Idaho Code

Excerpts relating to the reporting and control of sexually-transmitted venereal and infectious diseases



I. STATE BOARD OF CORRECTIONS

20-209. Control and management of penitentiary and inmates

The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired by law for use by the state board of correction and of the present penitentiary of the state and all property owned or used in connection therewith, and shall provide for the care, maintenance and employment of all inmates now or hereinafter committed to its custody.

The state board of correction is authorized to provide medical and counseling services to those inmates who have been exposed to the HIV (human immunodeficiency virus) which causes acquired immunodeficiency syndrome (AIDS) or who have been diagnosed as having contracted a human immunodeficiency viral disease.

The state board of correction should provide educational and informational services to inmates housed in Idaho and to its department employees in order to assure that the transmission of HIV within correctional facilities is diminished.

II. MARRIAGE LICENSES, CERTIFICATES AND RECORDS

32-412A. Educational pamphlet and self administered confidential risk appraisal on possible AIDS exposure.

Before any county recorder may issue a marriage license, each male and female applicant therefore shall be provided with a confidential AIDS educational pamphlet prepared by the state department of health and welfare and provided to the county recorder by the department of health and welfare. The educational pamphlet shall contain information describing how AIDS can be contracted, what some of the symptoms of the disease are, what the effects of the disease are, and what can be done to prevent exposure to the disease.

Each applicant shall certify to the county recorder that he or she has read the educational pamphlet or has had the educational pamphlet read to them.

The confidential questionnaire shall be designed so that an answer to the various questions will indicate to the marriage license applicant his or her potential past exposure to situations, conditions, or procedures that are medically known to have caused AIDS.

The questionnaire shall state that the results of the questionnaire are confidential to the applicant, but that if any of the answers indicate that he or she is in the general population at risk for developing AIDS, he or she should contact a physician, or the district health department, or the state department of health and welfare.

III. DEPARTMENT OF HEALTH AND WELFARE

39-145. Rules and regulations.

The board is authorized and directed to establish appropriate rules, regulations and standards concerning the administration of this act, including criteria for training programs, certification of personnel, for ambulances, determination of acts which may be performed by basic life support personnel, establishment of fees for training, inspections, and certifications, appropriate requirements for recertification of personnel and equipment, and other necessary and proper matters.

Additionally, the board shall prescribe guidelines, standards and procedures for handling or containment of human blood, tissue or fluids encountered at crime and accident scenes. Such guidelines, standards and procedures shall be provided to all law enforcement personnel, all emergency services personnel and all fire department personnel, and such other personnel as necessary.

IV. CONTROL OF VENEREAL DISEASE

39-601. Venereal diseases enumerated

Syphilis, gonorrhea, acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), other manifestations of HIV (human immunodeficiency virus) infections, chancroid and hepatitis B virus (HBV) infections, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable and dangerous to public health; and it shall be unlawful for anyone infected with these diseases or any of them to knowingly expose another person to the infection of such diseases.

39-601A. Policy on expenditures.

It is the intent of the legislature that governmental authorities shall be required to provide those services authorized or mandated by law for treatment or testing for the diseases enumerated in Section 39-601, Idaho Code, only to the extent of funding and available resources appropriated.

39-602. Report of venereal disease to health authorities.

Any physician or other person who makes a diagnosis of or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary or charitable or penal institution, in which there is a case of venereal disease, shall immediately make a report of such case to the department of health and welfare, according to such form and manner as the state board of health and welfare shall direct.

39-604. Confined and imprisoned persons — Examination, treatment, and quarantine — Victims of sexual offenses — Access to offenders' test results, testing for HIV, counseling and referral services.

- (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again before release, and, if infected, treated for the diseases enumerated in Section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.
- (2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in Section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities and the jailer, been exposed to a disease enumerated in Section 39-601, Idaho Code.

- (3) All persons, including juveniles, who are charged with sex offenses, drug related charges, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in Section 39-601, Idaho Code.
- (4) All persons who are charged with any crime in which body fluid as defined in this chapter has likely been transmitted to another shall be tested for the presence of HIV antibodies or antigens and for hepatitis [hepatitis] B virus.
- (5) If a person is tested as required in subsections (3) or (4) of this Section, the results of the test shall be revealed to the court. The court shall release the results of the test to the victim(s), or if the victim(s) is a minor, to the minor's parent, guardian or legal custodian. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.
- (6) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:
 - (a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of correction, the board of correction shall reimburse such costs;
 - (b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;
 - (c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.

39-605. Rules for carrying out law.

The state board of health and welfare is hereby empowered and directed to make such rules as shall, in its judgment, be necessary for the carrying out of the provisions of this chapter, including rules providing for the control and treatment of persons isolated or quarantined under the provisions of Section 39-603, Idaho Code, and such other rules, not in conflict with provisions of this chapter, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter, and shall have the force and effect of law. Such rules may be amended from time to time by the state board of health and welfare. All rules must be entered on the minutes of the state board of health and welfare and copies shall be furnished to all county and municipal health officers and to anyone else who may apply for same. Such rules shall be adopted and become effective in accordance with the provisions of Chapter 52, Title 67, Idaho Code.

39-606. Reports.

Reports to the director of the department of health and welfare of the existence of diseases included in this chapter shall be made by the name of the patient being treated for such

disease. It is the intent of this chapter to observe all possible secrecy for the benefit of the sufferer so long as the said sufferer conforms to the requirements of this chapter. Confidential disease reports containing patient identification reported under this Section shall only be used by public health officials who must conduct investigations and shall be subject to disclosure according to Chapter 3, Title 9, Idaho Code. Any person who willfully or maliciously discloses the content of any confidential public health record, as described herein to any third party, except pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator, or as otherwise authorized by law, shall be guilty of a misdemeanor.

39-607. Penalties for violations.

Any person who shall violate any lawful rule or regulation made by the state board of health and welfare, pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any public health authority, pursuant to the authority granted in this chapter, or any person who, knowing that he or she is infected with syphilis, gonorrhea or chancroid, exposes another person to the infection of such disease, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction thereof, by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than six (6) months; or by both such fine and imprisonment.

39-608. Transfer of body fluid which may contain the HIV virus — Punishment — Definitions — Defenses.

(1) Punishment

Any person who exposes another in any manner with the intent to infect or, knowing that he or she is or has been afflicted with acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, transfers or attempts to transfer any of his or her body fluid, body tissue or organs to another person is guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years, by fine not in excess of five thousand dollars (\$5,000), or by both such imprisonment and fine.

- (2) Definitions as used in this section:
- (a) "Body fluid" means semen (irrespective of the presence of spermatozoa), blood, saliva, vaginal secretion, breast milk, and urine.
- (b) "Transfer" means engaging in sexual activity by genital-genital contact, oral-genital contact, anal-genital contact; or permitting the use of a hypodermic syringe, needle, or similar device without sterilization; or giving, whether or not for value, blood, semen, body tissue, or organs to a person, blood bank, hospital, or other medical care facility for purposes of transfer to another person.

(3) Defenses

- (a) Consent. It is an affirmative defense that the sexual activity took place between consenting adults after full disclosure by the accused of the risk of such activity.
- (b) Medical advice. It is an affirmative defense that the transfer of body fluid, body tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious.

39-609. Declaration of policy.

The legislature hereby declares that infection with human immunodeficiency virus, the virus which causes acquired immune deficiency syndrome (AIDS), is an infectious and communicable disease that endangers the population of this state. The legislature further declares that reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control and that efforts to control the disease should include public education, counseling, and voluntary testing and that restrictive enforcement measures should be used only when necessary to protect the public health. It is hereby declared to be the policy of this state that an effective program of preventing AIDS must maintain the confidentiality of patient information and restrict the use of such information solely to public health requirements. This confidentiality is essential so that infected persons are encouraged to reveal their condition to persons who have a legitimate need to know in order that they may assist the patient. Conversely, there is a need for certain individuals to know of the patient's condition so that they may be protected from the disease or protect themselves and others closely associated with them or with the patient. The legislature believes that the balancing of the need to know by certain individuals in relationship to the need to maintain confidentiality to encourage reporting is essential to control the spread of the disease. This balancing cannot be fully codified in statutory law and must be left to the judgment and discretion of public health officials. If in the judgment of public health authorities an imminent danger to the public health exists due to an individual having a disease enumerated in Section 39-601, Idaho Code, public health authorities shall take such action as is authorized in this chapter and as is necessary to prevent danger to the public health. Persons who have a legitimate need to know may include health care personnel, doctors, nurses, dentists, persons providing emergency medical services, morticians, lab technicians and school authorities. This is not intended to limit the usual and customary exchange of information between health care providers.

39-610. Disclosure of HIV and HBV reporting information.

- (1) Confidential public health record as described in Section 39-606, Idaho Code, shall be subject to disclosure according to Chapter 3, Title 9, Idaho Code, shall not be discoverable, and shall not be compelled to be produced in any civil or administrative hearing.
- (2) State or local health authorities may contact and advise those persons who, in the judgment of health authorities, have been exposed to the HIV (human immunodeficiency virus) or hepatitis B (HBV) infections.
- (3) The department of health and welfare shall, in a manner established by rules and regulations, accept from persons involved in providing emergency or medical services reports of significant exposures to the blood or body fluids of a patient or deceased person. The department of health and welfare shall promulgate rules and regulations defining the term "significant exposure" as used in this section. Upon receipt of a report made pursuant to Section 39-602, Idaho Code, confirming the presence of HIV or HBV virus in a patient or a deceased person, the director of the department of health and welfare, or his designee, shall immediately contact and advise any and all persons who, on the basis of information then or thereafter reported to the department, have had a significant exposure to the blood or body fluids of that infected patient or deceased person. The significantly exposed person shall be informed only that he may have been exposed to HIV or HBV, as the case may be,

and thereafter advised of whatever prophylactic and testing procedures are appropriate. The significantly exposed person shall not be informed of the name of the infected patient or deceased person. Additionally, the department of health and welfare shall, to the greatest extent consistent with public health requirements, maintain the confidentiality of the identity of the significantly exposed person.

- (4) Public health authorities may disclose personally identifying information in public health records, as described in Section 39-606, Idaho Code, to other local or state public health agencies when the confidential information is necessary to carry out the duties of the agency in the investigation, control and surveillance of disease, as determined by the state board of health and welfare, or as otherwise authorized by law.
- (5) Nothing in this chapter imposes liability or criminal sanction for disclosure or nondisclosure of the results of a blood test to detect HIV or HBV virus in accordance with any reporting requirements of the department of health and welfare.

V. UNIFORM ANATOMICAL GIFT ACT

39-3401. Definitions. As used in this chapter:

- (1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
- (2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.
- (3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle driver's license or on an identification card, a will, or other writing used to make an anatomical gift.
- (4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
- (5) "Enucleation" means removing or processing eyes or parts of eyes.
- (6) "Enucleator" means an individual who has completed a course in eye enucleation and has a certificate of competence from an agency or organization designated by the Idaho board of medicine for the purpose of providing such training.
- (7) "Hospital" means a facility licensed, accredited, or approved as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.
- (8) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.
- (9) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.
- (10) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
- (11) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.
- (12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(13) "Technician" means an individual who is certified by the Idaho board of medicine to remove or process a part.

39-3403. Making, amending, revoking, and refusing to make anatomical gifts by individual.

- (1) An individual who is at least eighteen (18) years of age may (i) make an anatomical gift for any of the purposes stated in Section 39-3407 (1), Idaho Code, (ii) limit an anatomical gift to one (1) or more of those purposes, or (iii) refuse to make an anatomical gift.
- (2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two (2) witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.
- (3) An individual may attach to his driver's license or identification card a document and the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.
- (4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.
- (5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.
- (6) A donor may amend or revoke an anatomical gift, not made by will, only by:
 - (a) A signed statement;
 - (b) An oral statement made in the presence of two (2) individuals;
 - (c) Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or
 - (d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
- (7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.
- (8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.
- (9) An individual may refuse to make an anatomical gift of the individual's body or part by (i) a writing signed in the same manner as a document of gift, (ii) attaching a statement on his driver's license or identification card, or (iii) any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.
- (10) In the absence of contrary indications by the donor, an anatomical gift or a part is neither a refusal to give other parts nor a limitation on an anatomical gift under Section 39-3404, Idaho Code, or on a removal or release of other parts under Section 39-3405, Idaho Code.
- (11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not refusal to make another anatomical gift. If the donor intends a revocation to be refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

39-3404. Making, revoking, and objecting to anatomical gifts, by others.

- (1) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:
 - (a) The holder of an unrevoked durable power of attorney for health care;
 - (b) The spouse of the decedent;
 - (c) An adult son or daughter of the decedent;
 - (d) Either parent of the decedent;
 - (e) An adult brother or sister of the decedent;
 - (f) A grandparent of the decedent; and
 - (g) A guardian of the person of the decedent at the time of death.
- (2) An anatomical gift may not be made by a person listed in subsection (1), of this section if:
 - (a) A person in a prior class is available at the time of death to make an anatomical gift;
 - (b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
 - (c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.
- (3) An anatomical gift by a person authorized under subsection (1) of this section, must be made by (i) a document of gift signed by the person or (ii) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.
- (4) An anatomical gift by a person authorized under subsection (1) of this section, may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.
- (5) A failure to make an anatomical gift under subsection (1) of this section, is not an objection to the making of an anatomical gift.

39-3405. Authorization by coroner or local public health official.

- (1) The coroner may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy if:
 - (a) The official has received a request for the part from a hospital, physician, surgeon, or procurement organization;
 - (b) The official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in Section 39-3404(1), Idaho Code, of their option to make, or object to making, an anatomical gift:
 - (c) The official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in Section 39-3404(1), Idaho Code:
 - (d) The removal will be by a physician, surgeon, or technician; but in the case of eyes by one of them or by an enucleator;
 - (e) The removal will not interfere with any autopsy or investigation;
 - (f) The removal will be in accordance with accepted medical standards; and
 - (g) Cosmetic restoration will be done, if appropriate.

- (2) If the body is not within the custody of the coroner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of subsection (1) of this section are met.
- (3) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

39-3406. Routine inquiry and required request — Search and notification.

- (1) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to Section 39-3404(1), Idaho Code. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in Section 39-3407, Idaho Code. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The director of the department of health and welfare shall adopt regulations to implement this subsection.
- (2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:
 - (a) A law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual who the searcher believes is dead or near death; and
 - (b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.
- (3) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by paragraph (3)(a) of this subsection, and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.
- (4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to Section 39-3404(1), Idaho Code, or a release and removal of a part has been permitted pursuant to Section 39-3405, Idaho Code, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.
- (5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

39-3407. Persons who may become donees — Purposes for which anatomical gifts may be made.

- (1) The following persons may become donees of anatomical gifts for the purposes stated, provided that parts for transplantation shall not be transplanted or transfused under any conditions unless accompanied by a medical certificate which states that the part comes from a person who has been tested for HIV antibodies or antigens, and that the test is negative for the presence of HIV antibodies or antigens:
 - (a) A hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;
 - (b) An accredited medical or dental school, college, or university for education,

- research, advancement of medical or dental science; or
- (c) A designated individual for transplantation or therapy needed by that individual.
- (2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.
- (3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under Section 39-3404(1), Idaho Code, the donee may not accept the anatomical gift.

39-3703. Anatomical parts control.

No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, body tissue, organs, parts of organs or products derived therefrom, and including semen, ova and embryos, shall be used for any purpose of injecting, transfusing or transplanting into a human body unless such anatomical parts or the donor have been examined for acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, and a test is negative for the presence of HIV antibodies or antigens. The director of the department of health and welfare shall promulgate rules to fully implement the requirements of this section.

MINORS — CONSENT TO TREATMENT

39-3801. Infectious, contagious, or communicable disease — Medical treatment of minor 14 years of age or older — Consent of parents or guardian unnecessary.

Notwithstanding any other provision of law, a minor fourteen (14) years of age or older who may have come into contact with any infectious, contagious, or communicable disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law, or regulation adopted pursuant to law, to be reported to the local health officer. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section.

VII. MEDICAL CONSENT

39-4301. Purpose.

The primary purposes of this act are (1) to provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures and concerning what constitutes an informed consent for such care, treatment or procedures and (2) to provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases. However, nothing in this act shall be deemed to amend or repeal the provisions of Chapter 3, Title 66, Idaho Code, as the same pertain to medical attendance upon or hospitalization of the mentally ill, nor the provisions of Chapter 6, Title 18, Idaho Code, pertaining to provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof. Nothing in this act shall be construed to permit or require the provision of health care for a patient in contravention of his stated or implied objection thereto upon religious grounds nor shall anything in this act be construed to require the granting of permission for or on behalf of any patient not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient and/or the parent or spouse.

39-4302. Persons who may consent to their own care.

Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental or surgical care, treatment or procedure is competent to consent thereto on his own behalf. Any physician, dentist, hospital or other duly authorized person may provide such health care and services in reliance upon such a consent if the consenting person appears to the physician or dentist securing the consent to possess such requisite intelligence and awareness at the time of giving it.

39-4303. Persons who may give consent to care for others. (a) Parent, Spouse or Guardian.

- (a) Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures to any person who is not then capable of giving such consent as provided in this act or who is a minor or incompetent person, may be given or refused by any competent parent, spouse, or legal guardian of such person unless the patient is a competent adult who has refused to give such consent.
- (b) Competent Relative or Other Person. If no parent, spouse or legal guardian is readily available to do so, then consent may be given by any competent relative representing himself or herself to be an appropriate, responsible person to act under the circumstances; and, in the case of a never married minor or mentally incompetent person, by any other competent individual representing himself or herself to be responsible for the health care of such person, provided, however, that this subsection shall not be deemed to authorize any person to override the express refusal by a competent adult patient to give such consent himself.

- (c) Attending Physician or Dentist. Whenever there is no person readily available and willing to give or refuse consent as specified hereinabove in this act, and in the judgment of the attending physician or dentist the subject person presents a medical emergency or there is substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental or surgical care to such patient, the attending physician or dentist may, in his discretion, authorize and/or provide such care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such physician or dentist, may proceed as if informed, valid consent therefor had been otherwise duly given.
- (d) Immunity from Liability. No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental or surgical care, treatment or procedures to another as provided by this act shall be subject to civil liability therefor.

39-4303A. Blood testing.

A physician may pursuant to section 39-4303(c), Idaho Code, consent to ordering tests of a patient's or a deceased person's blood or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses without prior consent of the patient if:

- (1) There has been or is likely to be a significant exposure to the patient's or a deceased person's blood or body fluids by a person providing emergency or medical services to such patient which may result in the transmittal of a virus or disease; and
- (2) The patient is unconscious or incapable of giving informed consent and the physician is unable to obtain consent from the patient's parents, spouse, guardian or competent relative under the requirements of subsections (a) and (b) of section 39-4303, Idaho Code.

The department of health and welfare shall promulgate rules and regulations identifying the blood-transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests can be ordered under this section and defining the term "significant exposure" as provided in this section.

Results of tests conducted under this section which confirm the presence of a blood-transmitted or body fluid-transmitted virus or disease shall be reported to the director of the department of health and welfare in the name of the patient or deceased person. The department records containing such test results shall be used only by public health officials who must conduct investigations. The exposed person shall only be informed of the results of the test, and shall not be informed of the name of the patient or deceased person. Protocols shall be established by hospitals to maintain confidentiality while disseminating the necessary test result information to persons who may have a significant exposure to blood or other body fluids and to maintain records of such tests to preserve the confidentiality of the test results. Any person who willfully or maliciously discloses the results of a test conducted under this section, except pursuant to a written authorization by the person whose blood was tested of by the person's authorized representative, or as otherwise authorized by law, shall be guilty of a misdemeanor. [I.C. § 39-4303A, as added by 1989, ch. 376, § 1, p. 945.]

39-4304. Sufficiency of consent.

Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures shall be valid in all respects if the person giving it is sufficiently aware of pertinent facts respecting the need for, the nature of and the significant risks ordinarily attendant upon such a patient receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the physician or dentist to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like physician or dentist of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographical area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

39-4305. Form of consent.

It is not essential to the validity of any consent for the furnishing of hospital, medical, surgical or dental care, treatment or procedures that the same be in writing or any other form of expression; however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment, or procedures to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed sufficient.

39-4306. Responsibility for consent and documentation thereof.

Obtaining consent for such health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure; however, a licensed hospital and any medical or dental office lay or professional employee, acting with the approval of such a physician or dentist, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of a patient. In performing such a ministerial act, the hospital or medical or dental office lay or professional employee shall not be deemed to have engaged in the practice of medicine or dentistry.

Reportable Diseases in the State of Idaho

FOODBORNE, ENTERIC AND LIVER DISEASES

Amebiasis (7d) Botulism (24h)

Campylobacteriosis (7d)

Cholera (24h)

Escherichia coli O157:H7 (7d)

Giardiasis (7d) Hepatitis A (24h) Hepatitis B (24h) Hepatitis C (24h) Salmonellosis (24h)

Shigellosis (7d)
Typhoid Fever (24h)

Food poisoning foodborne illness (24h)

MENINGITIS/ENCEPHALITIS

Aseptic Meningitis (7d)

Haemophilus influenzae, invasive (24h)

Neisseria meningitides, invasive (24h)

Viral encephalitis (7d)

SEXUALLY TRANSMITTED DISEASES

Chancroid (7d)
AIDS (7d)
HIV Positive tests (7d)
Chlamydia trachomatis infections (7d)
Neisseria gonorrhoeae infections (7d)
Syphilis (7d)

ZOONOTIC DISEASES

Anthrax (24h)
Brucellosis (7d)
Hantavirus Pulmonary Syndrome (7d)
Lyme Disease (7d)
Malaria (7d)
Plague / Yersiniosis (24h)
Psittacosis (7d)

This list applies to health care providers, hospitals and laboratories. A case must be reported to the state or local health department following diagnosis within the number of days (d) or hours (h) indicated in parentheses after each disease.

Q fever (7d)
Rabies (24h)
Relapsing Fever (7d)
Rocky Mountain Spotted Fever (7d)
Trichinosis (7d)
Tularemia (7d)

VACCINE-PREVENTABLE DISEASES

Diphtheria (24h)
Congenital Rubella Syndrome (24h)
Measles (24h)
Mumps (7d)
Pertussis (24h)
Poliomyelitis (24h)
Rubella (24h)
Tetanus (7d)
Severe reactions to immunizations (24h)

OTHER IMPORTANT REPORTABLE DISEASES

Cancer (7d)
Human T-lymphotrophic virus 1 (HTLV 1)
(7d)
Lead ≥ 10 μg/dl (7d)
Legionellosis / Legionnaire's Disease (7d)
Leprosy (7d)
Leptospirosis (7d)
Pneumocystis carinii pneumonia (7d)
Reye's Syndrome (7d)
Rheumatic Fever (7d)
Streptococcus pyogenes, invasive (7d)
Extraordinary occurrence of illness (24h)
CD4 count < 200 cells/mm³ (7d)

Toxic Shock Syndrome (7d) Tuberculosis (7d) Viral Myocarditis (7d)

Spousal Notification

Summary

The Ryan White CARE Act Amendments of 1996 require all states to make a good faith effort to notify a spouse of a known HIV-infected patient that s/he may have been exposed to HIV and should seek counseling and testing. Failure to fulfill this requirement will jeopardize Ryan White CARE Act grant funds for the state of Idaho.

As of May 1, 1997, Idaho STD/AIDS Program will provide information on spousal notification requirements and procedures to all individuals reporting cases of HIV infection and AIDS. The procedures require that a person diagnosed with HIV infection or AIDS be (a) asked if they have, or have had, a spouse (as defined below) and (b) informed that s/he should notify their spouse or former spouse(s) of the potential exposure to HIV. The procedures will outline what services are available for reporting individuals who request assistance with the notification process.

Definition of Spouse

A spouse is defined as "any individual who is the legal or common law marriage partner of an HIV-infected patient, or who has been the marriage partner of that patient at any time within the ten-year period prior to the diagnosis of HIV infection." If two persons consider themselves married and represent themselves as such, they should be considered married for spousal notification purposes.

Spousal Elicitation

When discussing partners in a counseling session, **every** HIV-infected patient must be asked questions such as:

- "Who have you been married to in the last ten years?"
- "How many people have you considered yourself married to since _____ (ten years before testing HIV positive)?"
- "What has your marital status been during the past ten years?"

All spousal elicitation efforts should be documented in case management notes.

Spousal Notification

Reasonable efforts must be made to determine if each HIV-infected patent intends to notify his/her spouse/former spouse(s) of the possible exposure to HIV or agrees to have a qualified health department disease intervention specialist (DIS) notify them.

Culturally competent partner notification services are available through local and regional STD control programs at health departments around the state. No information leading to the identity of the HIV-infected person will be revealed to the spouse by the local health district epidemiologist or DIS making the decision. Call (208) 334-5944 to find out about notification resources in your area.

If the HIV-infected person indicates her/his intent to notify the spouse, culturally competent counseling and educational services on the following issues should be made available:

- How to make the notification
- How to preserve the confidentiality of both the HIV-infected person and the spouse
- How HIV transmission and infection can be prevented
- How the spouse may access counseling, testing, other prevention services, and treatment.

Providers must implement reasonable procedures to ensure that notified spouses receive referrals for HIV counseling, testing, other prevention services, and treatment.

NOTE: Combinations of the two notification methods are acceptable. For example, a person may decide to inform her/his current spouse and choose health department notification for the former spouse(s), especially if the former spouse(s) live out of the area or state.

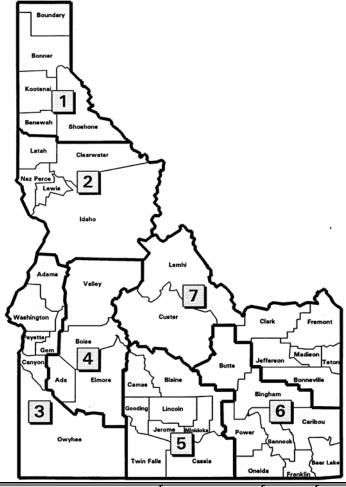
Legislation Referenced

Ryan White CARE Reauthorization Act (Public Law 104-146), Section 8(a)

For More Information

If you have any questions or concerns on issues related to spousal notification, please contact the Clinical and Preventive Services, at (208) 334-0670 or the STD/AIDS Program at (208) 334-6527.

IDAHO HEALTH DISTRICTS



District		Address	City	Zip	Phone
1	Panhandle	8500 N. Atlas Rd.	Hayden	83835	667-3481
2	North Central	215-10th St.	Lewiston	83501	799-3100
3	Southwest	920 Main St.	Caldwell	83605	455-5300
4	Central	707 N. Armstrong Pl.	Boise	83704	375-5211
5	South Central	1020 Washington Ave. N.	Twin Falls	83301	734-5900
6	Southeast	1901 Alvin Ricken Dr.	Pocatello	83201	233-9080
7	Eastern Idaho Public Health District	1250 Hollipark Drive	Idaho Falls	83402	522-0310

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