

## CHAPTER 252

## COMMUNICABLE DISEASES

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

**252.01 Definitions.** In this chapter:

(1c) “Advanced practice nurse prescriber” means an advanced practice nurse who is certified under s. 441.16 (2) to issue prescription orders.

(1g) “Emergency medical responder” has the meaning given in s. 256.01 (4p).

(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.

(2m) “HIV test” means a test for the presence of HIV or an antibody to HIV.

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

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

(5) “Physician assistant” has the meaning given in s. 448.01 (6).

(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 HIV test result” means a result of an HIV test 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; 2005 a. 187; 2009 a. 209; 2011 a. 161; 2017 a. 12.

**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) Except as provided in ss. 93.07 (24) (e) and 97.59, 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, and public buildings 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. 450.145 (1).

**History:** 1981 c. 291; 1993 a. 27 s. 284; Stats. 1993 s. 252.02; 1999 a. 150 s. 672; 2001 a. 109; 2005 a. 198; 2015 a. 55.

**Cross-reference:** See also ch. DHS 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 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 child care center or nursery school shall, within 30 school days after the date on which the student is admitted, present written evidence to the school, child 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, child care center, or nursery school objecting to the immunization for reasons of health, religion, or personal conviction. At the time any school, child 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, child 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 date on which the student is admitted to a school, child care center, or nursery school, the school, child 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, child care center, or nursery school may exclude from the school, child 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 percent of the students in a child care center, nursery school, or school district who are subject to the requirements of sub. (2) have complied with sub. (2), the child 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 percent of the students in a child care center, nursery school, or school district who are subject to the requirements of sub. (2) have complied with sub. (2), the child 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, child 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, child 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.

(9m) A pharmacist or pharmacy that administers a vaccine under this section to a person 6 to 18 years of age shall update the Wisconsin Immunization Registry established by the department within 7 days of administering the vaccine.

(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; 2009 a. 185; 2015 a. 55.  
**Cross-reference:** See also chs. DHS 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:

**3 Updated 15–16 Wis. Stats.****COMMUNICABLE DISEASES 252.06**

(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) (a) to (p), 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 health agency of a federally recognized American Indian tribe or band may report this information 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 indicate that an individual providing the specimen has a communicable disease, or having a communicable disease, has died, or 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 or to the department.

(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, including forms appropriate for reporting under s. 95.22, 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.

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**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; 2005 a. 198; 2007 a. 97; 2009 a. 28.

**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 related to public health declared by the governor under s. 323.10 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. 323.10, 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. 323.10, 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; 2009 a. 42.

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

**Cross-reference:** See also ch. DHS 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, physician assistant, or advanced practice nurse prescriber 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, physician assistant, or advanced practice nurse prescriber, 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.

(12) From the appropriation account under s. 20.435 (1) (e), the department may expend not more than \$81,100 annually to fund targeted prevention activities for populations at high risk for tuberculosis infection.

**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; 2005 a. 187; 2009 a. 28; 2011 a. 161.

The commonly accepted meanings of “facility” and “confined” indicate that the legislature intended jail to be a permissible placement option under sub. (9) (a) for persons with noninfectious tuberculosis who are noncompliant with a prescribed treatment regimen, provided that no less restrictive alternative exists. If conditions at a particular jail are such that proper care and treatment would be unavailable, or contrary to the prevention of the spread of the disease, jail is not authorized under sub. (9) (a). Whether a facility meets these requirements is a fact-intensive question addressed to the circuit court’s discretion. *City of Milwaukee v. Washington*, 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111, 05–3141.

The “no less restrictive alternative” requirement under sub. (9) (a) 3. applies to the place of confinement as well as the fact of confinement. A court must determine that the place of confinement is a facility where proper care and treatment will be provided, spread of the disease will be prevented, and no less restrictive alternative to the proposed placement exists. If after this analysis two or more placement options remain, a court may consider cost as a factor in making its determination. *City of Milwaukee v. Washington*, 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111, 05–3141.

### 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 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 account under s. 20.435 (1) (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation account under s. 20.435 (1) (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 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; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28.

**Cross-reference:** See also ch. DHS 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, physician assistant, or advanced practice nurse prescriber 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 a physician’s, physician assistant’s, or advanced practice nurse prescriber’s opinion is the noncommunicable stage, the physician, physician assistant, or advanced practice nurse prescriber 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, physician assistant, or advanced practice nurse prescriber. The court 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 968.38 (4) 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 may 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 968.38 (4). If a physician, physician assistant, or advanced practice nurse prescriber 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, physician, physician assistant, or advanced practice nurse prescriber 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, physician assistant, advanced practice nurse prescriber, 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, physician assistant, or advanced practice nurse prescriber 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; 2005 a. 187; 2009 a. 209; 2011 a. 161.

**Cross-reference:** See also ch. DHS 145, Wis. adm. code.

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

(b) “AIDS service organizations” means nonprofit corporations or public agencies that provide, or arrange for the provision of, comprehensive services to prevent HIV infection and comprehensive health and social services for persons who have HIV infection, and that are designated as such by the department under sub. (4).

(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 appropriation accounts under s. 20.435 (1) (a) and (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 per-



sons 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 HIV 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 HIV tests and, if appropriate, tests for the presence of 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, laboratory HIV testing services, and, if appropriate, laboratory testing services for the presence of related viruses.

8. ‘Mike Johnson life care and early intervention services grants.’ The department shall award not more than \$4,000,000 in each fiscal year 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 appropriation account under s. 20.435 (5) (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 account under s. 20.435 (1) (am). All of the following apply to grants awarded under this subdivision:

- a. None of the funds awarded may be used to fund AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual.
- b. None of the funds awarded may be used for political purposes.
- c. Funds awarded shall be used to provide medical care and support services for individuals with HIV.

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. 16.287 (1) (f).

(c) *HIV prevention grants.* 1. From the appropriation account under s. 20.435 (1) (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 account under s. 20.435 (1) (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 percent of the funding to applying organizations that receive funding under par. (a) 8. and 40 percent of the funding to applying community–based organizations that are operated by minority group members, as defined in s. 16.287 (1) (f).

3. From the appropriation account under s. 20.435 (1) (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.

(4) **DESIGNATION OF AIDS SERVICE ORGANIZATIONS.** The department shall designate AIDS service organizations and specify the geographical area of the state in which they are designated to provide services.

**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; 2005 a. 25; 2007 a. 20; 2009 a. 28, 209, 221; 2011 a. 32; 2013 a. 20; 2015 a. 55; 2017 a. 59.

**252.13 HIV tests.** (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 in accordance with the conditions under s. 252.15 (2m) (a), subject that blood, plasma, product or derivative to an HIV test. 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 an HIV test.

(1r) For the purposes of this section, the state epidemiologist shall make separate findings of medical significance and sufficient reliability for an HIV test or a series of HIV tests 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 HIV 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 administer an HIV test to 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 an HIV test under sub. (1m) and performance of the test has yielded a negative, validated HIV test result.

**History:** 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13; 2009 a. 209.

**252.133 HIV testing for anatomical gifts.** (1) Except as provided in sub. (2), a health care provider, as defined in s. 252.15 (1) (ar), who procures, processes, distributes, or uses a human body part or human tissue that is the subject of an anatomical gift under s. 157.06 shall have an HIV test performed on the donor of the body part or tissue in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use an HIV test that yields a validated HIV test result. If the validated HIV test result of the donor is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

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

**History:** 2009 a. 209 ss. 30, 45, 46; 2013 a. 166 s. 77.

**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.

10. A partnership of any provider specified under subs. 1. to 8.

11. A corporation of any provider specified under subs. 1. to 8. that provides health care services.

12. A cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility.

13. An emergency medical services practitioner licensed under s. 256.15 (5).

14. A physician assistant.

15. An emergency medical 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. 45.50, 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 HIV test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive, validated HIV test result, 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.

(2m) If a person declines to be subjected to an HIV test, a health care provider may not use the fact that the person declined an HIV test as a basis for denying services or treatment, other than an HIV test, to the person.

(3) 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 indi-



vidual 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 \$10,000 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; 2005 a. 22; 2007 a. 130; 2009 a. 165, 209; 2011 a. 161; 2017 a. 12.

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

(ac) “Authorized representative” means any of the following:

1. A health care agent, as defined under s. 155.01 (4), acting in accordance with a power of attorney for health care that is in effect under s. 155.05 (2).

2. A person named by the court under ch. 48 or 54 or ch. 880, 2003 stats., having the duty and authority of guardianship.

3. A parent or legal custodian of a person who is under 14 years of age.

4. For a person who is unable to communicate due to a medical condition, the person’s closest living relative or another individual with whom the person has a meaningful social and emotional relationship.

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

(af) “Emergency medical services practitioner” has the meaning given in s. 256.01 (5).

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

(am) “Health care professional” means a physician or physician assistant 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) (a) to (hm) and (i) to (p).

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).

(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) “Significant exposure” means contact that 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) “Standard 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.

**(2m) CONSENT FOR HIV TESTING.** (a) Except as provided in par. (b), and subject to par. (c), a health care provider, blood bank, blood center, or plasma center may not subject a person to an HIV test unless all of the following conditions are satisfied:

1. The health care provider, blood bank, blood center, or plasma center notifies the person or the person’s authorized representative that the person will be subjected to an HIV test unless the person or the person’s authorized representative declines the test.

2. The health care provider, blood bank, blood center, or plasma center offers the person or the person’s authorized representative a brief oral or written explanation or description of HIV infection; HIV test results; requirements under subs. (7) (b) and (7m) for reporting HIV test results; treatment options for a person who has a positive HIV test result; and services provided by AIDS service organizations, as defined in s. 252.12 (1) (b), and other community-based organizations for persons who have a positive HIV test result.

3. If a health care provider offers to perform an HIV test, the health care provider notifies the person or the person’s authorized representative that the person or the person’s authorized representative may decline the HIV test and that, if the person or the person’s authorized representative declines the HIV test, the health care provider may not use the fact that the person declined an HIV test as a basis for denying services or treatment, other than an HIV test, to the person.

4. The health care provider, blood bank, blood center, or plasma center provides the person or the person’s authorized representative an opportunity to ask questions and to decline the HIV test.

5. After complying with applicable conditions under subs. 1. to 4., the health care provider, blood bank, blood center, or plasma center verifies that the person or the person’s authorized representative understands that an HIV test will be performed on the person and that the decision of the person or the person’s authorized representative regarding whether to have an HIV test performed is not coerced or involuntary.

(b) Paragraph (a) does not apply to any of the following:

1. HIV testing of any body fluid or tissue that is performed by the department, a laboratory certified under 42 USC 263a, or a health care provider, blood bank, blood center, or plasma center for the purpose of research, 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.

2. HIV testing of a resident or patient 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), if the medical director of the center or institute 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 and if the medical director provides the resident or patient, or the resident’s or patient’s guardian, an explanation of the HIV test result.

3. HIV testing by a health care professional acting under an order of the court under sub. (5j) or s. 938.296 (4) or (5) or 968.38 (4) or (5). No sample used for laboratory test purposes under this subdivision may disclose the name of the HIV test subject, and the HIV test results may not be made part of the individual’s permanent medical record.

4. HIV testing in cases of significant exposure, as provided under sub. (5g) or (5j).

5. HIV testing of a donor of a human body part or human tissue that is required under s. 252.133.

(c) If the subject of an HIV test is a minor who is 14 years of age or older, a health care provider, blood bank, blood center, or plasma center shall provide the notifications and offer the information under par. (a) 1. to 4. to the minor or his or her authorized representative, and only the minor or his or authorized representative may consent to or decline an HIV test under par. (a).

**(2r) PROHIBITION AGAINST CONDITIONING HIV TESTING ON DISCLOSURE.** A health care provider may not require a person to authorize disclosure of HIV test results as a condition of administering an HIV test to the person.

**(3m) CONFIDENTIALITY AND DISCLOSURE OF HIV TEST RESULTS.** (a) The subject of an HIV test or the subject's authorized representative may disclose the results of the subject's test to anyone.

(b) Except as provided under par. (d) or (e), a person who is neither the subject of the HIV test nor the subject's authorized representative may not disclose the subject's HIV test results unless the subject of the HIV test or his or her authorized representative has signed authorization for the disclosure that contains all of the following:

1. The name of the subject of the HIV test.
2. Specification of the information that may be disclosed.
3. The name of the person authorized to make the disclosure.
4. The name of the person to whom the disclosure is authorized.
5. The signature of the subject of the HIV test or the signature of the subject's authorized representative.
6. The date the authorization is signed as provided under subd. 5.
7. The time period during which the authorization for disclosure is effective.

(c) If the subject of an HIV test is a minor who is 14 years of age or older, only the minor or his or her authorized representative may exercise the test subject's authority to disclose HIV test results under par. (a) or to authorize disclosure of HIV test results under par. (b).

(d) Except as provided under par. (f), a person who is neither the subject of an HIV test nor the subject's authorized representative may without written authorization from the test subject or authorized representative under par. (b) disclose the subject's HIV test results to the following persons under the following circumstances:

1. To the subject of the HIV test and the subject's authorized representative.
2. To a health care provider who provides care to the subject of the HIV test, 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 subjected the test subject to an HIV test for any of the following purposes:
  - a. Determining the medical acceptability of blood or plasma secured from the subject of the HIV test.
  - b. Notifying the subject of the HIV test 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 that is the subject of an anatomical gift under s. 157.06, for the purpose of assuring medical acceptability of the gift for the purpose intended.
6. To the state epidemiologist or his or her designee, or to a local health officer or his or her designees, for the purpose of pro-

viding epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 (5) (a) 1. or 2. or (c) or to other persons who prepare the body of the subject of the HIV test for burial or other disposition or to a person who performs an autopsy, or assists in performing an autopsy, on the subject of the HIV test.

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. Except as provided under par. (g), to a person who conducts research, for the purpose of research, if the researcher:

- a. Is affiliated with a health care provider under subd. 2.
- b. Has obtained permission to perform the research from an institutional review board.
- c. Provides written assurance to the person disclosing the HIV 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 coroner, medical examiner, or an appointed assistant to a coroner or medical examiner, if one or more of the following applies:

- a. The coroner, medical examiner, or an appointed assistant is investigating the cause of death of the subject of the HIV test and possible HIV-infected status is relevant to the cause of death.
- b. The coroner, medical examiner, or appointed assistant is investigating the cause of death of the subject of the HIV test and has contact with the body fluid of the subject of the HIV test that constitutes a significant exposure, if a physician, physician assistant, or advanced practice nurse prescriber, based on information provided to the physician, physician assistant, or advanced practice nurse prescriber, determines and certifies in writing that the coroner, medical examiner, or appointed assistant has had a contact that constitutes a significant exposure and if the certification accompanies the request for disclosure.

12. 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 HIV test result.

13. If the subject of the HIV test has a positive HIV test result and is deceased, by the subject's attending physician, physician assistant, or advanced practice nurse prescriber, to persons, if known to the physician, physician assistant, or advanced practice nurse prescriber, with whom the subject had sexual contact or shared intravenous drug use paraphernalia.

14. To a person under s. 938.296 (4) (a) to (e) as specified in s. 938.296 (4); to a person under s. 938.296 (5) (a) to (e) as specified in s. 938.296 (5); to a person under s. 968.38 (4) (a) to (c) as specified in s. 968.38 (4); or to a person under s. 968.38 (5) (a) to (c) as specified in s. 968.38 (5).

15. If the subject of the HIV test is a child who has been placed in a foster home, group home, residential care center for children and youth, or juvenile correctional facility, as defined in s. 938.02 (10p), or in a supervised independent living arrangement, including a placement under s. 48.205, 48.21, 938.205, or 938.21, or for whom placement in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in a supervised independent living arrangement 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 placements 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 the operator of the group home, residential care center for children and youth, or juvenile correctional facility in which the child is placed, as provided in s. 48.371 or 938.371.

16. If the subject of the HIV test is a prisoner, to the 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 HIV 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).

17. If the subject of the HIV test is a prisoner, by a person specified in subd. 16. to a correctional officer of the department of corrections who has custody of or is responsible for the supervision of the test subject, to a person designated by a jailer to have custodial authority over the test subject, or to a law enforcement officer or other person who is responsible for transferring the test subject to or from a prison or jail, if the HIV test result is positive and disclosure of that information is necessary for the health and safety of the test subject or of other prisoners, of the person to whom the information is disclosed, or of any employee of the prison or jail.

(e) The health care professional who performs an HIV test under sub. (5g) or (5j) on behalf of a person who has contact with body fluids of the test subject that constitutes a significant exposure shall disclose the HIV test results to the person and the person's physician, physician assistant, or nurse.

(f) The results of an HIV test of an individual that is performed under sub. (5g) or (5j) may be disclosed only to the following:

1. The subject of the test.
2. Anyone authorized by the subject of the test.
3. The person who was certified to have had contact that constitutes a significant exposure and to that person's physician, physician assistant, or nurse.

(g) A person who was certified to have had contact with body fluid of an individual that constitutes a significant exposure and has the individual's blood subjected to an HIV test under sub. (5g) or (5j) may not disclose the identity of the test subject to any other person except for the purpose of having the HIV test performed.

(h) A private pay patient may prohibit disclosure of his or her HIV test results under par. (d) 10. if he or she annually submits to the maintainer of his or her HIV test results under sub. (4) (c) a signed, written request that disclosure be prohibited.

**(4) RECORD MAINTENANCE.** A health care provider, blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues from a person for the purpose of an HIV test, or offers to subject a person to an HIV test, shall maintain in the person's health care record all of the following:

(b) A record of whether the person or his or her authorized representative consented to or declined the HIV test under sub. (2m) (a).

(bm) A record of any authorization for disclosure of HIV test results that the person or his or her authorized representative has made as provided under sub. (3m) (b).

(c) A record of the results of an HIV test administered to the person, except that results of an HIV test administered under sub. (5g) or (5j) or s. 938.296 (4) or (5) or 968.38 (4) or (5) that include the identity of the test subject may not be maintained without the consent of the test subject.

**(5g) SIGNIFICANT EXPOSURE.** A person who has contact with body fluid of an individual that constitutes a significant exposure may cause the individual to be subjected to HIV testing and receive the results of the HIV test under sub. (3m) (e) if all of the following apply:

(a) The contact occurred under one of the following circumstances:

1. The person is an emergency medical services practitioner; emergency medical responder; fire fighter; peace officer; correctional officer; person who is employed at a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g); state patrol officer; jailer, keeper of a jail, or person designated with custodial authority by the jailer or keeper and the contact occurred during the course of the person providing care or services to the individual.

2. The person is 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 and the contact occurred while the person was searching or arresting the individual or while controlling or transferring the individual in custody.

3. The person is a health care provider or an employee of a health care provider and the contact occurred during the course of the person providing care or treatment to the individual or handling or processing specimens of body fluids or tissues of the individual.

4. The person is a staff member of a state crime laboratory and the contact occurred during the course of the person handling or processing specimens of body fluids or tissues of the individual.

5. The person is a social worker or an employee of a school district, cooperative educational service agency, charter school, private school, tribal school, as defined in s. 115.001 (15m), the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired and the contact occurred while the person was performing employment duties involving the individual.

6. While the person rendered emergency care at the scene of an emergency or accident, if the person is immune from civil liability for rendering the care under s. 895.48 or 895.4802 (2).

(b) If the contact occurs as provided under par. (a) 1. to 5., the entity that employs or contracts with the person to provide the services described under par. (a) 1. to 5. requires, as a general policy, that standard precautions against significant exposure be taken during provision of the services, except in those emergency circumstances in which the time necessary for use of the standard precautions would endanger the life of the individual.

(c) A physician, physician assistant, or advanced practice nurse prescriber, based on information provided to the physician, physician assistant, or advanced practice nurse prescriber, determines and certifies in writing that the person has had contact that constitutes a significant exposure. The certification shall accompany the request for HIV testing and disclosure. If the person is a physician, physician assistant, or advanced practice nurse prescriber, he or she may not make this determination or certification. The information that is provided to a physician, physician assistant, or advanced practice nurse prescriber to document the occurrence of the contact that constitutes a significant exposure and the physician's, physician assistant's, or advanced practice nurse prescriber's certification that the person has had contact that consti-



tutes a significant exposure, shall be provided on a report form that is developed by the department of safety and professional services under s. 101.02 (19) (a) or on a report form that the department of safety and professional services determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

(d) The person submits to an HIV test 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.

(e) Except as provided in sub. (5j), the HIV test is performed on blood of the individual that is drawn for a purpose other than HIV testing.

(f) The individual has been given an opportunity to be subjected to an HIV test in accordance with the conditions under sub. (2m) (a) and has declined.

(g) The individual has been informed of all of the following:

1. That an HIV test may be performed on his or her blood.
2. That the HIV test results may be disclosed to the person and the person's physician, physician assistant, or nurse.
3. That, except as provided in subd. 2., the HIV test may not be disclosed to any person.
4. That, if the person knows the identity of the individual, the person may not disclose the identity to any other person except for the purpose of having the HIV test performed.
5. That a record may be kept of the HIV test results only if the record does not reveal the individual's identity.

**(5j) COURT ORDER FOR HIV TESTING.** (a) A person who may cause an individual to be subjected to HIV testing under sub. (5g) may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to an HIV test if no blood of the individual that was drawn for a purpose other than HIV testing is available for HIV testing. A person making a request to a district attorney under this paragraph shall provide the district attorney the certification under sub. (5g) (c).

(b) Upon receipt of a request and certification under par. (a), 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 an HIV test administered by a health care professional.

(c) The court shall set a time for a hearing on the matter under this subsection within 20 days after receipt of a request under par. (b). The court shall give the district attorney and the individual from whom an HIV 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 person who requested a court order for testing has had contact with body fluid of the individual that constitutes a significant exposure, the court shall, except as provided in par. (d), order the individual to submit to an HIV test. No sample used for laboratory test purposes under this paragraph may disclose the name of the HIV test subject.

(d) The court is not required to order an individual to submit to an HIV test under par. (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.

**(5m) AUTOPSIES; HIV TESTING OF CERTAIN CORPSES.** (d) Notwithstanding s. 157.05, a corpse may be subjected to an HIV test and the test results disclosed to a person who has contact that constitutes a significant exposure with body fluid of the corpse or an individual who subsequently dies, if all of the following apply:

1. The contact occurs under any of the following circumstances:
  - a. While the person, including a person exempted from civil liability under the conditions specified under s. 895.48 or 895.4802 (2) renders emergency care to an emergency or accident victim and the victim subsequently dies prior to performance of an HIV test on the victim.

b. The person is a funeral director, coroner, medical examiner, or appointed assistant to a coroner or medical examiner and the contact occurs while the person prepares the corpse for burial or other disposition or while the person performs an autopsy or assists in performing an autopsy on the corpse.

c. The person is a health care provider or an agent or employee of a health care provider and the person has contact with body fluid of the corpse, or of a patient who dies subsequent to the contact and prior to performance of an HIV test on the patient.

2. A physician, physician assistant, or advanced practice nurse prescriber, based on information provided to the physician, physician assistant, or advanced practice nurse prescriber, determines and certifies in writing that the contact under subd. 1. constitutes a significant exposure. A health care provider who has a contact under subd. 1. c. may not make the certification under this subdivision for himself or herself.

3. The certification under subd. 2. accompanies the request for performance of an HIV test and disclosure.

(e) If the conditions under par. (d) are satisfied, the following person shall order an HIV test of the corpse:

1. If the contact occurs as provided under par. (d) 1. a., the coroner, medical examiner, or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c), or (d).
2. If the contact occurs as provided under par. (d) 1. b., the attending physician, physician assistant, or advanced practice nurse prescriber of the funeral director, coroner, medical examiner, or appointed assistant.
3. If the contact occurs as provided under par. (d) 1. c., the physician, physician assistant, or advanced practice nurse prescriber who makes the certification under par. (d) 2.

**(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 HIV TEST RESULTS PROHIBITED.** No person to whom the results of an HIV test have been disclosed under sub. (3m) (a), (b), (d), or (e) or (5m) may disclose the test results except as authorized under sub. (3m) (a), (b), (d), or (e) or (5m).

**(7) REPORTING OF POSITIVE HIV 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 HIV 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 HIV test result is obtained from an HIV test subject, the health care provider, blood bank, blood center, or plasma center that maintains a record of the HIV test result 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 HIV test was performed.
5. The HIV test result.

5m. The mode of transmission of HIV to the test subject.

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 HIV test subject.

2. The identity of persons with whom the HIV 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 HIV test result is obtained from a test subject, the test subject's physician, physician assistant, or advanced practice nurse prescriber who maintains a record of the HIV test result under sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician, physician assistant, or advanced practice nurse prescriber to have had contact with body fluid of the test subject that constitutes a significant exposure, only after the physician, physician assistant, or advanced practice nurse prescriber has done all of the following:

(a) Counseled the HIV test subject to inform any person who has had contact with body fluid of the test subject that constitutes a significant exposure.

(b) Notified the HIV test subject that the name of any person known to the physician, physician assistant, or advanced practice nurse prescriber to have had contact with body fluid of the test subject that constitutes a significant exposure will be reported to the state epidemiologist.

**(7r) EXPLANATION OF HIV FOR TEST SUBJECTS.** The department shall provide to health care providers, blood banks, blood centers, and plasma centers a brief explanation or description of all of the following that a health care provider, blood bank, blood center, or plasma center may provide prospective HIV test subjects under sub. (2m) (a) 2.:

(a) HIV infection.

(b) HIV test results.

(c) Requirements under subs. (7) (b) and (7m) for reporting HIV test results.

(d) Treatment options for a person who has a positive HIV test result.

(e) Services provided by AIDS service organizations, as defined in s. 252.12 (1) (b), and other community-based organizations for persons who have a positive HIV test result.

**(8) CIVIL LIABILITY.** (a) Any person violating sub. (2m), (3m) (b), (d), or (f), (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 \$2,000 for a negligent violation and up to \$50,000 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. (2m), (3m) (b), (d), or (f), (5m), (6) or (7) (c). A conviction under sub. (2m), (3m) (b), (d), or (f), (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 an HIV test in violation of sub. (3m) (b) or (f) or (5m) and thereby causes bodily harm or psychological harm to the subject of the HIV test may be fined not more than \$50,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of an HIV test in violation of sub. (3m) (b) or (f) or (5m) is subject to a forfeiture of not more than \$2,000 for each violation. Whoever intentionally discloses the results of an HIV test in violation of sub. (3m) (b) or (f) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain

may be fined not more than \$200,000 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; 2005 a. 155, 187, 266, 344, 387; 2007 a. 97, 106, 130; 2009 a. 28, 209, 302, 355; 2011 a. 32; 2011 a. 260 ss. 42 to 44, 81; 2013 a. 334; 2015 a. 197 s. 51; 2017 a. 12.

No claim for a violation of s. 146.025, 1987 stats., 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 or domestic partner under ch. 770, 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" means coverage under part A, part B, or part D of Title XVIII of the federal Social Security Act, 42 USC 1395 to 1395hhh.

(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 account under s. 20.435 (1) (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 percent 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), physician assistant, or advanced practice nurse prescriber 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, except for premiums for coverage for part D of Title XVIII of the federal Social Security Act, 42 USC 1395 to 1395hhh.

(b) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation account under s. 20.435 (1) (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 percent but does not exceed 300 percent 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 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 percent but does not exceed 300 percent 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; 2005 a. 187; 2007 a. 20; 2009 a. 28; 2011 a. 161.

**Cross-reference:** See also ch. DHS 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, 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 percent 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), physician assistant, or advanced practice nurse prescriber 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 or domestic partner under ch. 770 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 or domestic partner under ch. 770 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 account under s. 20.435 (1) (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 percent but does not exceed 300 percent 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 or domestic partner under ch. 770 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 percent but does not exceed 300 percent 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; 2005 a. 187; 2009 a. 28; 2011 a. 161.

**Cross-reference:** See also ch. DHS 138, Wis. adm. code.

**252.185 Communicable disease control and prevention.** (1) From the appropriation under s. 20.435 (1) (cf), the department shall distribute moneys to local health departments to use for disease surveillance, contact tracing, staff development and training, improving communication among health care professionals, public education and outreach, and other infection control measures as required under this chapter. The department shall consider the following factors to establish an equitable allocation formula for the distribution of moneys under this section:

(a) Base allocation, including at least some base amount for each local health department.

(b) General population.

(c) Target populations.

(d) Risk factors.

(e) Geographic area, including consideration of the size of the service area or the density of population, or both.

(2) By January 1, 2019, and biennially thereafter, each local health department shall submit to the division of the department that addresses public health issues a financial statement of its use of funds under this section.

**History:** 2017 a. 59.

**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 child 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; 2009 a. 185.

**252.25 Violation of law relating to health.** Any person who willfully violates or obstructs the execution of any state

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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.