

## Colorado

All citations are to “Colo. Rev. Stat.” unless otherwise noted.

### DEFINITIONS

- (1) “AIDS,” and “HIV” are defined at §§ 10-3-1104.5, 26-4-642.
- (2) “Communicable disease” is defined at § 22-25-103.
- (3) “Comprehensive and uniform client assessment process,” and “long-term care” are defined at § 26-4-507.
- (4) “Diagnostic test” is defined at § 18-3-401.
- (5) “HIV infection,” and “HIV-related test,” relating to insurance, are defined at § 10-3-1104.5.
- (6) “Long-term-care eligible person” is defined at § 26-4-642.
- (7) “Prostitution” is defined at § 18-7-201.

### CRIMINAL LAW

(1) In the context of the business of insurance, the disclosure of HIV-related test (see Definitions (5)) results other than as permitted by statute (see Testing & Reporting (1)) is a misdemeanor. § 10-3-1104.5.

(2) Any person who performs, or offers, or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person who is not such person’s spouse, in exchange for money or any other thing of value, and with knowledge of being infected with HIV (see Definitions (1)), commits prostitution (see Definitions (7)) with knowledge of being infected with AIDS (see Definitions (1)) and is guilty of a Class 5 felony. § 18-7-201.7.

(3) Any person with knowledge of being infected with HIV who patronizes a prostitute is guilty of a Class 6 felony. § 18-7-205.7.

(4) Failure by an attending physician or other health care provider required to make a report of HIV infection (see Definitions (5), Testing & Reporting (6)), or any laboratory or person required to make a report of HIV infection (see Testing & Reporting (7)) is a Class 2 petty offense. Any physician or other health care provider, any officer or employee of the Department of Public Health and Environment or a local department of health, or any person, firm, or corporation that releases or makes public confidential health reports containing information about a person’s HIV infection is

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guilty of a misdemeanor. § 25-4-1409.

(5) If a sex offender commits a sexual offense and the sex offender, prior to committing the offense, had notice that he or she tested positive for HIV, the district court shall sentence the sex offender for an indeterminate term of at least three times the upper limit of the range for the level of offense committed and a maximum of the sex

offender's life. § 18-1.3-1004.

(6) A person, on trial or indicted for a sexual offense involving penetration, shall be ordered by the court to submit to a diagnostic test (see Definitions (4)) for HIV. The results shall be reported to the court, which shall disclose the results to any victim upon request. Review and disclosure of the results is confidential. § 18-3-415.

(7) The results of the diagnostic test shall be reported to the district attorney who will keep them confidential. If the person tests positive, the district attorney may contact the Department of Public Health to determine if this person was notified prior to the date of the offense. If the person had notice, the district attorney may file an indictment and seek mandatory sentencing provisions. If the court determines that the person tested had notice of his or her HIV infection before the date the offense was committed, the judge shall sentence a mandatory term of incarceration of at least three times the upper limit of the range for the offense committed, up to the remainder of the person's natural life. § 18-3-415.5.

(8) A victim of the crime has a right to be informed of the results of any HIV testing that is ordered and performed. § 24-4.1-302.5.

(9) When a victim requests, the Department of Corrections, the Department of Human Services, any state hospital, or the public or private local corrections authorities shall notify the victim of any results of HIV testing that is ordered and performed in a sex offense case. § 24-4.1-303.

(10) Any adult or juvenile who is bound over for trial for any sexual offense involving sexual penetration, subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, or any person who is indicted for or is convicted of any such offense, shall be ordered by the court to submit to an HIV blood test. The results of such test shall be reported to the court, who shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential. If any person who is bound over for trial or who is indicted for or convicted of a sexual offense voluntarily submits to an HIV test, the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense. § 18-3-415.

Social & Medical Services (2)

Testing & Reporting (1), (2), (3), (5), (9)

Miscellaneous (2)

## EDUCATION

(1) A comprehensive health education program, a planned, sequential health program of learning experiences in preschool, kindergarten, and grades one through twelve shall include the topic of communicable diseases, including AIDS and HIV-

related illnesses (see Definitions (1)), shall be developed and implemented. §§ 22-25-103, 22-25-104. Any curriculum and materials developed and used in teaching sexuality and human reproduction shall include values and responsibility and shall emphasize abstinence by school aged children. § 22-25-104.

(2) The Department of Public Health and Environment shall develop and implement programs under which state and local health departments may perform the following tasks: prepare and disseminate to health care providers circulars of information and presentations describing different aspects of HIV infection (see Definitions (5)); provide consultation to agencies and organizations regarding appropriate policies for testing, diagnosis, treatment, counseling, and other aspects of HIV infection; conduct health information programs to inform the general public of the medical and psychosocial aspects of HIV infection, including updated information on how infection is transmitted and can be prevented; prepare and update an educational program on HIV infection in the workplace for use by employers; develop and implement HIV education risk-reduction programs for specific populations at higher risk for infection; and develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools. School districts are urged to provide every secondary school student with education on HIV infection and AIDS and its prevention, with parental consent. § 25-4-1405.

Testing & Reporting (4)

## EMPLOYMENT

Criminal Law (4)

Education (2)

Social & Medical Services (2), (7)

Testing & Reporting (8)

## HOUSING

(1) The fact or suspicion that an occupant of real property is or was at any time infected with HIV or AIDS (see Definitions (1)), which could psychologically impact or stigmatize such property, is not a material fact subject to a disclosure requirement in a real estate transaction. No cause of action shall arise against a real estate broker or salesperson for failing to disclose such circumstances. § 38-35.5-101.

## INSURANCE

(1) Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS (see Definitions (1)) by seeking counseling from health care professionals is an unfair method of competition or a deceptive act or

practice in the business of insurance. § 10-3-1104.

(2) The general assembly declares that a balance must be maintained between the need for information by those in the insurance business and the public's need for fairness in practices for testing for HIV (see Definitions (1)), including the need to minimize intrusion into an individual's privacy and the need to limit disclosure of the results of such testing. § 10-3-1104.5.

(3) Any policy of life or endowment insurance or annuity contract or contract supplemental thereto may contain benefits providing for the acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable for an insured who is diagnosed with a terminal case of AIDS, for health care expenses or for long-term care (see Definitions (3)) which is certified or ordered by a physician. § 10-7-113.

Criminal Law (1)

Social & Medical Services (6)

Testing & Reporting (1), (8)

## RESEARCH

(1) The Department shall conduct feasible studies and pilot programs as the general assembly may from time to time direct to lessen medical costs, including Medicaid money associated with persons with HIV or AIDS (see Definitions (1)). § 26-4-646.

Testing & Reporting (7)

## SOCIAL & MEDICAL SERVICES

(1) It is the duty of every physician who, during the course of an examination, discovers the existence of HIV infection (see Definitions (5)) or treats a patient for HIV infection to inform the patient of the interpretation of laboratory results and counsel the patient on measures for preventing the infection of others, prevention and treatment of opportunistic infections, treatment to prevent progression of HIV infection, and the necessity of regular medical evaluation. Any local health department, state institution or facility, medical practitioner, or public or private hospital or clinic may examine and provide treatment for HIV infection for any minor without parental consent.

Consultation, examination, and treatment for such minor shall be absolutely confidential and shall not be divulged by the facility or physician to anyone but the minor, except for purposes of required reporting (see Testing & Reporting (6), (7)). If the minor is less than sixteen years old and not emancipated, the minor's parents or legal guardian may be informed by the physician or facility of the consultation, examination, and treatment. The physician or other health care provider shall counsel the minor on the importance of informing the minor's parents of the consultation. § 25-4-1405.

(2) When a public safety worker, emergency medical service provider, or staff member of a detention facility has been exposed to blood or other bodily fluid that may reasonably be infected with HIV, state and local health departments may assist in evaluation and treatment of any involved person by: accessing information on the incident and any person involved to determine whether a potential exposure to HIV occurred; examining and testing such involved persons to determine HIV infection when the fact of an exposure has been established by the state or local health department; communicating relevant information and laboratory test results on the involved persons to such person's attending physician or directly to the involved persons if the confidentiality of such information and test results is acknowledged by the recipients and adequately protected; and providing counseling to the involved persons on the potential health risks and treatment resulting from exposure. The employer of an exposed person shall ensure that relevant information and laboratory test results on the involved person are kept confidential and protected from unauthorized disclosure. § 25-4-1405.

(3) Optional services or optional eligible groups were created to increase federal financial participation. These programs include, but are not limited to, home and community-based services program for persons living with AIDS (see Definitions (1)). § 26-4-303. Colorado has selected, as an optional service under the medical assistance program, to provide home and community-based services for persons living with AIDS. § 26-4-302.

(4) The Department of Human Services has established a uniform and comprehensive client assessment process (see Definitions (3)) for all individuals in need of long-term care (see Definitions (3)) in order to: determine the appropriate services and levels of care necessary to meet clients' needs; to analyze alternative forms of care and the payment sources for such care; and to assist in the selection of long-term care programs and services that meet clients' needs most cost-efficiently. Participation in the process shall be mandatory for clients of publicly funded long-term care programs, including home and community-based services for persons living with AIDS. Private paying clients of long-term care programs may participate in the process for a fee. § 26-4-507.

(5) A single entry point agency is an agency in a local community through which any person eighteen years of age or older who is in need of long-term care can access long-term care services. The agency may serve private paying clients on a fee-for-service basis and shall serve clients of publicly funded long-term care programs including home and community-based services for persons living with AIDS. § 26-4-522.

(6) A home and community-based services program for persons with HIV or AIDS shall be implemented by the Department of Human Services. Such program shall include: personal care and homemaker services; adult day care services; private duty nursing services; electronic monitoring services; and nonmedical transportation

services. Such services shall be provided to persons with HIV or AIDS whose gross income does not exceed 300% of the current federal supplemental security income (SSI) benefit level, whose resources do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of SSI benefits, and for whom a licensed physician certifies that such program provides an appropriate alternative to institutionalized care. Any person who accepts and receives these services shall pay an amount, which shall be the lesser of the person's gross income, minus federally allowed maintenance and medical deductions, or the projected cost of services to be rendered to the person under the case plan. A long-term care eligible person receiving home and community-based services shall remain eligible for such services. The provision of such services shall be subject to the availability of federal matching Medicaid funds, for payment of administrative costs and costs for the provision of such services. If the Department of Human Services or the case management agency makes a determination that the cost for the provision of home and community-based services necessary to allow an HIV or AIDS client to avoid institutionalization exceeds or would exceed either the average individual Medicaid payment for like services for hospital or nursing facility care, such client shall not be considered eligible for home and community-based services. The location for the provision of home and community-based services shall be agreed upon by the HIV or AIDS client and the case management agency. §§ 26-4-644 to 645.

(7) A member of an eligible person's family, other than the person's spouse, may be employed to provide personal care services to such person. The maximum reimbursement for the services provided by a member of the person's family for each client shall not exceed \$5000 per family per year. § 26-4-645.5.

(8) Having HIV or AIDS, being presumed to have HIV or AIDS, or seeking HIV testing should not serve as the basis for discriminatory actions or the prevention of access to services. § 25-4-1401.

(9) Ryan White C.A.R.E. Program creates the AIDS drug assistance program to provide certain pharmaceutical products to qualifying low-income people who have HIV or AIDS. § 25-4-1411.

Criminal Law (4)

Education (2)

Insurance (1), (3)

Testing & Reporting (1), (4), (5), (6), (7), (8), (9), (10)

Miscellaneous (1), (2)

## TESTING & REPORTING

(1) No person shall request or require that an applicant for insurance submit to an HIV-related test (see Definitions (5)) unless that person: obtains the applicant's prior

written informed consent; reveals, in a written consent form, and explains the use of the HIV test result to the applicant and entities to whom test results may be disclosed; provides the applicant with factual information on AIDS (see Definitions (1)) and information on how to obtain relevant counseling; follows a confirmatory test protocol; and discloses the results of testing in the manner prescribed by this provision. A person may disclose an individual applicant's HIV-related test results to reinsurers or to those contractually retained medical personnel, laboratories, and insurance affiliates which are involved in underwriting decisions regarding the individual's application if disclosure is necessary to make underwriting decisions regarding such application. Other than disclosure as explained above, no person shall disclose HIV-related test results which identify the individual applicant with the test results to anyone without first obtaining separate written informed consent from the applicant, except that if the test result is positive or indeterminate, such person may report the test result finding to the medical information bureau, but only if a nonspecific blood test result code is used to protect the confidentiality of the applicant. A person shall notify an insurance applicant in writing of an adverse underwriting decision based upon the results of an HIV test but shall not disclose the specific results of such test to the applicant. The person shall also inform the applicant that the results of the blood test will be sent to a physician designated by the applicant, and that such physician should be contacted for information regarding the HIV test. Any person who fails to comply with these provisions is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$500 nor more than \$5000, or by imprisonment in the county jail for not less than six months and no more than twenty-four months, or both such fine and imprisonment. § 10-3-1104.5.

(2) Any person who is convicted of prostitution (see Definitions (7)) shall be ordered by the court to submit to an HIV test. The court shall order that such person pay the cost of the test as a part of the costs of the action. The district attorney shall keep the results of such test confidential unless the person is charged with prostitution with knowledge of being infected with HIV (see Criminal Law (2)) and the results of such test indicate the presence of HIV infection. § 18-7-201.5.

(3) Any person who is convicted of patronizing a prostitute shall be ordered by the court to submit to an HIV test. The court shall order that such person pay the costs of the testing as a part of the costs of the action. The district attorney shall keep the results of the test confidential unless the person is charged with patronizing a prostitute with knowledge of being infected with HIV (see Criminal Law (3)) and the results of the test indicate the presence of HIV infection. § 18-7-205.5.

(4) The general assembly declares that HIV is an infectious and communicable disease (see Definitions (2)) that endangers the population of Colorado. Reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control. Efforts to control the disease should include public education, counseling, and

voluntary testing. § 25-4-1401.

(5) Every attending physician or other person treating a case of HIV infection in a hospital, clinic, sanitarium, penal institution, or other private or public institution shall make a report to the Department of Public Health and Environment on every individual known to be diagnosed with AIDS, HIV-related illness, or HIV infection, including death from HIV infection. The reports shall contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or other person making the report. Good faith reporting or disclosure pursuant to this section shall not constitute libel or slander or a violation of the right of privacy or privileged communication. Any person who in good faith complies completely with this section shall be immune from civil and criminal liability for any action taken in compliance with the provisions of this section or with any other regulations promulgated by the Department of Public Health and Environment relating to such reporting requirements.

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§ 25-4-1402.

(6) All laboratories or persons performing laboratory tests for HIV shall report to the Department of Public Health and Environment or appropriate local department of health, the name, date of birth, sex, and address of any individual whose specimen tests positive for HIV. Such report shall include test results and the name and address of the attending physician and any other person or agency referring such positive specimen for testing.

§ 25-4-1403.

(7) Researchers conducting a medical research study of HIV treatment or vaccine effectiveness or conducting basic biomedical research into the cellular mechanisms causing HIV infection, pursuant to approved research protocol, shall be exempt from reporting requirements (see Testing & Reporting (6), (7)). The research exemption does not exempt medical researchers from the requirement of providing post-test counseling to infected enrolled research subjects and referral of such subjects to the Department of Health and Environment or local department of health for partner notification services.

§ 25-4-1402.5.

(8) The public health reports required to be submitted to the Department of Public Health and Environment and records resulting from compliance with such reporting requirements which are held by the Department of Health and Environment, any local department of health, or any health care provider or facility, third-party payor, physician, clinic, laboratory, blood bank, or other agency shall be strictly confidential information. Such information shall not be released, shared with any agency or institution, or made public except under the following circumstances: release may be made of such information for statistical purposes in a manner such that no individual person can be identified; release may be made of such information to the extent necessary to enforce the law concerning treatment, control, and investigation of HIV infection by public

health officials; release may be made to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; an officer or an employee of the local department of health or Department of Public Health and Environment may make a report of child abuse, only if the information reported includes only limited information and excludes the child's HIV or sexually transmitted disease status. No officer or employee of the Department of Public Health and Environment or local department of health shall be examined in any judicial, executive, legislative, or other proceeding as to the existence or content of any individual's report retained by such department. Information regarding HIV and AIDS infection records held by a facility that provides ongoing health care is considered medical information, not public

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health reports, and is protected from unauthorized disclosure. § 25-4-1404.

(9) No physician, health worker, hospital, clinic, sanitarium, laboratory, or other private or public institution shall test any specimen of any patient for HIV infection without the knowledge and consent of the patient, except under the following circumstances: where a health care provider or a custodial employee of the Department of Corrections or the Department of Human Services is exposed to blood or other bodily fluids that may be infected with HIV; when a patient's medical condition is such that knowledge and consent cannot be obtained; when testing is done as part of seroprevalence surveys, if all personal identifiers are removed from the specimens prior to the laboratory testing; when the patient to be tested is sentenced to and in the custody of the Department of Corrections or is committed to the Colorado Mental Health Institute and confined to the forensic ward or the minimum or maximum security ward of such institution; or when a person is bound over for trial for a sexual offense and is tested by a health care provider or facility other than one which exclusively provides testing and counseling. Any patient tested for HIV infection without such person's knowledge and consent shall be given notice promptly, personally, and confidentially that a test sample was taken and that the results of the test may be obtained upon request. § 25-4-1405.

(10) The provision of confidential counseling and testing services for HIV is the preferred screening service for detection of HIV infection. However, the Department of Public Health and Environment shall, consistent with generally accepted practices for the protection of the public health and safety, conduct an anonymous counseling and testing program for persons considered to be at high risk for infection with HIV. Such program shall be conducted at selected HIV testing sites. The disclosure of an individual's name, address, phone number, or birth date shall not be required under the anonymous testing program as a condition of being tested for HIV. The age and sex of a person seeking to be tested at an anonymous test site may be required. A person may provide personal identifying information after counseling, if the person volunteers to do so. § 25-4-

1405.5.

(11) When investigating HIV infection, state and local health departments may inspect and have access to medical and laboratory records relevant to the investigation of HIV infection. § 25-4-1405.

Criminal Law (1), (4), (6)

Education (2)

Insurance (2)

Social & Medical Services (1), (2), (8)

Miscellaneous (1), (2)

## MISCELLANEOUS

(1) Orders directed to individuals with HIV infection (see Definitions (5)) or restrictive measures on individuals with HIV infection shall be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts to obtain the voluntary cooperation of the individual who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. When the executive director of the Department of Public Health and Environment or the director of a local department of health knows or has reason to believe, on the basis of medical or epidemiological information, that a person is infected with HIV (see Definitions (1)) and is a danger to the public health, such director may issue an order to: require a person to be examined and tested to determine whether that person is infected with HIV; require a person with HIV infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others; and direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others, but only if the director has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling or has received counseling and continues to demonstrate behavior which endangers the health of others. If a person violates a cease and desist order and it is shown that the person is a danger to others, the executive director of the Department of Public Health and Environment or the director of the local department of health may enforce the cease and desist order by imposing upon the HIV-infected person such restrictions as are necessary to prevent the specific conduct which endangers the health of others. Upon issuance of any order by the Department of Public Health and Environment or the local department of health pursuant to this section, such department shall give prompt notice, personally and confidentially, to the person who is the subject of the order, stating the grounds and provisions of the order and that such person has a right to refuse to comply with such order and a right to a judicial hearing to review the order. Any hearing conducted pursuant to this section shall be closed and confidential. § 25-4-1406.

(2) When restrictive measures at the departmental level (see Miscellaneous (1)) have been exhausted or cannot be satisfied as a result of threatened criminal behavior and the executive director of the Department of Public Health and Environment or the director of a local health department knows or has reason to believe that a person has HIV and presents an imminent danger to the public health, such director may bring an action in district court to enjoin such person from engaging in specific conduct which endangers the public health. In addition, the district court may take such person into custody for up to seventy-two hours and place such person in a facility designated or approved by the director. A custody order issued for the purpose of counseling and testing to determine whether such person is infected with HIV shall provide for the immediate release from custody of any person who tests negative and may provide for counseling or other appropriate measures to be imposed on any person who tests positive. The person who is the subject of the order shall be notified of the right to refuse to comply with such order and the right to a judicial hearing with an attorney present. If such person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing. Any hearing conducted pursuant to this section shall be closed and confidential. Any order entered by the district court pursuant to this section shall impose terms no more restrictive than necessary to protect the public health. § 25-4-1407.

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· Belle Bonfils Mem'l Blood Ctr. v. Dist. Court, 763 P.2d 1003, 1008-09 (Colo. 1988) (identity of an infected blood donor should not be disclosed, but limited discovery should be permitted).

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· See Evans v. Romer, 854 P.2d 1270, 1284 (Colo. 1993), *cert. denied*, 114 S. Ct. 419 (1993).

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· Borquez v. Ozer, No. 93CA1805, 1995 Colo. App. LEXIS 302, at \*11 (Ct. App. Nov. 9, 1995) (plaintiff had a privacy interest in dissemination of information relating to his exposure to HIV and his sexual orientation).

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· Belle Bonfils Mem'l Blood Ctr. v. Dist. Court, 763 P.2d 1003, 1008-09 (Colo. 1988) (identity of an infected blood donor should not be disclosed, but limited discovery should be permitted).