

Delaware

All citations are to “Del. Code Ann.” unless otherwise noted.

DEFINITIONS

(1) “Emergency medical care provider,” “receiving medical facility,” “communicable disease,” and “universal precautions,” pertaining to notification of emergency medical providers, are defined at 16, § 1201A.

(2) “Forensic medical examination” is defined at 11, § 9019.

(3) “HIV test” is defined at 11, § 3910.

(4) “HIV,” “HIV test,” and “informed consent,” as it pertains to testing for insurance purposes, are defined at 18, § 7402.

(5) “HIV-related test,” “health care provider,” and “release of test results,” pertaining to informed consent and confidentiality regarding HIV-related tests, are defined at 16, § 1201.

(6) “HIV test,” pertaining to sex offenders, is defined at 10, § 1075.

(7) “Medical treatment,” and “blood testing,” for purposes of consent to health care of minors, are defined at 13, § 707.

(8) “Psychologically impacted,” and “psychological impacts,” in relation to real-estate transactions, are defined at 24, § 2930.

(9) “Residential health facility” is defined at 16, § 1161.

(10) “Sexually transmitted diseases” (STDs), “health care professional,” “health facility,” and “invasive medical procedure” are defined at 16, § 701.

CRIMINAL LAW

(1) Under sperm bank and tissue bank registry law, all such donations shall be tested for exposure to HIV or any other causative agent of AIDS, except in an emergency, when life saving measures do not permit the delay. Violation of this is a Class E felony. 16, § 2801.

(2) Violation of any regulatory provision relating to STDs (see Definitions (10)) shall result in a fine. 16, § 713.

Testing & Reporting (1), (2), (3), (8), (9), (10), (11), (12)

Miscellaneous (2)

EDUCATION

EMPLOYMENT

Social & Medical Services (1)

Testing & Reporting (4), (6)

HOUSING

(1) The fact that real property is or was occupied by someone suspected to be HIV positive or AIDS diagnosed is not material to a real property transaction (no cause of action arises for failure to disclose). The agent shall not make any disclosure concerning those psychological impacts (see Definitions (8)), even if a buyer specifically request the information, relating to an occupant of real property who is or was at any time suspected to be HIV positive or diagnosed with AIDS. 24, § 2930.

INSURANCE

(1) An insurer may not require an applicant to submit to an HIV test (see Definitions (4)) unless: the insurer obtains prior written informed consent (see Definitions (4)); explains to the applicant the use to which the test results may be put and the entities to whom the test results may be disclosed; and provides appropriate written information on HIV and AIDS. No positive test may be used by the insurer unless it has been confirmed by a more accurate confirmatory test. 18, § 7403

(2) Insurers shall maintain strict confidentiality regarding HIV test results. Disclosure may be made to those involved in underwriting and claims insurance and on a limited confidential basis to a medical information exchange agency. 18, § 7404.

(3) If the insurer fails to issue a policy due to the results of HIV testing, the insurer shall advise the applicant that the policy has been denied based on the results of the medical examination, but not the specific reason. The applicant will be told to check with the physician designated by the applicant at the time of application. If no physician was designated, the insurer shall request the applicant to designate a physician. The information as to the applicant's positive HIV test results will be transmitted to the applicant's physician. If the applicant fails to designate a physician, the insurer shall transmit the information to the Department of Health and Social Services (Department) to allow the Department to locate the applicant and report the test results. If the applicant has designated a physician, but does not contact the physician within thirty days of notification, the physician shall transmit the information to the Department to allow the Department to locate the applicant and report the test results. 18, § 7405.

RESEARCH

Testing & Reporting (3)

Miscellaneous (3)

SOCIAL & MEDICAL SERVICES

(1) A person employed by the Division of Public Health (Division) as a STD (see Definitions (10)) case investigator may perform venipuncture or skin puncture for the

purpose of withdrawing blood for test purposes, even though he or she is not otherwise licensed to withdraw blood, provided that such a person works under the direction of a licensed physician, has been trained by a licensed physician in the proper procedures to be employed when withdrawing blood, and has a statement signed by the instructing physician that such training has been completed. 16, § 709.

(2) The Division, under the direction and control of the Secretary of the Department of Health and Social Services, is authorized to operate STDs programs for which a fee for service is charged to cover the cost of the program. 29, § 7904.

Testing & Reporting (3)

Miscellaneous (3)

TESTING & REPORTING

(1) Any physician who diagnoses, suspects, or treats a reportable STD (see Definitions (10)) and every administrator of a health facility or prison in which there is a case of a reportable STD shall report such a case to the Division of Public Health (Division). Such report shall be confidential and protected from release. Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit or similar facility in which an examination of a biological specimen which yields evidence of suggestive of a reportable STD shall notify the Division of its findings within one working day. All reports and notifications made shall be confidential and protected from release. Any health care professional making reports in compliance with this law shall be free from any liability or cause of action arising out of the making of such report. 16, § 702.

(2) All records held by the Division relating to known or suspected STD incidence, specifically including HIV infection, are confidential and not to be made public, upon subpoena or otherwise, except: for anonymous statistical purposes; with consent; to medical and state agencies and courts to enforce the control of STDs; for child abuse investigation; to medical and emergency personnel to protect the health of the HIV positive subject; or for release in a civil or criminal litigation where the court finds compelling need for the information. Pleadings pertaining to the disclosure of such testing records shall substitute a pseudonym for the name of the subject of the records. The subject is permitted to participate, if not already a party, in the disclosure proceedings, which shall be in camera unless otherwise necessary or agreed to, and if the court limits the disclosure and prohibits further disclosure. 16, § 711.

(3) The Director of the Division shall, in order to protect the public health: make examinations of persons reasonably suspected of being infected with a communicable STD; examine medical records of suspected or diagnosed cases which may be maintained by a health facility or health care professional (see Definitions (10)); require persons infected with a communicable STD to report for treatment to a health care

professional; and may issue an order seeking to examine, isolate, or quarantine persons infected with or suspected of being infected with a communicable STD. 16, § 703. The Director may order a person that he knows or has reason to believe, because of medical or epidemiological information, has a communicable STD: require the person to be examined and tested to determine whether the person has a communicable STD; require the person with a communicable STD to report to a qualified health care professional for counseling and information on how to avoid infecting others; require a person with a communicable STD to cease and desist from specified conduct which endangers the health of others when the Director has determined that such a person has been ordered to report to counseling and continues to demonstrate behavior which endangers the health of others. If a person violates a cease and desist order of this nature, the Director may enforce such an order by imposing certain restrictions, such as an injunction or taking such a person into custody, and placing the person in a facility designated by the Director. 16, §§ 704, 705.

(4) No government health employee shall be examined in a court or other proceeding regarding public or private health care records pertaining to examination or treatment for a STD or HIV infection without consent of the subject or as otherwise authorized. 16, § 712.

(5) An HIV-related test (see Definitions (5)) requires a voluntary informed consent agreement executed by the subject. A minor twelve years of age or older may consent or refuse consent to testing. Any qualified health facility or health care professional may examine and provide treatment for a STD for a minor. Oral consent may be given if it is documented by customary practice. Informed consent consists of an explanation of the meaning of the test, the procedure, including ability to withdraw consent, the nature of HIV and AIDS and their relationship to the test, and behaviors known to create a risk of HIV transmission. Informed consent is not necessary: in a medical emergency where the subject is unable to grant or withhold consent; when testing is for anonymous research purposes; for purposes related to donation of anatomical parts, blood or semen; when a health care worker has been exposed to blood or body fluids in a manner known to transmit HIV; or where ordered by a civil or criminal court. A non-consenting person must be notified confidentially and may then request the test results. The subject of the test, upon learning of the result, must be provided with counseling. 16, §§ 710, 1202.

(6) The identity of a person undergoing HIV-related testing or the results of such test shall be confidential, and disclosed only to the following: the subject; someone with a legally effective release; employees of health care facilities that are authorized and where the employee has a medical need to know; health care providers with an emergency medical need to know; the Public Health Authority when required by regulation; facilities handling anatomical, blood, or semen donations; health facilities' committees which conduct oversight; a civil or criminal court; emergency medical providers; or relating to the investigation of child abuse or to the control of STDs. These

provisions shall not interfere with the transmission of information as may be necessary to obtain third party payment for medical care related to HIV infection or with documentation of cause of death on death certificates. 16, § 1203. A person with knowledge of the identity of the subject of HIV-related testing or of the test results shall maintain confidentiality. 16, § 1206A.

(7) Damages for violations of provisions regarding informed consent and confidentiality of HIV testing and test results may be sought. These damages include money damages, an injunction, and attorney's fees. 16, § 1205.

(8) When the circumstances of a case demonstrate a possibility of transmission of HIV, a person charged with a sex offense shall be informed by the judge of the availability of HIV testing. The victim of the sex offense shall be notified that the defendant has been informed of this. 10, § 1076, 11, § 3911. If the victim so requests, the court shall order that a defendant in a sex offense be tested for HIV under the direction of the Division. 10, § 1077, 11, § 3912. The result of an HIV test of a sex offender shall not be a public record and shall only be made available to the victim, the defendant, and the court or a related agency. The Division shall provide counseling to the victim and the defendant, if the defendant tests positive for HIV. The cost of testing shall be paid by the defendant unless the defendant is indigent. The filing of an appeal does not stay an order for a sex offender to be tested for HIV. 10, § 1077, 11, §§ 3913, 3914.

(9) A person who is charged with a criminal offense in which it is alleged that the person interfered with the duties of a law enforcement officer by biting, scratching, spitting, or transferring blood or other bodily fluids on or through the skin of a law enforcement officer is subject to a court order requiring testing for HIV. 11, § 3915. The law enforcement officer may petition the court to order an HIV test, and the court shall hear the petition promptly. If the court finds that probable cause exists to believe that a possible transfer of blood or other bodily fluid occurred between the person charged and the law enforcement officer, the court shall order the person charged to provide two specimens of blood for testing. 11, § 3916. If the test indicates the presence of HIV, the Division shall provide counseling to the law enforcement officer and the person charged regarding HIV. The cost of the testing shall be paid by the person tested unless the court has determined the person indigent. 11, § 3918.

(10) The Division shall provide to the Department of Corrections any positive HIV test result of a sex offender solely for the purpose of providing medical treatment for the defendant while incarcerated. 11, § 3914. The Division shall provide any positive test result to the Department of Services to Children, Youth, and Their Families solely for the purpose of providing medical treatment to the defendant while incarcerated under the department's jurisdiction. 10, § 1077.

(11) Prison authorities of any state, county, or city prison shall ensure that all persons confined or imprisoned in their respective prisons are provided services for the

examination, treatment, and cure, if possible, of STDs. 16, § 706.

(12) The victim of a sexual offense shall not have to pay any out-of-pocket costs for a forensic medical examination (see Definitions (2)). If these costs can not be recovered from the victim's insurer, they may be paid out of the Victim Compensation Fund. 11, § 9019.

(13) Every health care professional shall take suitable specimens from every pregnant woman for testing for syphilis, gonorrhea, chlamydia and other STDs as may be designated by the Department of Health and Social Services. 16, § 708.

(14) Every licensed health care provider who renders primary prenatal care shall advise every pregnant patient of the value of testing for HIV infection and shall request that each pregnant patient give informed consent to such testing. If the patient is found to be HIV positive, the practitioner shall counsel the patient about the dangers to her fetus and the advisability of receiving treatment. The pregnant patient has a right to refuse to consent to an HIV test and any recommended treatment. Documentation of such refusal shall be made in the patient's medical record. 16, § 1204.

Criminal Law (1)

Insurance (1), (2), (3)

Social and Medical Services (1)

Miscellaneous (3)

MISCELLANEOUS

(1) Based on findings that adult entertainment establishments are conducive to the spread of communicable diseases (see Definitions (1)), and that AIDS is found to be of particular danger to people who frequent these establishments, adult entertainment establishments should be regulated, and standards for the prevention of the spread of AIDS and other communicable diseases should be set for the protection of the public health, safety, and welfare. 24, § 1631.

(2) Prison authorities of any state, county, or city prison shall make available to the Division of Public Health such portion of any state, county, or city prison as may be necessary to isolate or quarantine persons known or suspected to have a communicable STD (see Definitions (10)) provided that no other suitable place is available. 16, § 706.

(3) The Department of Health and Social Services shall make such rules and regulations designating STDs to be reported, providing for the control and treatment of persons isolated or quarantined, and such rules and regulations concerning the care, treatment, and quarantine of persons infected therewith. 16, § 707.