals who have received or are receiving from the department treatment, diagnostic services or preventive care for diseases, disabilities or physical injuries, are confidential and are not open to inspection except where permitted by rule of the department, as provided in Subsection C of this section and to the secretary of health and environment [secretary of health] or to an employee of the health and environment department [department of health] authorized by the secretary to obtain such information, but the information shall only be revealed for use in connection with a governmental function of the secretary or the authorized employee. Both the secretary and the employees are subject to the penalty contained in Subsection F of this section if they release or use the information in violation of this section.

B. All information voluntarily provided to the director or his agent in connection with studies designated by him as medical research and approved by the secretary of health and environment [secretary of health], either conducted by or under the authority of the director for the purpose of reducing the morbidity or mortality from any cause or condition of health, is confidential and shall be used only for the purposes of medical research. The information shall not be admissible as evidence in any action of any kind in any court or before any administrative proceeding or other action.

C. The human services department and the office of the state long-term care ombudsman shall have prompt access to all files and records in the possession of the licensing and certification bureau of the department that are related to any health facility investigation. Officers and employees of those agencies with such access are subject to the penalty in Subsection F of this section if they release or use the information in violation of this section.

D. The files and records of the department are subject to subpoena for use in any pending cause in any administrative proceeding or in any of the courts of the state, unless otherwise provided by law.

E. No person supplying information to the department for use in a research project or any cooperating person in a research project shall be subject to any action for damages or other relief as a result of that activity.

F. Any person who discloses confidential information in violation of this section is guilty of a petty misdemeanor.

24-1-21. Penalties.

Any person violating any of the provisions of the Public Health Act or any order, rule or regulation adopted pursuant to the provisions of the Public Health Act is guilty of a petty misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) or imprisonment in the county jail for a definite term not to exceed six months or both such fine and imprisonment in the discretion of the court. Each day of a continuing violation of Subsection A of Section 24-1-5 NMSA 1978 after conviction shall be considered a separate offense. The department also may enforce its rules and orders by any appropriate civil action. The attorney general shall represent the department.

ARTICLE 2B

Human Immunodeficiency Virus Tests

24-2B-1. Short title.

This act [24-2B-1 to 24-2B-8 NMSA 1978] may be cited as the "Human Immunodeficiency Virus Test Act".

24-2B-2. Informed consent.

No person shall perform a test designed to identify the human immunodeficiency virus or its antigen or antibody without first obtaining the informed consent of the person upon whom the test is performed, except as provided in Section 6 [24-2B-6 NMSA 1978] of the Human Immunodeficiency Virus Test Act. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses and limitations and the meaning of its results. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.

24-2B-3. Substituted consent.

Informed consent shall be obtained from a legal guardian or other person authorized by law when the person is not competent. A minor shall have the capacity to give informed consent to have the human immunodeficiency virus test performed on himself.

24-2B-4. Mandatory counseling.

No positive test result shall be revealed to the person upon whom the test was performed without the person performing the test or the health facility at which the test was performed providing or referring that person for individual counseling about:

- A. the meaning of the test results;
- B. the possible need for additional testing;

- C. the availability of appropriate health care services, including mental health care, social and support services; and
- D. the benefits of locating and counseling any individual by whom the infected person may have been exposed to the human immunodeficiency virus and any individual whom the infected person may have exposed to the human immunodeficiency virus.

24-2B-5. Informed consent not required.

Informed consent for testing is not required and the provisions of Section 1 [Section 21 [24-2B-2 NMSA 1978] of the Human Immunodeficiency Virus Test Act do not apply for:

- A. a health care provider or health facility performing a test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part, including tissue and blood or blood products, donated for a purpose specified under the Uniform Anatomical Gift Act [Chapter 24, Article 6 NMSA 1978], or for transplant recipients or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;
- B. the performance of a test in bona fide medical emergencies when the subject of the test is unable to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that post-test counseling or referral for counseling shall nonetheless be required when the individual is able to receive that post-test counseling. Necessary treatment shall not be withheld pending test results;
- C. the performance of a test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
- D. the performance of a test in order to provide appropriate care or treatment to a health care worker who may have been exposed to excessive amounts of blood or bodily fluids when the subject of the test is unable to grant or withhold consent and the test results are necessary for medical diagnostic purposes; or
- E. the performance of a test done in a setting where the identity of the test subject is not known, such as in public health testing programs and sexually transmitted disease clinics.

24-2B-6. Confidentiality.

No person or the person's agents or employees who require or administer the test shall disclose the identity of any person upon whom a test is performed, or the result of such a test in a

manner which permits identification of the subject of the test, except to the following persons:

- A. the subject of the test or the subject's legally authorized representative, guardian or legal custodian;
- B. any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
- C. an authorized agent, a credentialed or privileged physician or employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;
- D. the health and environment department [department of health] and the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of acquired immune deficiency syndrome;
- E. a health facility or health care provider which procures, processes, distributes or uses:
 - (1) a human body part from a deceased person, with respect to medical information regarding that person;
 - (2) semen provided prior to the effective date of the Human Immunodeficiency Virus Test Act for the purpose of artificial insemination;
 - (3) blood or blood products for transfusion or injection; or
 - (4) human body parts for transplant with respect to medical information regarding the donor or recipient;
- F. health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews so long as any identity remains confidential;
- G. authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and
- H. for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.

24-2B-7. Disclosure statement.

No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by the Human Immunodeficiency Virus Test Act [24-2B-1 to 24-2B8 NMSA 1978]. whenever disclosure is made pursuant to that act, it shall be accompanied by a statement in writing which includes the following or substantially similar language: This information has

been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law.

24-2B-8. Self-disclosure.

Nothing in the Human Immunodeficiency Virus Test Act [24-2B-1 to 24-2B-8 NMSA 1978] shall be construed to prevent a person who has been tested from disclosing in any way to any other person his own test results.

ARTICLE 10A

Human Immunodeficiency Virus Tests as Condition of Employment

28-10A-1. Human immunodeficiency virus related test; limitation.

A. No person may require an individual to disclose the results of a human immunodeficiency virus related test as a condition of hiring, promotion or continued employment, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

B. A person who asserts that a bona fide occupational qualification exists for disclosure of an individual's human immunodeficiency virus related test results shall have the burden of proving that:

- (1) the human immunodeficiency virus related test is necessary to ascertain whether an individual is currently able to perform in a reasonable manner the duties of the particular job or whether an individual will present a significant risk of transmitting human immunodeficiency virus to other persons in the course of normal work activities; and
- (2) there exists no reasonable accommodation short of requiring the test.