

## **10A NCAC 41A .0202 CONTROL MEASURES – HIV**

The following are the control measures for the Human Immunodeficiency Virus (HIV) infection:

- (1) Persons diagnosed with HIV infection (hereafter "person living with HIV") shall:
  - (a) refrain from sexual intercourse unless condoms are used except when:
    - (i) the person living with HIV is in HIV care, is adherent with the treatment plan of the attending physician, and has been virally suppressed for at least 6 months (HIV levels below 200 copies per milliliter) at the time of sexual intercourse;
    - (ii) the sexual intercourse partner is HIV positive;
    - (iii) the sexual intercourse partner is taking HIV Pre-Exposure Prophylaxis (PrEP) – antiretroviral medication used to prevent HIV infection as directed by an attending physician; or
    - (iv) the sexual intercourse occurred in the context of a sexual assault in which the person living with HIV was the victim;
  - (b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
  - (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk, except when:
    - (i) The person living with HIV is donating organs as part of a clinical research study that has been approved by an institutional review board under the criteria, standards, and regulations described in 42 USC 274f-5(a) and (b);  
or, if the United States Secretary of Health and Human Services determines under USC 274f-5(c) that participation in this clinical research is no longer warranted as a requirement for transplants, and the organ recipient is receiving the transplant under the criteria, standards, and regulations of USC 274f-5(c); or
    - (ii) Sperm or ova are harvested under the supervision of an attending physician to be used by the person's spouse or partner for the purpose of achieving pregnancy.
  - (d) have a test for tuberculosis;
  - (e) notify future sexual intercourse partners of the infection, unless the person living with HIV meets the criteria listed in Sub-item (1)(a)(i) of this Rule. If the person living with HIV is the victim of a sexual assault, there is no requirement to notify the assailant;
  - (f) if the time of initial infection is known, notify persons who have been sexual intercourse or needle-sharing partners since the date of infection or give the names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing and notification; and
  - (g) if the date of initial infection is unknown, notify persons who have been sexual intercourse or needle-sharing partners for the previous 12 months or give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual and needle-sharing partners for the preceding 12 months.
- (2) The attending physician shall:
  - (a) give the control measures in Item (1) of this Rule to patients living with HIV in accordance with 10A NCAC 41A .0210;
  - (b) advise persons living with HIV to notify all future sexual partners of infection;
  - (c) If the attending physician knows the identity of the spouse of the person living with HIV and has not, with the consent of the person living with HIV, notified and counseled the spouse, the physician shall list the spouse on a form provided by the Division of Public Health and shall send the form to the Division by secure transmission, required by 45 CFR 164.312(e)(1), or by secure fax at (919) 715-4699. The Division shall undertake to counsel the spouse and the attending physician's responsibility to notify exposed and potentially exposed persons shall be satisfied by fulfilling the requirements of Sub-Items (2)(a) and (c) of this Rule;
  - (d) advise persons living with HIV concerning proper methods for the clean-up of blood and other body fluids;
  - (e) advise persons living with HIV concerning the risk of perinatal transmission and transmission by breastfeeding.

- (3) The attending physician of a child living with HIV who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities shall notify the local health director. The local health director shall consult with the attending physician and investigate the following circumstances:
- (a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parents or legal guardians to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint this interdisciplinary committee. Significant risk of transmission shall be determined in accordance with the HIV Risk and Prevention Estimates published by the Centers for Disease Control and Prevention, which are hereby incorporated by reference including subsequent amendments and editions. A copy of this publication can be accessed at no cost online at <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>.
    - (i) If the superintendent or private school director establishes this committee within three days of notification, the local health director shall consult with this committee.
    - (ii) If the superintendent or private school director does not establish this committee within three days of notification, the local health director shall establish this committee.
  - (b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
    - (i) notify the parents or legal guardians;
    - (ii) notify the committee;
    - (iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
    - (iv) determine if an alternative educational setting is necessary to protect the public health;
    - (v) instruct the superintendent or private school director concerning protective measures to be implemented in the alternative educational setting developed by school personnel; and
    - (vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.
  - (c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents or legal guardians that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.
- (4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were HIV positive, would pose a significant risk of HIV transmission, the following shall apply:
- (a) When the source person is known:
    - (i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and, unless the source is already known to be living with HIV, shall test the source for HIV infection with or without consent unless it reasonably appears that the test cannot be performed without endangering the safety of the source person or the person administering the test. If the source person cannot be tested, any existing specimen shall be tested. The attending physician of the source person shall

notify the attending physician of the exposed person of the infection status of the source.

- (ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals until the interval since last exposure is sufficient to assure detection using current CDC HIV testing guidelines, and, if the source person was HIV positive, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The CDC HIV testing guidelines are hereby incorporated by reference including subsequent amendments and editions. The CDC HIV testing guidelines can be accessed at no cost online at <https://www.cdc.gov/hiv/guidelines/testing.html>, with the most current updates found at <https://stacks.cdc.gov/view/cdc/23447>. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality of the source person's HIV status.
  - (b) When the source person is unknown, the attending physician of the exposed persons shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals until the interval since the last exposure is sufficient to assure detection using the current CDC HIV testing guidelines.
  - (c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.
- (5) The attending physician shall notify the local health director when the physician has cause to suspect a patient living with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person has cause to suspect a person living with HIV is not following control measures and is thereby causing a significant risk of transmission.
- (6) When the local health director is notified pursuant to Item (5) of this Rule of a person who is mentally ill or intellectually impaired, the local health director shall confer with the attending mental health physician or Local Management Entity/Managed Care Organization and the physician, if any, who notified the local health director to develop a plan to prevent transmission.
- (7) The Division of Public Health shall notify the Director of Health Services of the North Carolina Department of Public Safety and the prison facility administrator when any person confined in a state prison is determined to be living with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined person living with HIV is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making recommendations to the unit housing classification committee.
- (8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.
- (9) Local health departments shall provide counseling and testing for HIV infection at no charge to the patient. Third party payers may be billed for HIV counseling and testing when such services are provided and the patient provides written consent.
- (10) HIV pre-test counseling is not required. Post-test counseling for persons living with HIV is required, must be individualized, and shall include referrals for medical and psychosocial services and control measures counseling.
- (11) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual including linkage to care and may include referral to one or more of the following available and appropriate services:
  - (a) substance abuse counseling and treatment;
  - (b) harm reduction services;
  - (c) mental health counseling and treatment required to prevent transmission;

- (d) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission; and
- (e) intimate partner violence intervention services.
- (12) The Division of Public Health shall conduct a partner notification program to assist in the notification and counseling of partners of persons living with HIV.
- (13) Every pregnant woman shall be offered HIV testing by her attending physician at her first prenatal visit and in the third trimester. The attending physician shall test the pregnant woman for HIV infection, unless the pregnant woman refuses to provide informed consent pursuant to G.S. 130A-148(h). If there is no record at labor and delivery of an HIV test result during the current pregnancy for the pregnant woman, the attending physician shall inform the pregnant woman that an HIV test will be performed, explain the reasons for testing, and the woman shall be tested for HIV without consent using a rapid HIV test unless it reasonably appears to the clinician that the test cannot be performed without endangering the safety of the pregnant woman or the person administering the test. If the pregnant woman cannot be tested, an existing specimen, if one exists that was collected within the last 24 hours, shall be tested using a rapid HIV test. The attending physician must provide the woman with the test results as soon as possible.
- (14) If an infant is delivered by a woman with no record of the result of an HIV test conducted during the pregnancy and if the woman was not tested for HIV during labor and delivery, the fact that the mother has not been tested creates a reasonable suspicion pursuant to G.S. 130A-148(h) that the newborn has HIV infection and the infant shall be tested for HIV. An infant born in the previous 12 hours shall be tested using a rapid HIV test
- (15) Testing for HIV may be offered as part of routine laboratory testing panels using a general consent that is obtained from the patient for treatment and routine laboratory testing, so long as the patient is notified that they are being tested for HIV and given the opportunity to refuse.

*History Note:* Authority G.S. 130A-135; 130A-144; 130A-145; 130A-148(h);  
 Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;  
 Eff. March 1, 1988;  
 Amended Eff. February 1, 1990; November 1, 1989; June 1, 1989;  
 Temporary Amendment Eff. January 7, 1991 for a period of 180 days to expire on July 6, 1991;  
 Amended Eff. May 1, 1991;  
 Recodified from 15A NCAC 19A .0201 (d) and (e) Eff. June 11, 1991;  
 Amended Eff. August 1, 1995; October 1, 1994; January 4, 1994; October 1, 1992;  
 Temporary Amendment Eff. February 18, 2002; June 1, 2001;  
 Amended Eff. January 1, 2018; November 1, 2007; April 1, 2005; April 1, 2003;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.