

## CHAPTER 252

### COMMUNICABLE DISEASES

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**Cross-reference:** See definitions in s. 250.01.

#### 252.01 Definitions. In this chapter:

(1g) “First responder” means a person who, as a condition of employment or as a member of an organization that provides emergency medical care before hospitalization, provides emergency medical care to a sick, disabled or injured individual before the arrival of an ambulance, but who does not provide transportation for a patient.

(1m) “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(2) “HIV infection” means the pathological state produced by a human body in response to the presence of HIV.

(3) “Municipality” means any city, village or town.

(4) “Peace officer” has the meaning given in s. 939.22 (22).

(6) “State epidemiologist” means the individual appointed by the state health officer under s. 250.02 (1) as the state epidemiologist for acute and communicable diseases.

(7) “State patrol officer” means an officer of the state traffic patrol under s. 110.07 (1) (a).

(8) “Validated test result” means a result of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV that meets the validation requirements determined to be necessary by the state epidemiologist.

**History:** 1993 a. 27 ss. 281, 283, 320, 338, 339, 341; 1993 a. 252.

**252.02 Powers and duties of department.** (1) The department may establish systems of disease surveillance and inspection to ascertain the presence of any communicable disease. Any agent of the department may, with a special inspection warrant issued under s. 66.0119, enter any building, vessel or conveyance to inspect the same and remove therefrom any person affected by a communicable disease. For this purpose, the agent may require the person in charge of the vessel or conveyance, other than a railway car, to stop the same at any place and may require the conductor of any railway train to stop the train at any station or upon any sidetrack, for such time as may be necessary.

(2) In an emergency, the department may provide those sick with a communicable disease with medical aid and temporary hospital accommodation.

(3) The department may close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics.

(4) The department may promulgate and enforce rules or issue orders for guarding against the introduction of any communicable disease into the state, for the control and suppression of communicable diseases, for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by a communicable disease and for the sanitary care of jails, state prisons, mental health institutions, schools, hotels and public build-

ings and connected premises. Any rule or order may be made applicable to the whole or any specified part of the state, or to any vessel or other conveyance. The department may issue orders for any city, village or county by service upon the local health officer. Rules that are promulgated and orders that are issued under this subsection supersede conflicting or less stringent local regulations, orders or ordinances.

(5) If any public officer or employee or any person in charge of any building, vessel, conveyance, jail, state prison, mental health institution or school fails to comply with a rule promulgated or order issued under sub. (4), the department may appoint an agent to execute its rules or orders. Expenses that an agent incurs shall be paid by the unit of government that employs the person or of which the public officer is a member. If the building, vessel, conveyance, mental health institution or school is privately owned the state shall pay the expenses that the agent incurs.

(6) The department may authorize and implement all emergency measures necessary to control communicable diseases.

(7) The department shall promulgate rules that specify medical conditions treatable by prescriptions or nonprescription drug products for which pharmacists and pharmacies must report under s. 440.142 (1).

**History:** 1981 c. 291; 1993 a. 27 s. 284; Stats. 1993 s. 252.02; 1999 a. 150 s. 672; 2001 a. 109.

**Cross Reference:** See also ch. HFS 145, Wis. adm. code.

**252.03 Duties of local health officers.** (1) Every local health officer, upon the appearance of any communicable disease in his or her territory, shall immediately investigate all the circumstances and make a full report to the appropriate governing body and also to the department. The local health officer shall promptly take all measures necessary to prevent, suppress and control communicable diseases, and shall report to the appropriate governing body the progress of the communicable diseases and the measures used against them, as needed to keep the appropriate governing body fully informed, or at such intervals as the secretary may direct. The local health officer may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.

(2) Local health officers may do what is reasonable and necessary for the prevention and suppression of disease; may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the department of measures taken.

(3) If the local authorities fail to enforce the communicable disease statutes and rules, the department shall take charge, and expenses thus incurred shall be paid by the county or municipality.

(4) No person may interfere with the investigation under this chapter of any place or its occupants by local health officers or their assistants.

**History:** 1981 c. 291; 1993 a. 27 s. 285; Stats. 1993 s. 252.03.

## 252.04 COMMUNICABLE DISEASES

**252.04 Immunization program. (1)** The department shall carry out a statewide immunization program to eliminate mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis and other diseases that the department specifies by rule, and to protect against tetanus. Any person who immunizes an individual under this section shall maintain records identifying the manufacturer and lot number of the vaccine used, the date of immunization and the name and title of the person who immunized the individual. These records shall be available to the individual or, if the individual is a minor, to his or her parent, guardian or legal custodian upon request.

**(2)** Any student admitted to any elementary, middle, junior or senior high school or into any day care center or nursery school shall, within 30 school days, present written evidence to the school, day care center or nursery school of having completed the first immunization for each vaccine required for the student's grade and being on schedule for the remainder of the basic and recall (booster) immunization series for mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis, tetanus and other diseases that the department specifies by rule or shall present a written waiver under sub. (3).

**(3)** The immunization requirement is waived if the student, if an adult, or the student's parent, guardian or legal custodian submits a written statement to the school, day care center or nursery school objecting to the immunization for reasons of health, religion or personal conviction. At the time any school, day care center or nursery school notifies a student, parent, guardian or legal custodian of the immunization requirements, it shall inform the person in writing of the person's right to a waiver under this subsection.

**(4)** The student, if an adult, or the student's parent, guardian or legal custodian shall keep the school, day care center or nursery school informed of the student's compliance with the immunization schedule.

**(5)** (a) By the 15th and the 25th school day after the student is admitted to a school, day care center or nursery school, the school, day care center or nursery school shall notify in writing any adult student or the parent, guardian or legal custodian of any minor student who has not met the immunization or waiver requirements of this section. The notices shall cite the terms of those requirements and shall state that court action and forfeiture penalty could result due to noncompliance. The notices shall also explain the reasons for the immunization requirements and include information on how and where to obtain the required immunizations.

(b) 1. A school, day care center or nursery school may exclude from the school, day care center or nursery school any student who fails to satisfy the requirements of sub. (2).

2. Beginning on July 1, 1993, if the department determines that fewer than 98% of the students in a day care center, nursery school or school district who are subject to the requirements of sub. (2) have complied with sub. (2), the day care center or nursery school shall exclude any child who fails to satisfy the requirements of sub. (2) and the school district shall exclude any student enrolled in grades kindergarten to 6 who fails to satisfy the requirements of sub. (2).

3. Beginning on July 1, 1995, if the department determines that fewer than 99% of the students in a day care center, nursery school or school district who are subject to the requirements of sub. (2) have complied with sub. (2), the day care center or nursery school shall exclude any child who fails to satisfy the requirements of sub. (2) and the school district shall exclude any student enrolled in grades kindergarten to 6 who fails to satisfy the requirements of sub. (2).

4. No student may be excluded from public school under this paragraph for more than 10 consecutive school days unless, prior to the 11th consecutive school day of exclusion, the school board provides the student and the student's parent, guardian or legal

custodian with an additional notice, a hearing and the opportunity to appeal the exclusion, as provided under s. 120.13 (1) (c) 3.

**(6)** The school, day care center or nursery school shall notify the district attorney of the county in which the student resides of any minor student who fails to present written evidence of completed immunizations or a written waiver under sub. (3) within 60 school days after being admitted to the school, day care center or nursery school. The district attorney shall petition the court exercising jurisdiction under chs. 48 and 938 for an order directing that the student be in compliance with the requirements of this section. If the court grants the petition, the court may specify the date by which a written waiver shall be submitted under sub. (3) or may specify the terms of the immunization schedule. The court may require an adult student or the parent, guardian or legal custodian of a minor student who refuses to submit a written waiver by the specified date or meet the terms of the immunization schedule to forfeit not more than \$25 per day of violation.

**(7)** If an emergency arises, consisting of a substantial outbreak as determined by the department by rule of one of the diseases specified in sub. (2) at a school or in the municipality in which the school is located, the department may order the school to exclude students who are not immunized until the outbreak subsides.

**(8)** The department shall provide the vaccines without charge, if federal or state funds are available for the vaccines, upon request of a school district or a local health department. The department shall provide the necessary professional consultant services to carry out an immunization program, under the requirements of sub. (9), in the jurisdiction of the requesting local health department. Persons immunized may not be charged for vaccines furnished by the department.

**(9)** (a) An immunization program under sub. (8) shall be supervised by a physician, selected by the school district or local health department, who shall issue written orders for the administration of immunizations that are in accordance with written protocols issued by the department.

(b) If the physician under par. (a) is not an employee of the county, city, village or school district, receives no compensation for his or her services under par. (a) and acts under par. (a) in accordance with written protocols issued by the department, he or she is a state agent of the department for the purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

(c) The department may disapprove the selection made under par. (a) or may require the removal of a physician selected.

**(10)** The department shall, by rule, prescribe the mechanisms for implementing and monitoring compliance with this section. The department shall prescribe, by rule, the form that any person immunizing a student shall provide to the student under sub. (1).

**(11)** Annually, by July 1, the department shall submit a report to the legislature under s. 13.172 (3) on the success of the statewide immunization program under this section.

**History:** 1993 a. 27 ss. 181, 470; 1995 a. 32, 77, 222.

**Cross Reference:** See also chs. HFS 144 and 146, Wis. adm. code.

**252.041 Compulsory vaccination during a state of emergency. (1)** Except as provided in sub. (2), during the period under which the department is designated as the lead state agency, as specified in s. 250.042 (2), the department, as the public health authority, may do all of the following as necessary to address a public health emergency:

(a) Order any individual to receive a vaccination unless the vaccination is reasonably likely to lead to serious harm to the individual or unless the individual, for reasons of religion or conscience, refuses to obtain the vaccination.

(b) Isolate or quarantine, under s. 252.06, any individual who is unable or unwilling for reasons specified under sub. (1) to receive vaccination under par. (a).

(2) The department shall promulgate rules that specify circumstances, if any, under which vaccination may not be performed on an individual.

**History:** 2001 a. 109.

**252.05 Reports of cases.** (1) Any health care provider, as defined in s. 146.81 (1), who knows or has reason to believe that a person treated or visited by him or her has a communicable disease, or having a communicable disease, has died, shall report the appearance of the communicable disease or the death to the local health officer. The local health officer shall report this information to the department or shall direct the person reporting to report to the department. Any person directed to report shall submit this information to the department.

(2) Each laboratory shall report as prescribed by the department those specimen results that the department finds necessary for the surveillance, control, diagnosis and prevention of communicable diseases.

(3) Anyone having knowledge or reason to believe that any person has a communicable disease shall report the facts to the local health officer.

(4) Reports under subs. (1) and (2) shall state so far as known the name, sex, age and residence of the person, the communicable disease and other facts the department or local health officer requires. Report forms may be furnished by the department and distributed by the local health officer.

(5) All reports shall be made within 24 hours, unless otherwise specified by the department, by telephone, telegraph, mail or electronic means or by deposit at the office of the local health officer.

(6) Any local health officer, upon receiving a report, shall cause a permanent record of the report to be made and upon demand of the department transmit the original or a copy to the department, together with other information the department requires. The department may store these records as paper or electronic records and shall treat them as patient health care records under ss. 146.81 to 146.835.

(7) When an outbreak or epidemic occurs, the local health officer shall immediately report to the department, and shall at all times keep the department informed of the prevalence of the communicable diseases in the locality in the manner and with the facts the department requires.

(8) The department shall print and distribute, without charge, to all local health departments and, upon request, to health care providers and facilities a chart that provides information about communicable diseases.

(9) Any person licensed, permitted, registered or certified under ch. 441 or 448 shall use ordinary skill in determining the presence of communicable diseases. If there is a dispute regarding disease determination, if the disease may have potential public health significance or if more extensive laboratory tests will aid in the investigation, the local health officer shall order the tests made by the state laboratory of hygiene or by a laboratory certified under 42 USC 263a.

(11) If a violation of this section is reported to a district attorney by a local health officer or by the department, the district attorney shall forthwith prosecute the proper action, and upon request of the department, the attorney general shall assist.

**History:** 1971 c. 164 s. 91; 1981 c. 291; 1993 a. 16; 1993 a. 27 ss. 286 to 291, 293, 294, 471; Stats. 1993 s. 252.05; 1993 a. 183; 2001 a. 109.

**252.06 Isolation and quarantine.** (1) The department or the local health officer acting on behalf of the department may require isolation of a patient or of an individual under s. 252.041 (1) (b), quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures as may be necessary and as are determined by the department by rule.

(3) If a local health officer suspects or is informed of the existence of any communicable disease, the officer shall at once investigate and make or cause such examinations to be made as are necessary. The diagnostic report of a physician, the notification or

confirmatory report of a parent or caretaker of the patient, or a reasonable belief in the existence of a communicable disease shall require the local health officer immediately to quarantine, isolate, require restrictions or take other communicable disease control measures in the manner, upon the persons and for the time specified in rules promulgated by the department. If the local health officer is not a physician, he or she shall consult a physician as speedily as possible where there is reasonable doubt or disagreement in diagnosis and where advice is needed. The local health officer shall investigate evasion of the laws and rules concerning communicable disease and shall act to protect the public.

(4) (a) If deemed necessary by the department or a local health officer for a particular communicable disease, all persons except the local health officer, his or her representative, attending physicians and nurses, members of the clergy, the members of the immediate family and any other person having a special written permit from the local health officer are forbidden to be in direct contact with the patient.

(b) If s. 250.042 (1) applies, all of the following apply:

1. No person, other than a person authorized by the public health authority or agent of the public health authority, may enter an isolation or quarantine premises.

2. A violation of subd. 1. is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

3. Any person, whether authorized under subd. 1. or not, who enters an isolation or quarantine premises may be subject to isolation or quarantine under this section.

(5) The local health officer shall employ as many persons as are necessary to execute his or her orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested. These persons shall be sworn in as quarantine guards, shall have police powers, and may use all necessary means to enforce the state laws for the prevention and control of communicable diseases, or the orders and rules of the department or any local health officer.

(6) (a) When the local health officer deems it necessary that a person be quarantined or otherwise restricted in a separate place, the officer shall remove the person, if it can be done without danger to the person's health, to this place.

(b) When a person confined in a jail, state prison, mental health institute or other public place of detention has a disease which the local health officer or the director of health at the institution deems dangerous to the health of other residents or the neighborhood, the local health officer or the director of health at the institution shall order in writing the removal of the person to a hospital or other place of safety, there to be provided for and securely kept. Upon recovery the person shall be returned; and if the person was committed by a court or under process the removal order or a copy shall be returned by the local health officer to the committing court officer.

(10) (a) Expenses for necessary medical care, food and other articles needed for the care of the infected person shall be charged against the person or whoever is liable for the person's support.

(b) The county or municipality in which a person with a communicable disease resides is liable for the following costs accruing under this section, unless the costs are payable through 3rd-party liability or through any benefit system:

1. The expense of employing guards under sub. (5).

2. The expense of maintaining quarantine and enforcing isolation of the quarantined area.

3. The expense of conducting examinations and tests for disease carriers made under the direction of the local health officer.

4. The expense of care provided under par. (a) to any dependent person, as defined in s. 49.01 (2).

(c) All expenses incurred by a local health department, or by an entity designated as a local health department by a federally recognized American Indian tribe or band in this state, in quarantining a person outside his or her home during a state of emergency

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related to public health declared by the governor under s. 166.03 (1) (b) 1. and not reimbursed from federal funds shall be paid for under either of the following, as appropriate:

1. If the governor designates the department as the lead state agency under s. 166.03 (1) (b) 1., from the appropriation under s. 20.435 (1) (c).

2. If the governor does not designate the department as the lead state agency under s. 166.03 (1) (b) 1., from the appropriation under s. 20.465 (3) (e).

**History:** 1981 c. 291; 1983 a. 189 s. 329 (19); 1993 a. 27 s. 295; Stats. 1993 s. 252.06; 2001 a. 109; 2003 a. 186.

**NOTE:** 2003 Wis. Act 186, which affected this section, contains extensive explanatory notes.

**Cross Reference:** See also ch. HFS 145, Wis. adm. code.

## 252.07 Tuberculosis. (1g) In this section:

(a) “Infectious tuberculosis” means tuberculosis disease of the respiratory tract, capable of producing infection or disease in others as demonstrated by the presence of acid-fast bacilli in the sputum or bronchial secretions or by chest radiograph and clinical findings.

(b) “Isolate” means a population of mycobacterium tuberculosis bacteria that has been obtained in pure culture medium.

(c) “Isolation” means the separation from other persons of a person with infectious tuberculosis in a place and under conditions that prevent the transmission of the infection.

(d) “Suspect tuberculosis” means an illness marked by symptoms and laboratory tests that may be indicative of tuberculosis, such as a prolonged cough, prolonged fever, hemoptysis, compatible roentgenographic findings or other appropriate medical imaging findings.

(1m) Infectious tuberculosis and suspect tuberculosis are subject to the reporting requirements specified in s. 252.05. Any laboratory that receives a specimen for tuberculosis testing shall report all positive results obtained by any appropriate procedure, including a procedure performed by an out-of-state laboratory, to the local health officer and to the department.

(1p) Any laboratory that performs primary culture for mycobacteria shall also perform organism identification for mycobacterium tuberculosis complex using an approved rapid testing procedure specified by the department by rule.

(1t) Any laboratory that identifies mycobacterium tuberculosis shall ensure that antimicrobial drug susceptibility tests are performed on the initial isolate. The laboratory shall report the results of these tests to the local health officer and the department.

(2) The department shall identify groups at risk for contracting or transmitting mycobacterium tuberculosis and shall recommend the protocol for screening members of those groups.

(5) Upon report of any person under sub. (1m) or (1t), the local health officer shall at once investigate and make and enforce the necessary orders. If any person does not voluntarily comply with any order made by the local health officer with respect to that person, the local health officer or the department may order a medical evaluation, directly observed therapy or home isolation of that person.

(8) (a) The department or a local health officer may order the confinement to a facility of an individual who has a confirmed diagnosis of infectious tuberculosis or suspect tuberculosis if all of the following conditions are met:

1. The department or local health officer notifies a court in writing of the confinement.

2. The department or local health officer provides to the court a written statement from a physician that the individual has infectious tuberculosis or suspect tuberculosis.

3. The department or local health officer provides to the court evidence that the individual has refused to follow a prescribed treatment regimen or, in the case of an individual with suspect tuberculosis, has refused to undergo a medical examination to confirm whether the individual has infectious tuberculosis.

4. In the case of an individual with a confirmed diagnosis of infectious tuberculosis, the department or local health officer determines that the individual poses an imminent and substantial threat to himself or herself or to the public health. The department or local health officer shall provide to the court a written statement of that determination.

(b) If the department or local health officer orders the confinement of an individual under this subsection, a law enforcement officer, or other person authorized by the local public health officer, shall transport the individual, if necessary, to a facility that the department or local health officer determines will meet the individual’s need for medical evaluation, isolation and treatment.

(c) No individual may be confined under this subsection for more than 72 hours, excluding Saturdays, Sundays and legal holidays, without a court hearing under sub. (9) to determine whether the confinement should continue.

(9) (a) The department or a local health officer may petition any court for a hearing to determine whether an individual with infectious or suspect tuberculosis should be confined for longer than 72 hours in a facility where proper care and treatment will be provided and spread of the disease will be prevented. The department or local health officer shall include in the petition documentation that demonstrates all of the following:

1. That the individual named in the petition has infectious tuberculosis; that the individual has noninfectious tuberculosis but is at high risk of developing infectious tuberculosis; or that the individual has suspect tuberculosis.

2. That the individual has failed to comply with the prescribed treatment regimen or with any rules promulgated by the department under sub. (11); or that the disease is resistant to the medication prescribed to the individual.

3. That all other reasonable means of achieving voluntary compliance with treatment have been exhausted and no less restrictive alternative exists; or that no other medication to treat the resistant disease is available.

4. That the individual poses an imminent and substantial threat to himself or herself or to the public health.

(b) The department or local health officer shall give the individual written notice of a hearing at least 48 hours before a scheduled hearing is to be held. Notice of the hearing shall include all of the following information:

1. The date, time and place of the hearing.

2. The grounds, and underlying facts, upon which confinement of the individual is being sought.

3. An explanation of the individual’s rights specified under par. (d).

4. The proposed actions to be taken and the reasons for each action.

(c) If the court orders confinement of an individual under this subsection, the individual shall remain confined until the department or local health officer, with the concurrence of a treating physician, determines that treatment is complete or that the individual is no longer a substantial threat to himself or herself or to the public health. If the individual is to be confined for more than 6 months, the court shall review the confinement every 6 months.

(d) An individual who is the subject of a petition for a hearing under this subsection has the right to appear at the hearing, the right to present evidence and cross-examine witnesses and the right to be represented by adversary counsel. At the time of the filing of the petition the court shall assure that the individual who is the subject of the petition is represented by adversary counsel. If the individual claims or appears to be indigent, the court shall refer the individual to the authority for indigency determinations specified under s. 977.07 (1). If the individual is a child, the court shall refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4). Unless good cause is shown, a hearing under

this subsection may be conducted by telephone or live audiovisual means, if available.

(e) An order issued by the court under this subsection may be appealed as a matter of right. An appeal shall be heard within 30 days after the appeal is filed. An appeal does not stay the order.

(10) Inpatient care for isolated pulmonary tuberculosis patients, and inpatient care exceeding 30 days for other pulmonary tuberculosis patients, who are not eligible for federal medicare benefits, for medical assistance under subch. IV of ch. 49 or for health care services funded by a relief block grant under subch. II of ch. 49 may be reimbursed if provided by a facility contracted by the department. If the patient has private health insurance, the state shall pay the difference between health insurance payments and total charges.

(11) The department may promulgate any rules necessary for the administration and enforcement of this section, including, if necessary to prevent or control the transmission of mycobacterium tuberculosis, rules that require screening of members of specific groups that are at risk for contracting or transmitting mycobacterium tuberculosis.

**History:** 1971 c. 158; 1975 c. 383 s. 4; 1975 c. 421; 1981 c. 291; 1993 a. 27 s. 296, 472; Stats. 1993 s. 252.07; 1993 a. 490; 1999 a. 9 ss. 2400rg to 2400rp, 2400ru.

### 252.09 Meningococcal disease and hepatitis B.

(1) Each private college and university in this state shall do all of the following:

(a) Annually, provide detailed information on the risks associated with meningococcal disease and hepatitis B and the availability and effectiveness of vaccines against the diseases to each enrolled student, if he or she is at least 18 years old, or to the student's parent or guardian, if the student is a minor.

(b) Require a student who resides in a dormitory or residence hall, or the student's parent or guardian if the student is a minor, to affirm that the student received the information under par. (a).

(c) Require a student who resides in a dormitory or residence hall to affirm whether he or she has received the vaccination against meningococcal disease and to provide the date of the vaccination, if any.

(d) Require a student who resides in a dormitory or residence hall to affirm whether he or she received the vaccination against hepatitis B and to provide the date of the vaccination, if any.

(e) Maintain a confidential record of the affirmations and the dates of the vaccinations of each student under pars. (c) and (d).

(2) Nothing in this section requires a college or university to provide or pay for vaccinations against meningococcal disease or hepatitis B.

**History:** 2003 a. 61.

**252.10 Public health dispensaries.** (1) A local health department may request from the department certification to establish and maintain a public health dispensary for the diagnosis and treatment of persons suffering from or suspected of having tuberculosis. Two or more local health departments may jointly establish, operate and maintain public health dispensaries. The department shall certify a local health department to establish and maintain a public health dispensary if the local health department meets the standards established by the department by rule. The department of health and family services may withhold, suspend or revoke a certification if the local health department fails to comply with any rules promulgated by the department. The department shall provide the local health department with reasonable notice of the decision to withhold, suspend or revoke certification. The department shall offer the local health department an opportunity to comply with the rules and an opportunity for a fair hearing. Certified local health departments may contract for public health dispensary services. If the provider of those services fails to comply, the department may suspend or revoke the local health department's certification. The department may establish, operate and maintain public health dispensaries and branches in areas of the

state where local authorities have not provided public health dispensaries.

(6) (a) The state shall credit or reimburse each dispensary on an annual or quarterly basis for the operation of public health dispensaries established and maintained in accordance with this section and rules promulgated by the department.

(b) The department shall determine by rule the reimbursement rate under par. (a) for services.

(g) The reimbursement by the state under pars. (a) and (b) shall apply only to funds that the department allocates for the reimbursement under the appropriation under s. 20.435 (5) (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries, local health departments, physicians or advanced practice nurse prescribers.

(9) Public health dispensaries shall maintain such records as are required by the department to enable them to carry out their responsibilities designated in this section and in rules promulgated by the department. Records may be audited by the department.

(10) All public health dispensaries and branches thereof shall maintain records of costs and receipts which may be audited by the department of health and family services.

**History:** 1971 c. 81; 1971 c. 211 s. 124; 1973 c. 90; 1975 c. 39, 198, 224; 1975 c. 413 ss. 2, 18; Stats. 1975 s. 149.06; 1977 c. 29; 1981 c. 20 ss. 1446, 2202 (20) (c); 1983 a. 27; 1985 a. 29; 1991 a. 39, 160; 1993 a. 27 ss. 406, 407, 409, 411 to 414; Stats. 1993 s. 252.10, 1993 a. 443; 1995 a. 27 ss. 6318, 9126 (19), 9145 (1); 1997 a. 27, 75, 156, 175, 252; 1999 a. 9, 32, 186.

**Cross Reference:** See also ch. HFS 145, Wis. adm. code.

**252.11 Sexually transmitted disease.** (1) In this section, "sexually transmitted disease" means syphilis, gonorrhea, chlamydia and other diseases the department includes by rule.

(1m) A physician or other health care professional called to attend a person infected with any form of sexually transmitted disease, as specified in rules promulgated by the department, shall report the disease to the local health officer and to the department in the manner directed by the department in writing on forms furnished by the department. A physician may treat a minor infected with a sexually transmitted disease or examine and diagnose a minor for the presence of such a disease without obtaining the consent of the minor's parents or guardian. The physician shall incur no civil liability solely by reason of the lack of consent of the minor's parents or guardian.

(2) An officer of the department or a local health officer having knowledge of any reported or reasonably suspected case or contact of a sexually transmitted disease for which no appropriate treatment is being administered, or of an actual contact of a reported case or potential contact of a reasonably suspected case, shall investigate or cause the case or contact to be investigated as necessary. If, following a request of an officer of the department or a local health officer, a person reasonably suspected of being infected with a sexually transmitted disease refuses or neglects examination by a physician or treatment, an officer of the department or a local health officer may proceed to have the person committed under sub. (5) to an institution or system of care for examination, treatment or observation.

(4) If a person infected with a sexually transmitted disease ceases or refuses treatment before reaching what in the physician's opinion is the noncommunicable stage, the physician shall notify the department. The department shall without delay take the necessary steps to have the person committed for treatment or observation under sub. (5), or shall notify the local health officer to take these steps.

(5) Any court of record may commit a person infected with a sexually transmitted disease to any institution or may require the person to undergo a system of care for examination, treatment or observation if the person ceases or refuses examination, treatment or observation under the supervision of a physician. The court

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shall summon the person to appear on a date at least 48 hours, but not more than 96 hours, after service if an officer of the department or a local health officer petitions the court and states the facts authorizing commitment. If the person fails to appear or fails to accept commitment without reasonable cause, the court may cite the person for contempt. The court may issue a warrant and may direct the sheriff, any constable or any police officer of the county immediately to arrest the person and bring the person to court if the court finds that a summons will be ineffectual. The court shall hear the matter of commitment summarily. Commitment under this subsection continues until the disease is no longer communicable or until other provisions are made for treatment that satisfy the department. The certificate of the petitioning officer is prima facie evidence that the disease is no longer communicable or that satisfactory provisions for treatment have been made.

**(5m)** A health care professional, as defined in s. 968.38 (1) (a), acting under an order of a court under s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining informed consent to the testing, subject an individual to a test or a series of tests to ascertain whether that individual is infected with a sexually transmitted disease. No sample used for performance of a test under this subsection may disclose the name of the test subject.

**(7)** Reports, examinations and inspections and all records concerning sexually transmitted diseases are confidential and not open to public inspection, and shall not be divulged except as may be necessary for the preservation of the public health, in the course of commitment proceedings under sub. (5) or as provided under s. 938.296 (4) or (5) or 968.38 (4) or (5). If a physician has reported a case of sexually transmitted disease to the department under sub. (4), information regarding the presence of the disease and treatment is not privileged when the patient or physician is called upon to testify to the facts before any court of record.

**(9)** The department shall prepare for free distribution upon request to state residents, information and instructions concerning sexually transmitted diseases.

**(10)** The state laboratory of hygiene shall examine specimens for the diagnosis of sexually transmitted diseases for any physician or local health officer in the state, and shall report the positive results of the examinations to the local health officer and to the department. All laboratories performing tests for sexually transmitted diseases shall report all positive results to the local health officer and to the department, with the name of the physician to whom reported.

**(11)** In each county with an incidence of gonorrhea, antibiotic resistant gonorrhea, chlamydia or syphilis that exceeds the state-wide average, a program to diagnose and treat sexually transmitted diseases at no cost to the patient is required. The county board of supervisors is responsible for ensuring that the program exists, but is required to establish its own program only if no other public or private program is operating. The department shall compile statistics indicating the incidence of gonorrhea, antibiotic resistant gonorrhea, chlamydia and syphilis for each county in the state.

**History:** 1971 c. 42, 125; 1973 c. 90; 1975 c. 6; 1975 c. 383 s. 4; 1975 c. 421; 1981 c. 291; 1991 a. 269; 1993 a. 27 s. 297; Stats. 1993 s. 252.11; 1993 a. 32; 1995 a. 77; 1999 a. 188.

**Cross Reference:** See also ch. HFS 145, Wis. adm. code.

## 252.12 HIV and related infections, including hepatitis C virus infections; services and prevention. (1) DEFINITIONS. In this section:

(c) “Nonprofit corporation” means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(d) “Organization” means a nonprofit corporation or a public agency which proposes to provide services to individuals with acquired immunodeficiency syndrome.

(e) “Public agency” means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

**(2) DISTRIBUTION OF FUNDS.** (a) *HIV and related infections, including hepatitis C virus infections; services.* From the appropriations under s. 20.435 (1) (a) and (5) (am), the department shall distribute funds for the provision of services to individuals with or at risk of contracting HIV infection, as follows:

1. ‘Partner referral and notification.’ The department shall contact an individual known to have received an HIV infection and encourage him or her to refer for counseling, HIV testing, and, if appropriate, testing for hepatitis C virus infection any person with whom the individual has had sexual relations or has shared intravenous equipment.

2. ‘Grants to local projects.’ The department shall make grants to applying organizations for the provision of HIV and related infection prevention information, the establishment of counseling support groups and the provision of direct care to persons with HIV infection, including those persons with hepatitis C virus infection.

3. ‘Statewide public education campaign.’ The department shall promote public awareness of the risk of contracting HIV and related infections and measures for HIV and related infections protection by development and distribution of information through clinics providing family planning services, as defined in s. 253.07 (1) (b), offices of physicians and clinics for sexually transmitted diseases and by newsletters, public presentations or other releases of information to newspapers, periodicals, radio and television stations and other public information resources. The information shall be targeted at individuals whose behavior puts them at risk of contracting HIV and related infections and shall encompass the following topics:

a. HIV infection and related infections.

b. Means of identifying whether or not individuals may be at risk of contracting HIV and related infections.

c. Measures individuals may take to protect themselves from contracting HIV and related infections.

d. Locations for procuring additional information or obtaining testing services.

4. ‘Information network.’ The department shall establish a network to provide information to local health officers and other public officials who are responsible for HIV infection and related infection prevention and training.

5. ‘HIV seroprevalence studies.’ The department shall perform tests for the presence of HIV and, if appropriate, related infections and shall conduct behavioral surveys among population groups determined by the department to be highly at risk of becoming infected with or transmitting HIV and related infections. Information obtained shall be used to develop targeted HIV infection and related infection prevention efforts for these groups and to evaluate the state’s prevention strategies.

6. ‘Grants for targeted populations and intervention services.’ The department shall make grants to those applying organizations that the department determines are best able to contact individuals who are determined to be highly at risk of contracting HIV for the provision of HIV and related infection information and intervention services.

7. ‘Contracts for counseling and laboratory testing services.’ The department shall distribute funding in each fiscal year to contract with organizations to provide, at alternate testing sites, anonymous or confidential counseling services for HIV and laboratory testing services for the presence of HIV and, if appropriate, related viruses.

8. ‘Life care and early intervention services.’ The department shall award not more than \$1,994,900 in fiscal year 2001–02 and not more than \$2,069,900 in each fiscal year thereafter in grants to applying organizations for the provision of needs assessments; assistance in procuring financial, medical, legal, social and pastoral services; counseling and therapy; homecare services and supplies; advocacy; and case management services. These services shall include early intervention services. The department shall also award not more than \$74,000 in each year from the appropri-

ation under s. 20.435 (7) (md) for the services under this subdivision. The state share of payment for case management services that are provided under s. 49.45 (25) (be) to recipients of medical assistance shall be paid from the appropriation under s. 20.435 (5) (am).

9. ‘Grant for family resource center.’ The department shall award a grant to develop and implement an African–American family resource center in the city of Milwaukee that targets activities toward the prevention and treatment of HIV infection and related infections, including hepatitis C virus infection, of minority group members, as defined in s. 560.036 (1) (f).

(c) *HIV prevention grants.* 1. From the appropriation under s. 20.435 (3) (md), the department shall award to applying nonprofit corporations or public agencies up to \$75,000 in each fiscal year, on a competitive basis, as grants for services to prevent HIV. Criteria for award of the grants shall include all of the following:

- a. The scope of proposed services, including the proposed targeted population and numbers of persons proposed to be served.
- b. The proposed methodology for the prevention services, including distribution and delivery of information and appropriateness of the message provided.
- c. The qualifications of the applicant nonprofit corporation or public agency and its staff.
- d. The proposed allocation of grant funds to the nonprofit corporation or public agency staff and services.
- e. The proposed method by which the applicant would evaluate the impact of the grant funds awarded.

2. From the appropriation under s. 20.435 (5) (am), the department shall award \$75,000 in each fiscal year as grants for services to prevent HIV infection and related infections, including hepatitis C virus infection. Criteria for award of the grants shall include the criteria specified under subd. 1. The department shall award 60% of the funding to applying organizations that receive funding under par. (a) 8. and 40% of the funding to applying community–based organizations that are operated by minority group members, as defined in s. 560.036 (1) (f).

3. From the appropriation under s. 20.435 (5) (am), the department shall award to the African American AIDS task force of the Black Health Coalition of Wisconsin, Inc., \$25,000 in each fiscal year as grants for services to prevent HIV infection and related infections, including hepatitis C infection.

(3) **CONFIDENTIALITY OF INFORMATION.** The results of any test performed under sub. (2) (a) 5. are confidential and may be disclosed only to the individual who receives a test or to other persons with the informed consent of the test subject. Information other than that released to the test subject, if released under sub. (2) (a) 5., may not identify the test subject.

**History:** 1987 a. 27, 70, 399; 1989 a. 31, 201, 336; 1991 a. 39, 80; 1993 a. 16; 1993 a. 27 ss. 318, 319, 321, 323; Stats. 1993 s. 252.12; 1995 a. 27; 1997 a. 27, 79; 1999 a. 9; 2001 a. 16.

**252.13 Blood tests for HIV. (1)** In this section, “autologous transfusion” means the receipt by an individual, by transfusion, of whole blood, blood plasma, a blood product or a blood derivative, which the individual has previously had withdrawn from himself or herself for his or her own use.

(1m) Except as provided under sub. (3), any blood bank, blood center or plasma center in this state that purchases or receives whole blood, blood plasma, a blood product or a blood derivative shall, prior to its distribution or use and with informed consent under the requirements of s. 252.15 (2) (b), subject that the state epidemiologist finds medically significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. This subsection does not apply to a blood bank that purchases or receives whole blood, blood plasma, a blood product or a blood derivative from a blood bank, blood center or plasma center in this state if the whole blood, blood plasma, blood product or blood derivative has previously been subjected to a test or series of tests

that the state epidemiologist finds medically significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

(1r) For the purposes of this section, the state epidemiologist shall make separate findings of medical significance and sufficient reliability for a test or a series of tests to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV for each of the following purposes:

(a) Subjecting whole blood, blood plasma, a blood product or a blood derivative to a test prior to distribution or use of the whole blood, blood plasma, blood product or blood derivative.

(b) Providing disclosure of test results to the subject of the test.

(2) If performance of a test under sub. (1m) yields a validated test result positive for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, the whole blood, blood plasma, blood product or blood derivative so tested with this result may not be distributed or used except for purposes of research or as provided under sub. (5).

(3) If a medical emergency, including a threat to the preservation of life of a potential donee, exists under which whole blood, blood plasma, a blood product or a blood derivative that has been subjected to testing under sub. (1m) is unavailable, the requirement of sub. (1m) shall not apply.

(4) Subsections (1m) and (2) do not apply to the extent that federal law or regulations require that a blood bank, blood center or plasma center test whole blood, blood plasma, a blood product or a blood derivative.

(5) Whole blood, blood plasma, a blood product or a blood derivative described under sub. (2) that is voluntarily donated solely for the purpose of an autologous transfusion may be distributed to or used by the person who has donated the whole blood, blood plasma, blood product or blood derivative. No person other than the person who has donated the whole blood, blood plasma, blood product or blood derivative may receive or use the whole blood, blood plasma, blood product or blood derivative unless it has been subjected to a test under sub. (1m) and the test has yielded a negative result for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

**History:** 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

**252.14 Discrimination related to acquired immunodeficiency syndrome. (1)** In this section:

(ad) “Correctional officer” has the meaning given in s. 301.28 (1).

(am) “Fire fighter” has the meaning given in s. 102.475 (8) (b).

(ar) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician licensed under subch. II of ch. 448.
- 4c. A perfusionist licensed under subch. II of ch. 448.
- 4e. A physical therapist or physical therapist assistant licensed under subch. III of ch. 448.
- 4g. A podiatrist licensed under subch. IV of ch. 448.
- 4m. A dietitian certified under subch. V of ch. 448.
- 4p. An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
- 4q. An athletic trainer licensed under subch. VI of ch. 448.
5. An optometrist licensed under ch. 449.
6. A psychologist licensed under ch. 455.
7. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.
8. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
9. An employee or agent of any provider specified under subs. 1. to 8.

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10. A partnership of any provider specified under subds. 1. to 8.
11. A corporation of any provider specified under subds. 1. to 8. that provides health care services.
12. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
13. An emergency medical technician licensed under s. 146.50 (5).
14. A physician assistant licensed under ch. 448.
15. A first responder.

(c) “Home health agency” has the meaning specified in s. 50.49 (1) (a).

(d) “Inpatient health care facility” means a hospital, nursing home, community–based residential facility, county home, county mental health complex or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

**(2)** No health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, home health agency, inpatient health care facility or person who has access to a validated test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(am) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, refuse to provide services to the individual.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(bm) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, provide services to the individual at a standard that is lower than that provided other individuals with like service needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

**(3)** A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

**(4)** Any person violating sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to \$5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

**History:** 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322, 9145 (1); 1997 a. 27, 35, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80, 89.

**252.15 Restrictions on use of a test for HIV. (1) DEFINITIONS.** In this section:

(ab) “Affected person” means an emergency medical technician; first responder; fire fighter; peace officer; correctional officer; person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p); state patrol officer; jailer, keeper of a jail, or person designated with custodial authority by the jailer or keeper; health care provider; employee of a health care provider; staff member of a state crime laboratory; social worker; or employee of a school district, cooperative educational service agency, charter school, private school, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired.

(ad) “Correctional officer” has the meaning given in s. 301.28 (1).

(af) “Emergency medical technician” has the meaning given in s. 146.50 (1) (e).

(aj) “Fire fighter” has the meaning given in s. 102.475 (8) (b).

(am) “Health care professional” means a physician who is licensed under ch. 448 or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(ar) “Health care provider” means any of the following:

1. A person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a certificate under ch. 460.

2. A home health agency.

3. An employee of the Mendota Mental Health Institute or the Winnebago Mental Health Institute.

(cm) “Home health agency” has the meaning given in s. 50.49 (1) (a).

(d) “Informed consent for testing or disclosure” means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) “Informed consent for testing or disclosure form” means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

(eg) “Relative” means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(em) “Significantly exposed” means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an eye, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(er) “Social worker” means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457.

(fm) “Universal precautions” means measures that a health care provider, an employee of a health care provider or other individual takes in accordance with recommendations of the federal centers for disease control for the health care provider, employee or other individual for prevention of HIV transmission in health-care settings.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. 1g., a health care provider who procures, processes, distributes or uses a human body part or human tissue donated as specified under s. 157.06 (6) (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

1g. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to testing under subd. 1. is unavailable, the requirement of subd. 1. does not apply.

2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV 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.

3. The medical director of a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. A health care provider may subject an individual to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual’s guardian, if the individual is adjudicated incompetent under ch. 880; from the individual’s parent or guardian, if the individual is under 14 years of age; or from the individual’s closest living relative or another with whom the individual has

a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

6. A health care professional acting under an order of the court under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding sub. (4) (c), the test results may not be made part of the individual’s permanent medical record.

7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician; first responder; fire fighter; peace officer; correctional officer; person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p); state patrol officer; jailer, keeper of a jail, or person designated with custodial authority by the jailer or keeper, during the course of providing care or services to an individual; a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail, or person designated with custodial authority by the jailer or keeper, while searching or arresting an individual or while controlling or transferring an individual in custody; a health care provider or an employee of a health care provider, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; a staff member of a state crime laboratory, during the course of handling or processing specimens of body fluids or tissues of an individual; social worker; or an employee of a school district, cooperative educational service agency, charter school, private school, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired, while performing employment duties involving an individual; who is significantly exposed to the individual may subject the individual’s blood to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and may receive disclosure of the results.

ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. A physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this determination or certification. The information that is provided to a physician to document the occurrence of a significant exposure and the physician’s certification that an affected person has been significantly exposed, under this subd. 7. ak., shall be provided on a report form that is developed by the department of commerce under s. 101.02 (19) (a) or on a report form that the department of commerce determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

am. The affected person submits to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

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ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including that individual, without his or her consent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the record does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and to disclose the results to that person. The person who is certified under subd. 7. ak. to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

b. Upon receipt of a request and certification under the requirements of this subdivision, a district attorney shall, as soon as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care professional, and to disclose the results of the test or tests as specified in subd. 7. c.

c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

d. The court is not required to order the individual to submit to a test under subd. 7. c. if the court finds substantial reason relating to the life or health of the individual not to do so and states the reason on the record.

7m. The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed. A record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

(am) 1. A health care provider who procures, processes, distributes or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody

to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

2. A health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall, in instances under those paragraphs in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under sub. (5) (a) 2. to 19. or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(bm) The health care provider that subjects a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under par. (a) 3. shall provide the test subject and the test subject's guardian, if the test subject is incompetent under ch. 880, with all of the following information:

1. A statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

2. A statement of explanation that the test results may be disclosed as specified under sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under sub. (5) (a) 2. to 18. or a statement that the listing is available upon request.

(3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent to providing

informed consent for disclosure under sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

**(4) RECORD MAINTENANCE.** A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained. A record that is made under the circumstances described in sub. (2) (a) 7m. may not reveal the identity of the test subject.

**(5) CONFIDENTIALITY OF TEST.** (a) An individual who is the subject of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who is neither the individual nor the individual's health care agent may not, unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employee of a health care provider under subd. 2. who prepares or stores patient health care records, as defined in s. 146.81 (4), for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under sub. (2) (a), for any of the following purposes:

a. Determining the medical acceptability of blood or plasma secured from the test subject.

b. Notifying the test subject of the test results.

c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 (6) (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 (5) or to other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV–infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13. To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or (5) (e) or 968.38 (4) (c) or (5) (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

18. To an affected person, under the requirements of sub. (2) (a) 7.

19. If the test was administered to a child who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility, as defined in s. 938.02 (15m), including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child, or to an agency that placed the child or arranged for the placement of the child in any of those place-

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ments and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or arranged for the placement of the child in any of those placements, to the child's foster parent or treatment foster parent or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child is placed, as provided in s. 48.371 or 938.371.

20. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to the prisoner's patient health care records under s. 302.388, to the medical staff of a jail to whom the results are disclosed under s. 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner is being transferred, if the results are provided to the medical staff by the department of corrections as part of the prisoner's medical file, to a health care provider to whom the results are disclosed under s. 302.388 (2) (c) or (f) or the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) A private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10. if he or she annually submits to the maintainer of his or her test results under sub. (4) (c) a signed, written request that denial be made.

**(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES.** Notwithstanding s. 157.05, a corpse may be subjected to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the attending physician of the funeral director, coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employee of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, and if a physician who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employee has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

**(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED.** No person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or nonantigenic products of HIV or an

antibody to HIV for self-use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

**(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED.** No person to whom the results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV have been disclosed under sub. (5) (a) or (5m) may disclose the test results except as authorized under sub. (5) (a) or (5m).

**(7) REPORTING OF POSITIVE TEST RESULTS.** (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under s. 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 250.04 (1) or (2) (a).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HIV infections.

(c) Except as provided in sub. (7m), a report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 252.05 with respect to persons for whom a diagnosis of acquired immunodeficiency syndrome has been made.

**(7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED.** If a positive, validated test result is obtained from a test subject, the test subject's physician who maintains a record of the test result under sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician to have been significantly exposed to the test subject, only after the physician has done all of the following:

(a) Counseled the test subject to inform any person who has been significantly exposed to the test subject.

(b) Notified the test subject that the name of any person known to the physician to have been significantly exposed to the test subject will be reported to the state epidemiologist.

**(8) CIVIL LIABILITY.** (a) Any person violating sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$25,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under sub. (2), (5) (a), (5m), (6) or (7) (c). A conviction under sub. (2), (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) PENALTIES. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$25,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than \$1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 7m., (5) (a) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

(10) DISCIPLINE OF EMPLOYEES. Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271.

No claim for a violation of sub. (2) was stated when the defendants neither conducted HIV tests nor were authorized recipients of the test results. *Hillman v. Columbia County*, 164 Wis. 2d 376, 474 N.W.2d 913 (Ct. App. 1991).

This section does not prevent a court acting in equity from ordering an HIV test where this section does not apply. *Syring v. Tucker*, 174 Wis. 2d 787, 498 N.W.2d 370 (1993).

This section has no bearing on a case in which a letter from the plaintiff to the defendant pharmacy contained a reference to a drug used only to treat AIDS, but did not disclose the results of an HIV test or directly disclose that the defendant had AIDS. *Doe v. American Stores, Co.* 74 F. Supp. 2d 855 (1999).

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.  
HIV Confidentiality: Who Has the Right to Know? Krimmer. Wis. Law. Feb. 2003.

Balancing Federal and Wisconsin Medical Privacy Laws. Hartin. Wis. Law. June 2003.

### 252.16 Health insurance premium subsidies. (1) DEFINITIONS. In this section:

(ar) “Dependent” means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(b) “Group health plan” means an insurance policy or a partially or wholly uninsured plan or program, that provides hospital, medical or other health coverage to members of a group, whether or not dependents of the members are also covered. The term includes a medicare supplement policy, as defined in s. 600.03 (28r), but does not include a medicare replacement policy, as defined in s. 600.03 (28p), or a long-term care insurance policy, as defined in s. 600.03 (28g).

(c) “Individual health policy” means an insurance policy or a partially or wholly uninsured plan or program, that provides hospital, medical or other health coverage to an individual on an individual basis and not as a member of a group, whether or not dependents of the individual are also covered. The term includes a medicare supplement policy, as defined in s. 600.03 (28r), but does not include a medicare replacement policy, as defined in s. 600.03 (28p), or a long-term care insurance policy, as defined in s. 600.03 (28g).

(d) “Medicare” has the meaning given in s. 49.498 (1) (f).

(e) “Residence” means the concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.

(2) SUBSIDY PROGRAM. From the appropriation under s. 20.435 (5) (am), the department shall distribute funding in each fiscal year to subsidize the premium costs under s. 252.17 (2) and, under this subsection, the premium costs for health insurance coverage available to an individual who has HIV infection and who is unable to continue his or her employment or must reduce his or her hours because of an illness or medical condition arising from or related to HIV infection.

(3) ELIGIBILITY. An individual is eligible to receive a subsidy in an amount determined under sub. (4), if the department determines that the individual meets all of the following criteria:

(a) Has residence in this state.

(b) Has a family income, as defined by rule under sub. (6), that does not exceed 300% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual’s family.

(c) Has submitted to the department a certification from a physician, as defined in s. 448.01 (5), of all of the following:

1. That the individual has an infection that is an HIV infection.

2. That the individual’s employment has terminated or his or her hours have been reduced, because of an illness or medical condition arising from or related to the individual’s HIV infection.

(dm) Has, or is eligible for, health insurance coverage under a group health plan or an individual health policy.

(e) Authorizes the department, in writing, to do all of the following:

1. Contact the individual’s employer or former employer or health insurer to verify the individual’s eligibility for coverage under the group health plan or individual health policy and the premium and any other conditions of coverage, to make premium payments as provided in sub. (4) and for other purposes related to the administration of this section.

1m. Contact the individual’s employer or former employer to verify that the individual’s employment has been terminated or that his or her hours have been reduced and for other purposes related to the administration of this section.

2. Make any necessary disclosure to the individual’s employer or former employer or health insurer regarding the individual’s HIV status.

(4) AMOUNT AND PERIOD OF SUBSIDY. (a) Except as provided in pars. (b) and (d), if an individual satisfies sub. (3), the department shall pay the full amount of each premium payment for the individual’s health insurance coverage under the group health plan or individual health policy under sub. (3) (dm), on or after the date on which the individual becomes eligible for a subsidy under sub. (3). Except as provided in pars. (b) and (d), the department shall pay the full amount of each premium payment regardless of whether the individual’s health insurance coverage under sub. (3) (dm) includes coverage of the individual’s dependents. Except as provided in par. (b), the department shall terminate the payments under this section when the individual’s health insurance coverage ceases or when the individual no longer satisfies sub. (3), whichever occurs first. The department may not make payments under this section for premiums for medicare.

(b) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation under s. 20.435 (5) (am).

(d) For an individual who satisfies sub. (3) and who has a family income, as defined by rule under sub. (6) (a), that exceeds 200% but does not exceed 300% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual’s family, the department shall pay a portion of the amount of each premium payment for the individual’s health insurance coverage. The portion that the department pays shall be determined according to a schedule established by the department by rule under sub. (6) (c). The department shall pay the portion of the premium determined according to the schedule regardless of whether the individual’s health insurance coverage under sub. (3) (dm) includes coverage of the individual’s dependents.

(5) APPLICATION PROCESS. The department may establish, by rule, a procedure under which an individual who does not satisfy sub. (3) (b), (c) 2. or (dm) may submit to the department an application for a premium subsidy under this section that the department shall hold until the individual satisfies each requirement of sub. (3), if the department determines that the procedure will assist the department to make premium payments in a timely

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manner once the individual satisfies each requirement of sub. (3). If an application is submitted by an employed individual under a procedure established by rule under this subsection, the department may not contact the individual's employer or health insurer unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure to the individual's employer or health insurer regarding the individual's HIV status.

**(6) RULES.** The department shall promulgate rules that do all of the following:

- (a) Define family income for purposes of sub. (3) (b).
- (b) Establish a procedure for making payments under this section that ensures that the payments are actually used to pay premiums for health insurance coverage available to individuals who satisfy sub. (3).
- (c) Establish a premium contribution schedule for individuals who have a family income, as defined by rule under par. (a), that exceeds 200% but does not exceed 300% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual's family. In establishing the schedule under this paragraph, the department shall take into consideration both income level and family size.

**History:** 1989 a. 336; 1991 a. 269; 1993 a. 16 ss. 2587, 2588; 1993 a. 27 ss. 386 to 389; Stats. 1993 s. 252.16; 1993 a. 491; 1995 a. 27; 1997 a. 27; 2001 a. 38.

**Cross Reference:** See also ch. HFS 138, Wis. adm. code.

### 252.17 Medical leave premium subsidies. (1) DEFINITIONS.

In this section:

- (a) "Group health plan" has the meaning given in s. 252.16 (1) (b).
- (d) "Medical leave" means medical leave under s. 103.10.
- (e) "Residence" has the meaning given in s. 252.16 (1) (e).

**(2) SUBSIDY PROGRAM.** The department shall establish and administer a program to subsidize, from the appropriation under s. 20.435 (5) (am), as provided in s. 252.16 (2), the premium costs for coverage under a group health plan that are paid by an individual who has HIV infection and who is on unpaid medical leave from his or her employment because of an illness or medical condition arising from or related to HIV infection.

**(3) ELIGIBILITY.** An individual is eligible to receive a subsidy in an amount determined under sub. (4), if the department determines that the individual meets all of the following criteria:

- (a) Has residence in this state.
- (b) Has a family income, as defined by rule under sub. (6), that does not exceed 300% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual's family.
- (c) Has submitted to the department a certification from a physician, as defined in s. 448.01 (5), of all of the following:
  1. That the individual has an infection that is an HIV infection.
  2. That the individual is on unpaid medical leave from his or her employment because of an illness or medical condition arising from or related to the individual's HIV infection or because of medical treatment or supervision for such an illness or medical condition.
- (d) Is covered under a group health plan through his or her employment and pays part or all of the premium for that coverage, including any premium for coverage of the individual's spouse and dependents.
- (e) Authorizes the department, in writing, to do all of the following:
  1. Contact the individual's employer or the administrator of the group health plan under which the individual is covered, to verify the individual's medical leave, group health plan coverage and the premium and any other conditions of coverage, to make premium payments as provided in sub. (4) and for other purposes related to the administration of this section.
  2. Make any necessary disclosure to the individual's employer or the administrator of the group health plan under

which the individual is covered regarding the individual's HIV status.

(f) Is not covered by a group health plan other than any of the following:

1. The group health plan under par. (d).
2. A group health plan that offers a substantial reduction in covered health care services from the group health plan under subd. 1.
- (g) Is not covered by an individual health insurance policy other than an individual health insurance policy that offers a substantial reduction in covered health care services from the group health plan under par. (d).
- (h) Is not eligible for medicare under 42 USC 1395 to 1395zz.
- (i) Does not have escrowed under s. 103.10 (9) (c) an amount sufficient to pay the individual's required contribution to his or her premium payments.

**(4) AMOUNT AND PERIOD OF SUBSIDY.** (a) Except as provided in pars. (b), (c) and (d), if an individual satisfies sub. (3), the department shall pay the amount of each premium payment for coverage under the group health plan under sub. (3) (d) that is due from the individual on or after the date on which the individual becomes eligible for a subsidy under sub. (3). The department may not refuse to pay the full amount of the individual's contribution to each premium payment because the coverage that is provided to the individual who satisfies sub. (3) includes coverage of the individual's spouse and dependents. Except as provided in par. (b), the department shall terminate the payments under this section when the individual's unpaid medical leave ends, when the individual no longer satisfies sub. (3) or upon the expiration of 29 months after the unpaid medical leave began, whichever occurs first.

(b) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation under s. 20.435 (5) (am).

(c) If an individual who satisfies sub. (3) has an amount escrowed under s. 103.10 (9) (c) that is insufficient to pay the individual's required contribution to his or her premium payments, the amount paid under par. (a) may not exceed the individual's required contribution for the duration of the payments under this section as determined under par. (a) minus the amount escrowed.

(d) For an individual who satisfies sub. (3) and who has a family income, as defined by rule under sub. (6) (a), that exceeds 200% but does not exceed 300% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual's family, the department shall pay a portion of the amount of each premium payment for the individual's coverage under the group health plan under sub. (3) (d). The portion that the department pays shall be determined according to a schedule established by the department by rule under sub. (6) (c). The department shall pay the portion of the premium determined according to the schedule regardless of whether the individual's coverage under the group health plan under sub. (3) (d) includes coverage of the individual's spouse and dependents.

**(5) APPLICATION PROCESS.** The department may establish, by rule, a procedure under which an individual who does not satisfy sub. (3) (b) or (c) 2. may submit to the department an application for a premium subsidy under this section that the department shall hold until the individual satisfies each requirement of sub. (3), if the department determines that the procedure will assist the department to make premium payments in a timely manner once the individual satisfies each requirement of sub. (3). If an application is submitted by an individual under a procedure established by rule under this subsection, the department may not contact the individual's employer or the administrator of the group health plan under which the individual is covered, unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure to the individual's employer or the

administrator of the group health plan under which the individual is covered regarding the individual's HIV status.

(6) RULES. The department shall promulgate rules that do all of the following:

(a) Define family income for purposes of sub. (3) (b).

(b) Establish a procedure for making payments under this section that ensures that the payments are actually used to pay premiums for group health plan coverage available to individuals who satisfy sub. (3).

(c) Establish a premium contribution schedule for individuals who have a family income, as defined by rule under par. (a), that exceeds 200% but does not exceed 300% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual's family. In establishing the schedule under this paragraph, the department shall take into consideration both income level and family size.

**History:** 1991 a. 269; 1993 a. 16 ss. 2589, 2590; 1993 a. 27 ss. 390 to 394; Stats. 1993 s. 252.17; 1993 a. 491; 1997 a. 27; 1999 a. 103.

**Cross Reference:** See also ch. HFS 138, Wis. adm. code.

**252.18 Handling foods.** No person in charge of any public eating place or other establishment where food products to be consumed by others are handled may knowingly employ any person handling food products who has a disease in a form that is communicable by food handling. If required by the local health officer or any officer of the department for the purposes of an investigation, any person who is employed in the handling of foods or is suspected of having a disease in a form that is communicable by food handling shall submit to an examination by the officer or by a physician designated by the officer. The expense of the examination, if any, shall be paid by the person examined. Any person knowingly infected with a disease in a form that is communicable by food handling who handles food products to be consumed by others and any persons knowingly employing or permitting such a person to handle food products to be consumed by others shall be punished as provided by s. 252.25.

**History:** 1981 c. 291; 1993 a. 27 s. 298; Stats. 1993 s. 252.18.

**252.19 Communicable diseases; suspected cases; protection of public.** No person who is knowingly infected with a communicable disease may willfully violate the recommendations of the local health officer or subject others to danger of contracting the disease. No person may knowingly and willfully take, aid in taking, advise or cause to be taken, a person who is infected or is suspected of being infected with a communicable disease into any public place or conveyance where the infected person would expose any other person to danger of contracting the disease.

**History:** 1981 c. 291; 1993 a. 27 s. 299; Stats. 1993 s. 252.19.

**252.21 Communicable diseases; schools; duties of teachers, parents, officers.** (1) If a teacher, school nurse or principal of any school or day care center knows or suspects that a communicable disease is present in the school or center, he or she shall at once notify the local health officer.

(6) Any teacher, school nurse or principal may send home pupils who are suspected of having a communicable disease or any other disease the department specifies by rule. Any teacher, school nurse or principal who sends a pupil home shall immediately notify the parents of the pupil of the action and the reasons for the action. A teacher who sends a pupil home shall also notify the principal of the action and the reasons for the action.

**History:** 1981 c. 291; 1993 a. 27 s. 301; Stats. 1993 s. 252.21.

**252.23 Regulation of tattooists. (1) DEFINITIONS.** In this section:

(a) "Tattoo" has the meaning given in s. 948.70 (1) (b).

(b) "Tattoo establishment" means the premises where a tattooist performs tattoos.

(c) "Tattooist" means a person who tattoos another.

(2) DEPARTMENT DUTY. Except as provided in ss. 250.041 and 252.241, the department shall provide uniform, statewide licensing and regulation of tattooists and uniform, statewide licensing and regulation of tattoo establishments under this section. The department shall inspect a tattoo establishment once before issuing a license for the tattoo establishment under this section and may make additional inspections that the department determines are necessary.

(3) LICENSE REQUIRED. Except as provided in sub. (5), no person may tattoo or attempt to tattoo another, designate or represent himself or herself as a tattooist or use or assume the title "tattooist" and no tattoo establishment may be operated unless the person and the establishment are licensed by the department under this section or by a local health department that is designated as the department's agent under s. 252.245.

(4) RULE MAKING. The department shall promulgate all of the following as rules:

(a) Except as provided in ss. 250.041 and 252.241, standards and procedures, including fee payment to offset the cost of licensing tattooists and tattoo establishments, for the annual issuance of licenses as tattooists or as tattoo establishments to applicants under this section.

(b) Standards for the performance of tattoos by a licensed tattooist and for the maintenance of a licensed tattoo establishment, which will promote safe and adequate care and treatment for individuals who receive tattoos and eliminate or greatly reduce the danger of exposure by these individuals to communicable disease or infection.

(5) EXCEPTION. This section does not apply to a dentist who is licensed under s. 447.03 (1) or to a physician who tattoos or offers to tattoo a person in the course of the dentist's or physician's professional practice.

**History:** 1995 a. 468; 1997 a. 191, 237.

**Cross Reference:** See also chs. HFS 173 and Med 15, Wis. adm. code.

**252.24 Regulation of body piercing and body-piercing establishments. (1) DEFINITIONS.** In this section:

(a) "Body piercer" means a person who performs body piercing on another.

(b) "Body piercing" means perforating any human body part or human tissue, except an ear, and placing a foreign object in the perforation in order to prevent the perforation from closing.

(c) "Body-piercing establishment" means the premises where a body piercer performs body piercing.

(2) DEPARTMENT DUTY. Except as provided in ss. 250.041 and 252.241, the department shall provide uniform, statewide licensing and regulation of body piercers and uniform, statewide licensing and regulation of body-piercing establishments under this section. The department shall inspect a body-piercing establishment once before issuing a license for the body-piercing establishment under this section and may make additional inspections that the department determines are necessary.

(3) LICENSE REQUIRED. Except as provided in sub. (5), no person may pierce the body of or attempt to pierce the body of another, designate or represent himself or herself as a body piercer or use or assume the title "body piercer" unless the person is licensed under this section.

(4) RULE MAKING. The department shall promulgate all of the following as rules:

(a) Except as provided in ss. 250.041 and 252.241, standards and procedures, including fee payment to offset the cost of licensing body piercers and body-piercing establishments, for the annual issuance of licenses as body piercers or as body-piercing establishments to applicants under this section.

(b) Standards for the performance of body piercing by a licensed body piercer and for the maintenance of a licensed body-piercing establishment, which will promote safe and adequate care and treatment for individuals who receive body piercing and

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eliminate or greatly reduce the danger of exposure by these individuals to communicable disease or infection.

**(5) EXCEPTION.** This section does not apply to a dentist who is licensed under s. 447.03 (1) or to a physician who pierces the body of or offers to pierce the body of a person in the course of the dentist's or physician's professional practice.

**History:** 1995 a. 468; 1997 a. 191, 237; 1999 a. 32.

**Cross Reference:** See also chs. HFS 173 and Med 15, Wis. adm. code.

**252.241 Denial, nonrenewal and revocation of license based on tax delinquency.** **(1)** Except as provided in sub. (1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing or renewing a license under s. 252.23 (2) or (4) (a) or 252.24 (2) or (4) (a).

**(1m)** If an individual who applies for or to renew a license under sub. (1) does not have a social security number, the individual, as a condition of obtaining the license, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

**(2)** The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

**(3)** Except as provided in sub. (1m), the department shall deny an application for the issuance or renewal of a license specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

**(4)** The department shall deny an application for the issuance or renewal of a license specified in sub. (1), or shall revoke the license specified in sub. (1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the license is liable for delinquent taxes.

**History:** 1997 a. 237; 1999 a. 9.

**252.245 Agent status for local health departments.**

**(1)** In the administration and enforcement of ss. 252.23 and 252.24, the department may enter into a written agreement with a local health department with a jurisdictional area that has a population greater than 5,000, which designates the local health department as the department's agent in issuing licenses to and making investigations or inspections of tattooists and tattoo establishments and body piercers and body-piercing establishments. In a jurisdictional area of a local health department without agent status, the department of health and family services may issue licenses, collect license fees established by rule under ss. 252.23 (4) (a) and 252.24 (4) (a) and make investigations or inspections of tattooists and tattoo establishments and body piercers and body-piercing establishments. If the department designates a local health department as its agent, the department or local health department may require no license for the same operations other than the license issued by the local health department under this subsection. If the designation is made and the services are furnished, the department shall reimburse the local health department furnishing the service at the rate of 80% of the net license fee per license per year issued in the jurisdictional area.

**(2)** A local health department designated as the department's agent under this section shall meet standards promulgated under ss. 252.23 (4) (a) and 252.24 (4) (a). The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department designated as the department's agent fails to meet the standards, the department of health and family services may revoke its agent status.

**(3)** The department shall provide education and training to agents designated under this section to ensure uniformity in the enforcement of s. 252.23 or 252.24 and rules promulgated under s. 252.23 or 252.24

**(4)** Except as provided in sub. (4m), a local health department designated as the department's agent under this section shall establish and collect the license fee for each tattooist or tattoo establishment and for each body piercer or body-piercing establishment. The local health department may establish separate fees for preinspections of new tattoo or body-piercing establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the tattooists and tattoo establishments or body piercers and body-piercing establishments, plus the state fee established under sub. (9).

**(4m)** A local health department designated as the department's agent under this section may contract with the department of health and family services for the department of health and family services to collect fees and issue licenses under s. 252.23 or 252.24. The department shall collect from the local health department the actual and reasonable cost of providing the services.

**(5)** If, under this section, a local health department becomes an agent or its agent status is discontinued during a licensee's license year, the department of health and family services and the local health department shall divide any license fee paid by the licensee for that license year according to the proportions of the license year occurring before and after the local health department is designated as an agent or the agent status is discontinued. No additional fee may be required during the license year due to the change in agent status.

**(6)** A village, city or county may enact ordinances and a local board of health may adopt regulations regarding the licensees and premises for which the local health department is the designated agent under this section, which are stricter than s. 252.23 or 252.24 or rules promulgated by the department of health and family services under s. 252.23 or 252.24. No such provision may conflict with s. 252.23 or 252.24 or with department rules.

**(7)** This section does not limit the authority of the department to inspect establishments in jurisdictional areas of local health departments that are designated as agents if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

**(8)** The department shall hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in the jurisdictional area of a local health department that is designated as the department's agent under this section appeals to the department of health and family services alleging that a license fee for a tattooist or tattooist establishment or for a body piercer or body-piercing establishment exceeds the license issuer's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the tattooist or tattooist establishment or to the body piercer or body-piercing establishment.

**(9)** The department shall promulgate rules establishing state fees for its costs related to setting standards under ss. 252.23 and 252.24 and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under sub. (4), collect the state fees and reimburse the department for the state fees collected. For tattooists or tattoo establishments and for body piercers or body-piercing establishments, the state fee may not exceed 20% of the license fees established under s. 252.23 (4) (a) or 252.24 (4) (a).

**History:** 1995 a. 468.

**252.25 Violation of law relating to health.** Any person who willfully violates or obstructs the execution of any state statute or rule, county, city or village ordinance or departmental order under this chapter and relating to the public health, for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than \$500 or both.

**History:** 1981 c. 291; 1993 a. 27 s. 300; Stats. 1993 s. 252.25.