

CHAPTER 11
HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION AND
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

641—11.1(139A,141A) Definitions. For the purpose of rules 641—11.1(139A,141A) to 641—11.34(915), the following definitions shall apply:

“*AIDS*” means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*AIDS-related condition*” means any condition resulting from HIV infection that meets the definition of AIDS as established by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*Blood bank*” means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

“*CDC*” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*CLIA*” means Clinical Laboratory Improvement Amendments as administered by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

“*Clinical laboratory*” means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

“*Confirmed positive test*” means a reactive result or detectable quantity on any HIV-related test, including an antibody test, an antigen test, a culture, a nucleic acid amplification test, or other test or combination of tests, that is considered to be confirmatory according to prevailing medical technology and algorithms or guidance from CDC. When the confirmed positive test involves more than one test, all test results should be included in any reports to the department.

“*Department*” means the Iowa department of public health.

“*Director of a plasma center, blood bank, clinical laboratory, or public health laboratory*” means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

“*Emergency medical services personnel*” means “emergency medical care provider” as defined in 641—131.1(147A).

“*Health care facility*” means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

“*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or licensed as a physician assistant, dental hygienist, or acupuncturist.

“*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

“*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

“*HIV infection*” means having acquired the human immunodeficiency virus.

“*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

“*Laboratory*” means a clinical or public health laboratory, a plasma center, or a blood bank inside or outside the boundaries of Iowa.

“*Physician*” means a person currently licensed pursuant to Iowa Code chapter 148.

“*Plasma center*” means a facility that conducts plasmapheresis.

“*Plasmapheresis*” means the removal of blood from a human being to obtain plasma with the subsequent reinfusion of the remaining formed elements into the donor, but excludes such a procedure performed for the purpose of improving the health of the donor.

“Public health laboratory” means a laboratory operated by an agency of city, county or state government for the purpose of supporting disease control activities.

“Sexually transmitted disease or infection” means “sexually transmitted disease or infection” as defined in 641—1.1(139A).

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.2(141A) HIV testing—obtaining consent—voluntary HIV-related tests for adults who are not pregnant.

11.2(1) Prior to conducting a voluntary HIV-related test on an adult, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

11.2(2) All adults who are able must give consent for an HIV test, but a separate written consent solely for the purpose of HIV testing shall not be required. If an adult signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an adult has not signed a general consent form for the performance of medical tests and procedures, or if the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing the HIV-related test.

11.2(3) If an adult is unable to give consent, the adult’s legal guardian may provide oral or written consent. If the adult’s legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.2(4) Once an adult has been informed of a confirmed positive HIV-related test, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of the adult with HIV infection.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.3(139A,141A) HIV testing—obtaining consent—voluntary HIV-related tests for minors who are not pregnant.

11.3(1) A minor shall have the legal capacity to act and give consent to the provision of medical care or services for the prevention, diagnosis, or treatment of HIV by a hospital, clinic, or health care provider. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

11.3(2) Prior to conducting a voluntary HIV-related test on a minor, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

11.3(3) A minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor’s legal guardian is required to be informed by the health facility conducting the test. Health facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.

11.3(4) Prior to the test, a minor shall give written consent for performance of the HIV-related test and to the notification of the legal guardian should the test be confirmed as positive.

11.3(5) If a minor is unable to provide consent for an HIV-related test, the minor’s legal guardian may provide oral or written consent for the minor. If the minor’s legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

11.3(6) Once a minor has been informed of a confirmed positive HIV-related test and the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a minor with HIV infection. [ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.4(141A) HIV testing—obtaining consent—voluntary HIV-related tests for pregnant women.

11.4(1) All pregnant women, including minors, shall be tested for HIV infection as part of the routine panel of prenatal tests. The health care provider requesting the test shall notify a pregnant woman that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test. No written or oral consent shall be required.

11.4(2) The testing shall occur as early as possible during each pregnancy.

11.4(3) The health care provider requesting the test shall make information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus available to all pregnant women.

11.4(4) A pregnant woman who is a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the health facility conducting the test. Health facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.

11.4(5) If a pregnant woman objects to and declines the test, the decision shall be documented in the pregnant woman's medical record by the health care provider. A health care provider shall encourage women who decline the test early in prenatal care to be tested at a subsequent visit.

11.4(6) Once a pregnant woman has been informed of a confirmed positive HIV-related test and, if the pregnant woman is a minor, the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a pregnant woman with HIV infection. [ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.5(141A) HIV test results—post-test counseling.

11.5(1) At any time that the subject of an HIV-related test is informed of a confirmed positive test result, the health care provider who requested the test or other designated personnel shall initiate counseling concerning the emotional and physical health effects of HIV infection. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject of the test shall be given information concerning where to obtain additional counseling. If a legal guardian of the subject of the test provided consent to the test, the counseling shall be given to the legal guardian.

11.5(2) Post-test counseling requirements do not apply to any of the following:

a. The performance of an HIV-related test by a health care provider or health facility when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in Iowa Code chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to Iowa Code section 505.15.

c. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is deceased and a documented significant exposure has occurred.

d. The performance of an HIV-related test by a health care provider or health facility when the subject of the test is unable to provide consent and the health care provider or health facility provided consent for the subject of the test.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.6(141A) Reporting of diagnoses and HIV-related tests, events, and conditions to the department.

11.6(1) The following constitute reportable events related to HIV infection:

a. A test result indicating HIV infection, including:

(1) Confirmed positive results on any HIV-related test or combination of tests, including antibody tests, antigen tests, cultures, and nucleic acid amplification tests.

(2) A positive result or report of a detectable quantity on any other HIV detection (non-antibody) tests, and results of all viral loads, including nondetectable levels.

b. AIDS and AIDS-related conditions, including all levels of CD4+ T-lymphocyte counts.

c. Birth of an infant to an HIV-infected mother (perinatal exposure) or any (positive, negative, or undetectable) non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger.

d. Death resulting from an AIDS-related condition, or death of a person with HIV infection.

11.6(2) Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a plasma center, blood bank, clinical laboratory or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department.

11.6(3) Within seven days of the receipt of a test result indicating HIV infection, which has been confirmed as positive according to prevailing medical technology, or immediately after the initial examination or treatment of a person infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

11.6(4) Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

11.6(5) Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.

11.6(6) Within seven days of the birth of an infant to an HIV-infected mother or a receipt of a laboratory result (positive, negative, or undetectable) of a non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger, the attending physician shall make a report to the department on a form provided by the department.

11.6(7) The report shall include:

a. The person's name, address, date of birth, gender, race and ethnicity, marital status, and telephone number.

b. The name, address and telephone number of the plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test, if a test was performed.

c. The address of the physician or other health care provider who requested the test.

d. If the person is female, whether the person is pregnant.

11.6(8) All persons who experience a reportable event while receiving services in the state, regardless of state of residence, shall be reported.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.7(141A) Penalties.

11.7(1) A director of a plasma center, blood bank, clinical laboratory or public health laboratory or a physician or other health care provider who repeatedly fails to file the report required pursuant to these rules is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the

notification that the individual may provide information to the department to explain or dispute the failure to report.

11.7(2) A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under these rules is subject to a civil penalty of not more than \$1,000 per occurrence. The department shall not impose the penalty without prior written notice and opportunity for hearing.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.8(141A) Immunity. An individual who makes a report in good faith pursuant to these rules is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.1(139A,141A) to 641—11.8(141A) are intended to implement Iowa Code sections 139A.35, 141A.4, 141A.6, 141A.7 and 141A.10.

641—11.9 and 11.10 Reserved.

TRAINING PROGRAMS

641—11.11(135) Purpose. The purpose of this rule is to describe the required content of AIDS training programs and to identify the groups of personnel involved.

11.11(1) Nonemergency personnel. Within six months of their initial employment, all supervisory and patient care personnel of any agency listed below shall complete a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection:

- a. A licensed hospice,
- b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or
- c. An agency which provides respite care services and receives state funds for respite care services.

11.11(2) Content. Training programs must address the following topics:

- a. HIV disease processes,
- b. Signs and symptoms,
- c. Transmission,
- d. High-risk activities,
- e. Prevention recommendations, and
- f. Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.

11.11(3) Emergency and law enforcement personnel. All emergency medical services personnel, firefighters, and law enforcement personnel shall complete a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection.

11.11(4) Content. Training programs must address the following topics:

- a. HIV disease processes,
- b. Signs and symptoms,
- c. Transmission,
- d. High-risk activities,
- e. Prevention recommendations, and
- f. Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.

This rule is intended to implement Iowa Code section 135.11.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.12 to 11.14 Reserved.

PARTNER NOTIFICATION SERVICES AND DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

641—11.15(139A,141A) Purpose. The purpose of rules 641—11.15(139A,141A) to 641—11.18(141A) is to establish a voluntary partner notification program, including a procedure to allow a physician or the department to notify an identifiable third party of an HIV-infected person directly that the party has been exposed to HIV when the HIV-infected person will not participate in the voluntary partner notification program.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.16(139A,141A) Definitions. For the purpose of rules 641—11.15(139A,141A) to 641—11.18(141A), the following definitions shall apply:

“Identifiable third party” means a sexual partner of or a person who shares drug injecting equipment with a person who has been diagnosed with HIV infection.

“Partner notification” means services provided to a person who has tested positive for a sexually transmitted disease or infection or to the person’s sexual or needle-sharing partners or social contacts. These services include, but are not limited to, counseling about the nature of the disease, modes of transmission, and risk reduction techniques; treatment or linkage to medical care and treatment; assessment for and referral to social or medical services; elicitation of exposed partners’ names and contact information; testing for other diseases or conditions; and provision of or referral to other prevention services.

“Significant exposure” means “significant exposure” as defined in 641—11.22(139A).

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.17(139A,141A) Partner notification services by the department.

11.17(1) The department shall maintain a partner notification program for persons known to have tested positive for sexually transmitted diseases or infections. In administering the program, the department shall provide for the following:

a. A physician or other health care provider shall encourage a person who tests positive for a sexually transmitted disease or infection to refer for counseling and testing any party with whom the newly diagnosed person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person who tests positive for a sexually transmitted disease or infection may provide to the department any relevant information provided by the tested person regarding any party with whom the tested person has had sexual relations or has shared drug injecting equipment.

11.17(2) When making contact with partners of a person with a sexually transmitted disease or infection, the department shall not disclose the identity of the person who provided the names of the partners and shall protect the confidentiality of the partners who are contacted.

11.17(3) The department may delegate its partner notification duties under subrule 11.17(1) for persons who have tested positive for HIV infection to a local health authority unless the authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.17(4) The department may delegate its partner notification duties under subrule 11.17(1) for persons who have tested positive for sexually transmitted diseases other than HIV infection to a local health authority or a physician or other health care provider unless the authority or physician or other health care provider refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

11.17(5) In addition to the provisions for partner notification provided under these rules and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to Iowa Code sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to Iowa Code chapter 691 who determines through an investigation that a deceased person was infected with HIV may notify

directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.18(141A) Direct notification of an identifiable third party by a physician or the department.

11.18(1) Direct notification shall be used when an HIV-infected person is having continuing contact with a sexual or needle-sharing partner who is unaware of the person's infection and when both of the following situations exist:

a. A physician for the HIV-infected person is of the good-faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of drug injecting equipment poses an imminent danger of HIV transmission to the third party.

b. When the physician believes in good faith that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.18(2) The department or a physician may reveal the identity of an HIV-infected person pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with an HIV-infected person.

11.18(3) When the physician is of the good-faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

a. Directly by the physician in accordance with subrules 11.18(4), 11.18(5) and 11.18(7), or

b. By the department at the request of the physician in accordance with subrules 11.18(6) and 11.18(7).

11.18(4) Notification by the physician. Prior to notification of a third party by an HIV-infected person's physician, the physician shall make reasonable efforts to inform, in writing, the HIV-infected person. The written information shall state that, due to the nature of the person's continuing contact through sexual intercourse or the sharing of drug injecting equipment with the third party and the physician's belief that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to the HIV-infected person:

a. The nature of the disclosure and the reason for the disclosure.

b. The anticipated date of disclosure.

c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the HIV-infected person shall be deemed satisfied when the physician delivers the written notice in person or directs a written notice to the HIV-infected person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.18(5) When performed by the HIV-infected person's physician, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the physician at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(6) Notification by the department.

a. The physician attending the HIV-infected person shall provide by telephone to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting equipment. The information may include the third party's name, address, telephone number, and any other locating information

known to the physician. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

b. Notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the department representative. The nature of the matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

11.18(7) Confidentiality. The HIV-infected person's physician and the department shall protect the confidentiality of the third party and the HIV-infected person. The identity of the HIV-infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to HIV. If the identity of the HIV-infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with HIV has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

11.18(8) Immunity. A health care provider attending an HIV-infected person has no duty to disclose to or to warn third parties of the dangers of exposure to HIV through contact with the HIV-infected person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of the HIV-infected person.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.15(139A,141A) to 641—11.18(141A) are intended to implement Iowa Code sections 139A.33 and 141A.5.

641—11.19 and 11.20 Reserved.

CARE PROVIDERS EXPOSED TO CONTAGIOUS OR INFECTIOUS DISEASES

641—11.21(139A) Purpose. The purpose of these rules is to implement Iowa Code section 139A.19, relating to care providers who are exposed to contagious or infectious diseases.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.22(139A) Definitions. For the purpose of rules 641—11.21(139A) to 641—11.26(139A), the following definitions shall apply:

"*AIDS*" means acquired immune deficiency syndrome as defined by CDC.

"*Blood-borne viral hepatitis*" means hepatitis B or hepatitis C.

"*Care provider*" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in Iowa Code section 147A.1, firefighter, or peace officer. "Care provider" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in Iowa Code section 613.17.

"*CDC*" means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

"*Certification of a significant exposure report*" means the determination by an authorized infection preventionist, occupational health professional, or other personnel trained in infection control or infectious disease medicine and designated by a facility to review significant exposure reports that the incident described by the exposed care provider meets the definition of a significant exposure as defined in this rule.

"*Contagious or infectious disease*" means blood-borne viral hepatitis, meningococcal disease, AIDS or HIV, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the

disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines from CDC.

“Department of corrections” means the Iowa department of corrections.

“Designated representative” means a person who is designated by a department, agency, division, or service organization to act on behalf of the exposed care provider as a liaison with the facility that received the source patient when the exposure occurred in the field or during patient transport.

“Exposure” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

“HBV” means hepatitis B virus.

“Health care facility” means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

“Health care provider” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

“HIV” means the human immunodeficiency virus identified as the causative agent of AIDS.

“Home health services” means health care services provided by a care provider in a patient’s home or other residence.

“Infectious bodily fluids” means bodily fluids capable of transmitting HIV as listed in “Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers,” found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent CDC statements on this topic. To prevent HIV and blood-borne viral hepatitis disease transmission, this reference indicates that standard precautions should be followed for exposure to the following infectious bodily fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and blood-borne viral hepatitis disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

“Respite care services” means health care services provided by a care provider in a patient’s home or other residence on a short-term, temporary basis as relief to those who are caring for family members.

“Significant exposure” means a situation in which there is a risk of contracting disease through exposure to a patient’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by CDC. Exposure includes contact with blood or other infectious bodily fluids to which standard precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures include:

1. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto a mucous membrane (mouth, nose, or eyes) of the care provider.
2. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood, bloody fluids, or other infectious bodily fluids.

“Significant exposure report” means the Report of Exposure to HIV or Other Infectious Disease form provided by the department. This is the only form authorized to be used to document a significant exposure to infectious bodily fluids such that the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease, and is deemed to consent to notification of the care provider of the results of the test, pursuant to Iowa Code section 139A.19.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.23(139A,141A) Exposures in non-clinical settings.

11.23(1) If a care provider sustains a significant exposure from a patient while rendering health care or other services, other than home-health or respite care services, outside of a health care facility or hospital, the care provider shall file a significant exposure report as soon as reasonably possible following the exposure. When the exposure occurred outside a clinical setting, a care provider who has sustained

a significant exposure should file this report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.

11.23(2) The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission of a significant exposure report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, the source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

11.23(3) Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to the source patient when the source patient is delivered to the facility and the exposure occurred prior to the delivery. The policies and procedures shall include the possibility for the care provider to designate a representative to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the source patient. The designated representative shall inform the hospital, clinic, or other health care facility, institution administered by the department of corrections, or jail of those parties who received the notification and, following receipt of this information and upon request of the source patient, the hospital, clinic, or other health care facility, institution administered by the department of corrections, or jail shall inform the source patient of the parties to whom notification was provided.

11.23(4) The hospital, clinic, or other health care facility to whom the source patient is delivered shall conduct the test. If the source patient is delivered to an institution administered by the department of corrections, the test shall be conducted by the staff physician of the institution. If the source patient is delivered to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. If the source patient was deemed to consent upon certification of a significant exposure report, the sample and test results shall only be identified by a number.

11.23(5) If a test result is positive, the hospital, clinic, or other health care facility, or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the source patient.

11.23(6) If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

11.23(7) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease. The notification shall not include the name of the source patient unless the patient consents. If the care provider who sustained a significant exposure determines the identity of a source patient who has been diagnosed or confirmed as having a contagious or infectious disease, the identity of the source patient shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the source patient.

11.23(8) This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's,

clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

11.23(9) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.23(10) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A.9.

11.23(11) The employer of a care provider who sustained a significant exposure shall pay the cost of testing for the source patient and for the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist a source patient and an exposed care provider in finding resources to pay for the costs of the testing when a care provider was exposed while rendering direct aid without compensation.

11.23(12) A hospital's, clinic's, other health care facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to a patient who was the source of the significant exposure.

11.23(13) Notwithstanding subrule 11.23(12), the hospital, clinic, or other health care facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health care facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source patient's contagious or infectious disease status to the exposed care provider.

11.23(14) Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to Iowa Code section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under Iowa Code chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.24(139A,141A) Exposures in clinical settings.

11.24(1) If a care provider sustains a significant exposure from a patient while rendering health care services or other services within a hospital, clinic, or other health care facility, or while delivering home-health or respite care services, the care provider shall file a report as soon as reasonably possible following the exposure. A care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other office designated by the facility in which the exposure occurred, or by the facility which has oversight for the delivery of home-health or respite care services.

a. If a general consent form was signed and in effect at the time of the significant exposure and the source patient is an adult, a significant exposure report form shall not be required to document the significant exposure. The health care facility or hospital may use an employee incident report or other similar form for this purpose. The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission and review of an employee incident report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, a source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed. Prior to conducting an HIV-related test, the health care facility or hospital shall provide information to the source patient concerning testing and a means of obtaining additional information regarding HIV infection and risk reduction pursuant to Iowa Code section 141A.6.

b. If no consent form was signed or in effect at the time of the exposure, or if the source patient is a minor, the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test upon submission of a significant exposure report form and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. Source patients shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

11.24(2) Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms or other employee incident report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to a patient during the admission, care, or treatment of the patient at the facility, or while delivering home-health or respite care services.

11.24(3) The hospital, clinic, or other health care facility where exposure occurred or which has oversight for the delivery of home-health or respite care services shall conduct the test. If a general consent form was signed and in effect and the source patient is an adult, the sample and test results shall be identified by name. If the source patient was deemed to consent to a test and to notification of the care provider upon certification of a significant exposure report pursuant to subrule 11.24(1) because no general consent was signed and in effect at the time of the exposure or because the source patient is a minor, the sample and test results shall be identified only by a number.

11.24(4) If a test result is positive, the hospital, clinic, or other health care facility or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The reports to the department shall include the name of the source patient.

11.24(5) If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health care facility or other person performing the test shall notify the legal guardian of the minor.

11.24(6) The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease.

11.24(7) This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

11.24(8) The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

11.24(9) The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A.9.

11.24(10) The employer of a care provider who sustained a significant exposure shall pay the cost of testing for the source patient and for the testing of the care provider, if the significant exposure was sustained during the course of employment.

11.24(11) A hospital's, clinic's, other health care facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the patient who was the source of the significant exposure.

11.24(12) Notwithstanding subrule 11.24(11), the hospital, clinic, or other health care facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health care facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source patient's contagious or infectious disease status to the exposed care provider.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.25(139A) Immunity. Hospitals, clinics, health care providers, or other persons participating in good faith in complying with provisions authorized or required under these rules are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.26(139A) Duty to test. A hospital, clinic, other health care facility, health care provider, or other person who is authorized to perform a test under these rules has no duty to perform the test authorized.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.21(139A) to 641—11.26(139A) are intended to implement Iowa Code section 139A.19.

641—11.27 to 11.29 Reserved.

HIV-RELATED TEST FOR CONVICTED OR ALLEGED SEXUAL-ASSAULT OFFENDERS AND VICTIMS

641—11.30(915) Purpose. The purpose of these rules is to describe procedures to follow for testing of a convicted or alleged offender for HIV pursuant to Iowa Code chapter 915, and to establish procedures to follow for providing counseling, health care, and support services to the victim.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.31(915) Definitions. For the purpose of rules 641—11.30(915) to 641—11.34(915), the following definitions shall apply:

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

"Alleged offender" means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a result of actions that would constitute a sexual assault.

"Authorized representative" means an individual who is authorized by the victim to request an HIV-related test of a convicted or alleged offender and who is any of the following:

1. The parent, guardian, or custodian of the victim if the victim is a minor.
2. The physician of the victim.
3. The victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results.

4. The victim's spouse.

5. The victim's legal counsel.

"Convicted offender" means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

"Department" means the Iowa department of public health.

"Department of corrections" means the Iowa department of corrections.

"Division" means the crime victim assistance division of the office of the attorney general.

"HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

“*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

“*Petitioner*” means a person who is the victim of a sexual assault which resulted in alleged significant exposure, or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

“*Sexual assault*” means sexual abuse as defined in Iowa Code section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

“*Significant exposure*” means contact of the victim’s ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration, of the convicted or alleged offender. “Significant exposure” is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender’s penis into the victim’s vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

“*Victim*” means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. “Victim” includes an alleged victim.

“*Victim counselor*” means a person who is engaged by a crime victim center as defined in Iowa Code section 915.20A, who is certified as a counselor by the crime victim center, and who has completed at least 20 hours of training provided by the Iowa coalition against sexual assault or a similar agency.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.32(915) HIV-related test—convicted or alleged sexual assault offender.

11.32(1) Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim’s interest in all proceedings under Iowa Code chapter 915.

11.32(2) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.31(915).

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

11.32(3) If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.31(915) and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

11.32(4) Upon receipt of the petition or application, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the nature,

reliability and significance of the HIV-related test and of any test results of the convicted or alleged offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

11.32(5) A hearing under this rule shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

a. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recording shall be taken of all court hearings unless waived by the parties.

11.32(6) Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of evidence.

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

11.32(7) A convicted or alleged offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.33(915) Medical examination costs. The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the victim compensation fund as established in Iowa Code chapter 915. Information is available from the department of justice, crime victim assistance program, telephone (515)281-5044.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.34(915) Testing, reporting, and counseling—penalties.

11.34(1) The physician or other practitioner who orders the testing for HIV of a convicted or alleged offender under Iowa Code chapter 915 shall disclose the results of the test to the convicted or alleged offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner.

11.34(2) Prior to ordering an HIV-related test on a convicted or alleged offender, the physician or practitioner shall provide information to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code section 141A.6. The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141A.6.

11.34(3) At any time that the subject of an HIV-related test is informed of confirmed positive test results, the physician or other practitioner who ordered the test shall initiate counseling concerning the emotional and physical health effects of HIV infection, as required under Iowa Code section 141A.7, and shall make any required reports to the department pursuant to Iowa Code section 141A.6.

a. The physician or other practitioner shall encourage an HIV-infected person to participate in the voluntary partner notification program pursuant to rule 641—11.17(139A,141A).

b. The physician or other practitioner may provide to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting equipment.

11.34(4) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.30(915) to 641—11.34(915).

11.34(5) Results of a test performed under 641—11.30(915) to 641—11.34(915), except as provided in subrule 11.34(6), shall be disclosed only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915), who may use the results to file charges of criminal transmission of HIV. Results of a test performed under these rules shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.30(915) to 641—11.34(915) is subject to the confidentiality provision of Iowa Code section 141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section 141A.9.

11.34(6) If HIV-related testing is ordered under 641—11.30(915) to 641—11.34(915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.34(6) shall be released only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner; the physician of the victim if requested by the victim; and the county attorney, who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV.

11.34(7) The court shall not consider the disclosure of an alleged offender's serologic status to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.34(8) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.34(9) The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.34(10) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in 641—11.30(915) to 641—11.34(915), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.30(915) to 641—11.34(915), and the rights to a predischarge hearing and to appeal provided under Iowa Code chapter 915 shall apply.

11.34(11) HIV-related testing required under 641—11.30(915) to 641—11.34(915) shall be conducted by the state hygienic laboratory.

11.34(12) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under Iowa Code section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.30(915) to 641—11.34(915).

11.34(13) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.34(14) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

11.34(15) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.34(16) A person to whom disclosure of a convicted offender's HIV-related test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of \$1,000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the tested subject, and all documentation shall be maintained in a confidential manner.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.30(915) to 641—11.34(915) are intended to implement Iowa Code sections 915.40 to 915.43.

641—11.35 to 11.39 Reserved.

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

641—11.40(141A) Definitions. For purposes of rules 641—11.40(141A) to 641—11.49(141A), the following definitions shall apply:

"ADAP advisory committee" means the committee appointed by the bureau of HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding ADAP.

"ADAP formulary" means the list of drugs approved for use in ADAP by the bureau upon recommendation of the ADAP advisory committee.

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“AIDS drug assistance program” or *“ADAP”* means the Iowa AIDS drug assistance program administered by the bureau of HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

“Bureau” means the bureau of HIV, STD, and hepatitis within the department.

“Deductible” means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

“Department” means the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“Health insurance assistance program” means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

“HIV” means the human immunodeficiency virus identified as the causative agent of AIDS.

“Household” means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

“Medication assistance program” means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

“Modified adjusted gross income” or *“MAGI”* means the calculation of income based upon applicable Internal Revenue Code and regulations of the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

“Payer of last resort” means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.41(141A) Purpose. The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.42(141A) Ensuring payer of last resort. To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client information for persons enrolled in Medicaid.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.43(141A) Eligibility requirements.

11.43(1) An applicant is eligible to participate in the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no health insurance to cover the cost of the drugs that are or may become available from ADAP;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual MAGI that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and

Human Services for the size of the household (this income shall be determined after a \$500 work-related allowance is deducted from the monthly salary of an employed person with HIV/AIDS);

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

11.43(2) An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

a. Applies for enrollment in ADAP on a form provided by the department;

b. Has creditable health insurance coverage;

c. Is currently being prescribed a drug on the ADAP formulary;

d. Has an annual MAGI that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household;

e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

f. Is a resident of Iowa.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.44(141A) Enrollment process.

11.44(1) The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

11.44(2) An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.45(141A) Discontinuation of services.

11.45(1) The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

a. The enrolled individual dies;

b. The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;

c. The enrolled individual's annual MAGI increases to an amount above the respective ADAP component's income guidelines;

d. The enrolled individual establishes residency outside the state of Iowa;

e. The enrolled individual does not request drugs over a 90-day period; or

f. The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

11.45(2) An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.46(141A) Distribution requirements.

11.46(1) Enrolled individuals shall be eligible to receive financial assistance only for drugs that:

a. Have received Food and Drug Administration approval to treat HIV or prevent the deterioration of health due to HIV, coinfections, or opportunistic infections; and

b. Are on the ADAP formulary.

11.46(2) The primary care provider shall write each drug prescription for an applicant or enrolled individual.

11.46(3) The enrolled individual must obtain the approved drug from the department's contracted pharmacy unless an exception to this requirement is granted by the department.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.47(141A) ADAP waiting list.

11.47(1) If an applicant is eligible for ADAP and sufficient funds are available to provide services to the applicant, the department shall enroll the applicant. If the applicant is eligible for ADAP and sufficient funds are not available to provide services to the applicant, the department shall place the applicant's name on the ADAP waiting list in the order provided for in this rule.

11.47(2) The department shall place names on the waiting list in chronological order based upon the date of receipt of a completed application by the department.

11.47(3) To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms semiannually.

11.47(4) The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.48(141A) Appeals. The department shall cause an applicant to be notified of the department's decision to approve or deny an application or to place an applicant on the ADAP waiting list. In the event an applicant is dissatisfied with the department's decision, the applicant may submit a formal appeal in writing to the ADAP advisory committee. Such request shall be delivered in person or shall be mailed by certified mail, return receipt requested, to ADAP Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Upon receipt of such an appeal, the ADAP advisory committee shall review the case and issue a written determination within 15 days of receipt of the request. The decision shall refer to the applicant by initials or other nonidentifying means. The ADAP advisory committee's decision shall be final and binding. This appeal process does not constitute a contested case proceeding as defined in Iowa Code chapter 17A.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

641—11.49(141A) Confidentiality. The ADAP application and all information received or maintained by the department in connection with ADAP shall be considered confidential information in accordance with Iowa Code section 141A.9.
[ARC 1215C, IAB 12/11/13, effective 1/15/14]

Rules 641—11.40(141A) to 641—11.49(141A) are intended to implement Iowa Code section 141A.3.

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