



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Phone: 617.426.1350
Fax: 617.426.3594
Website: www.glad.org

HIV Testing, Confidentiality, and Discrimination:

An Outline of Legal Protections for Persons with HIV
in New Hampshire

**This Document Does Not Constitute Legal Advice.
For Legal Advice About A Specific Situation You Must Consult An Attorney.**

Founded in 1978, Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization for lesbians, gay men, bisexuals and people living with HIV. GLAD's mission is to achieve full equality for all individuals in these groups, primarily through impact litigation and education.

9/2000

ABOUT GLAD'S AIDS LAW PROJECT

Founded in 1978, Gay & Lesbian Advocates & Defenders (GLAD) is a New England-wide public interest legal organization which works primarily through the courts to protect the civil rights of lesbians, gay men, bisexuals and people living with HIV. GLAD's AIDS Law Project was founded in 1984 to protect the rights of *all* people with HIV.

Fighting discrimination and establishing strong privacy protections have been important for people with HIV since the beginning of the epidemic. We outline here the basic New Hampshire and federal laws of particular importance to people with HIV. This outline is not intended to judge or evaluate the wisdom of any particular statute. Rather, we want you to understand the current scope of HIV testing, privacy, and anti-discrimination protections -- and the exceptions to these protections. The more information you have about existing laws, the more prepared you will be to stand up for your legal rights.

If you have questions about any of these laws, or believe that your legal rights have been violated, we want to hear from you. Call our toll-free legal information hotline (1-800-455-GLAD) Monday through Friday from 1:30 p.m. to 4:30 p.m. If one of our intake workers cannot answer your question, your call will be referred to one of GLAD's attorneys.

**This Document Does Not Constitute Legal Advice.
For Legal Advice About A Specific Situation You Must Consult An Attorney.**

Founded in 1978, Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization for lesbians, gay men, bisexuals and people living with HIV. GLAD's mission is to achieve full equality for all individuals in these groups, primarily through impact litigation and education.

9/2000

HIV TESTING, CONFIDENTIALITY, AND DISCRIMINATION: An Outline of Legal Protections for Persons with HIV in New Hampshire

I. HIV TESTING

A. INFORMED CONSENT REQUIRED FOR HIV TESTING

No physician, licensed nurse practitioner, employee of a health care facility, or employee of a blood bank, may administer an HIV test unless the patient has provided HIV-specific consent. New Hampshire Revised Statutes Annotated (RSA) § 141-F:5.

Prior to taking an HIV test, providers must inform the patient about the “medical interpretations of positive and negative findings” and the provisions of New Hampshire law regarding both the confidentiality of HIV test results and the circumstances under which HIV test results may be disclosed to others without consent (see Section II(B) below). RSA § 141-F:5. In addition, upon notification of the HIV test results, New Hampshire law mandates “appropriate counseling” of the individual who was tested. RSA § 141-F:7, II.

New Hampshire law does not mandate written consent for an HIV test. In order to avoid disputes about whether HIV-specific consent has been obtained, providers may want to document a patient’s consent in the record or obtain HIV-specific consent in writing.

B. EXCEPTIONS TO THE REQUIREMENT OF VOLUNTARY INFORMED CONSENT

1. Testing of Persons Convicted of Sexual Assault Crimes

All people convicted of a sexual assault crime are tested for HIV. The test results will be disclosed to the person convicted and to the office of victim/witness assistance. The office of victim/witness assistance is authorized to disclose the test results to the victim and the county attorney victim/witness advocates, although this is discretionary. The victim may be notified regardless of whether the victim has requested notification. The state must also provide counseling and referrals to the victim and the person convicted, and offer HIV testing for the victim. RSA § 632-A:10-b.

2. Prisoners

Individuals who are convicted and confined to a correctional facility, or people committed to New Hampshire Hospital (the state psychiatric hospital), “may be tested without obtaining written informed consent to the testing, when the results of such tests are necessary for the placement and management of such individuals in the facility,” in accordance with the written policies and procedures of the chief administrator of the facility. RSA § 141-F:5, IV.

In addition, test results of HIV-positive persons committed to a prison or mental health facility are disclosed to the medical director or chief medical officer of such facility. The medical director of the facility “shall” provide the facility’s administrator “whatever medical data is necessary to properly assign, treat, or manage the affected individual.” Similarly, the administrator “may” share this information with other officials who require the information to properly assign, treat, or manage the affected individual. RSA § 141-F:7, IV.

3. Patient Emergencies

When a patient is incapable of giving informed consent, a physician (or person authorized by a physician) may take an HIV test without informed consent if the test is “immediately necessary to protect the health of the [patient].” RSA § 141-F:5, V.

4. Testing of Donated Blood Products

Any agency receiving purchased or donated blood products “shall” test them for HIV prior to their distribution and use.¹ RSA § 141-F:5, I - III.

C. SPECIAL CATEGORIES REGARDING HIV TESTING

1. Testing of Minors

a) Informed Consent

Any minor over the age of 14 can provide consent to be tested and treated for HIV without the consent or knowledge of a parent or legal guardian.² RSA § 141-C:18, II.

¹ This statute also includes provisions for HIV testing without consent of donated body parts, fluids, or tissue used for medical or research purposes if the identity of the test subject is not known and cannot be determined by the researcher.

² This statute permits a minor over the age of 14 to “voluntarily submit himself to medical diagnosis and treatment for a sexually transmitted disease...without the knowledge or consent of the parent or legal guardian.” While HIV can also be transmitted through other means, it is recognized as a sexually transmitted disease for the purposes of this law.

b) Disclosure

A physician is not obligated to, but may, disclose a positive test result to a parent or legal guardian of a person who is under the age of 18. RSA § 141-F:7, III. *If confidentiality is important to you, it is a good idea to talk to your doctor up front and understand his or her policies on this issue.*

2. HIV Testing by Insurers

New Hampshire law makes a distinction between HIV testing by health organizations and HIV testing done by insurers. A separate set of laws under the state Unfair Insurance Trade Practices Act (RSA § 417:4, XIX) governs HIV testing by insurers, rather than the general HIV testing statute.

a) Informed Consent

In order to test an insurance applicant for HIV, an insurer must obtain written consent for an HIV test on a form designated by the Department of Health and Human Services, containing information about the medical interpretations of positive and negative test results, disclosure of test results, and the purpose for which the results may be used.

b) Privacy

The insurer can disclose the results of a positive HIV test only to the individual tested or any person the individual clearly authorized in writing on the form.

The insurer must maintain all results and records “confidential and protected against inadvertent or unwarranted intrusion.”

c) Remedy

The Commissioner of Insurance enforces these confidentiality provisions. If the Commissioner finds that an insurer violated any confidentiality provision, a consumer may subsequently bring a suit against the insurer. RSA § 417:19. If the consumer prevails, he or she may recover damages, costs, and reasonable attorney’s fees. RSA § 417:20.

3. Involuntary Testing of Patients After Occupational Exposure

New Hampshire law does not provide any authorization for involuntary HIV testing of patients in the event of an exposure to a health care worker or emergency first aid personnel.

However, in the event that an emergency response or public safety worker³ experiences an occupational exposure to an infectious disease, the emergency response worker's employer must have a medical referral consultant evaluate the exposure and give appropriate care, including prophylactic treatment. The medical referral consultant is required to "make all reasonable efforts to request and obtain a blood specimen from a source individual" for HIV testing when, in his or her opinion, HIV testing is "necessary in order to determine the proper prophylactic treatment or advice for the exposed worker." Nonetheless, *the source individual or their legal guardian must consent* to an HIV test and any disclosure of the test results to third persons. RSA § 141-G.

II. CONFIDENTIALITY & PRIVACY OF HIV-RELATED INFORMATION

A. CONFIDENTIALITY OF HIV TEST RESULTS

According to New Hampshire law, the identity of any person tested for HIV "shall not be disclosed to any person or agency except":

- the individual tested;
- their parent or legal guardian if they are a minor or a mentally incompetent adult; and
- the physician ordering the test, or the person authorized by the physician. RSA § 141-F:7-8.

New Hampshire law provides privacy protections for HIV+ test results in virtually every context. Under New Hampshire law, "[a]ll records and any other information pertaining to a person's testing for [HIV] shall be maintained by a health care provider, health or social service agency, organization, business, school or any other entity, public or private, as confidential, and protected from inadvertent or unwarranted intrusion."⁴ RSA § 141-F:8.

These confidentiality provisions apply to the disclosure of mental health, substance abuse, and other health-related records containing HIV or AIDS status information.

Unlike informed consent to test an individual for HIV, where oral consent is adequate, *written consent* is required to disclose an individual's HIV test results, or even that a person was the subject of an HIV test. Such written authorization must be HIV-specific and must include the reason for the request to disclose the test result. RSA § 141-F:8.

B. EXCEPTIONS TO NEW HAMPSHIRE HIV PRIVACY STATUTE

³ Includes firefighters, police officers, prison employees, emergency health care providers, and emergency towing personnel.

⁴ In addition, all records or information pertaining to a person's HIV test which are "obtained by subpoena or any other method of discovery shall not be released or made public." RSA § 141-F:8, II.

1. Health of the Patient

A physician may disclose HIV test results to another physician or health care provider “directly involved” in the patient’s health care if the disclosure is “necessary in order to protect the health of the person tested.” RSA § 141-F:8, IV.

2. Blood Donations

The identity of a person who tests positive for HIV may be disclosed to an agency who receives blood donations, provided that the information remains confidential and protected from unwarranted intrusion. RSA § 141-F:8, V.

C. REMEDIES FOR VIOLATION OF THE TESTING AND PRIVACY STATUTE

Any person who violates the HIV confidentiality and disclosure statutes described above (RSA § 141-F:7-141-F:8) shall be liable for actual damages, court costs, and attorney’s fees, plus a civil penalty of up to \$5000. RSA § 141-F:10.

Violations of the informed consent, test reporting, or confidentiality provisions described above (RSA § 141-F:5-141-F:8) may also result in criminal liability. Violations are considered misdemeanors if committed by a person, and felonies if committed by a corporate entity.

D. THE CONSTITUTIONAL RIGHT TO PRIVACY

Many courts have found that a person has a constitutional privacy right to the nondisclosure of HIV status. Courts have based this right on the Due Process Clause of the U.S. Constitution which creates a privacy interest in avoiding disclosure of certain types of personal information.

The constitutional right to privacy can only be asserted when the person disclosing the information is a state or government actor -- e.g., police, prison officials, doctors at a state hospital.

To determine whether there has been a violation of this right to privacy, courts balance the nature of the intrusion into a person’s privacy against the weight to be given the government’s legitimate reasons for a policy or practice which results in disclosure.

E. STATE HIV REPORTING LAWS

1. HIV Surveillance

New Hampshire regulations require physicians, health care providers, and diagnostic labs to report HIV and AIDS cases to the Department of Public Health within 72 hours. NH He-P 301.02. Local boards of health and individuals in charge of institutions where there is no health care provider in attendance⁵ are also required to report cases of communicable diseases to the Department “immediately,” including HIV or AIDS. NH He-P 301.03.

While reporting of AIDS diagnoses must include the patient’s name, reporting the name of a patient diagnosed with HIV infection is optional and left to the discretion of the person reporting. According to the regulations, such reporting “may include the patient’s name.” NH He-P 301.03 (a). In practice, according to the Department of Public Health, 95% of HIV cases reported are identified by name. The state does not have plans to move to a unique identifier system for the reporting of HIV-positive test results.

2. Contact Referral Program

New Hampshire law includes a general provision permitting the Commissioner of Public Health or his or her designee to do “contact referral” to notify persons who may have been infected with HIV. The law, however, prohibits the Commissioner or his or her designee from disclosing the identity of any HIV-positive individual. RSA § 141-F:9. The State’s current practice is to offer assistance to HIV-positive individuals in notifying partners.

F. DUTY TO WARN

1. The Dilemma

A counselor or physician may learn that a client is engaging in unsafe sex without having disclosed his or her HIV-positive status to the partner. Many people have asked whether there is a legal basis to breach client or patient confidentiality under these circumstances. It is the AIDS Law Project’s view that there is no clear justification for such a breach of confidentiality under New Hampshire law. *Providers and consumers alike, however, should be aware that the case law in this area is still developing and remains unresolved. For a legal opinion on how to handle a particular situation, a professional should consult with a supervisor or lawyer.*

⁵ This provision includes schools, child care agencies, hotels, restaurants, workplaces, hospitals, pharmacies, and prisons.

2. Statutory Duty or Right to Breach Confidentiality

New Hampshire has statutes generally addressing a duty by specified health providers to warn of threats of client violence to third parties. When a client has communicated a serious threat of physical violence against a clearly identified victim or a serious threat of substantial damage to real property, covered professionals⁶ in New Hampshire have a “duty to warn” of, or take reasonable precautions to provide protection from, a client’s violent behavior. These laws apply to certified mental health professionals⁷ (RSA § 330-A:22), physicians (RSA § 329:31), and nurses (RSA § 326-B:31).

The obligation to warn can be fulfilled through:

- reasonable efforts to communicate the threat to a victim;
- notification of police;
- civil commitment of the client to the state mental health system. (Note: the client must be in a mental condition “as a result of the mental illness to pose a likelihood of danger to himself or others.”)

A covered professional is not liable for information disclosed to a third party in an effort to discharge the duty described above.

It is important to keep in mind that New Hampshire law does not permit the disclosure of HIV status without written consent. Therefore, although no court has resolved the issue, the applicability of these duty to warn statutes to HIV is doubtful in light of this broad prohibition on the disclosure of HIV status in New Hampshire.

III. ANTI-DISCRIMINATION LAWS APPLICABLE TO HIV STATUS

A. DISCRIMINATION IN EMPLOYMENT

People who are HIV-positive or who have AIDS are protected from employment discrimination under both the New Hampshire Law Against Discrimination (RSA § 354-A) and the federal Americans with Disabilities Act (ADA). Both of these statutes prohibit discrimination in employment on the basis of a person’s disability.

The New Hampshire law covers employers with six or more employees; the ADA covers employers with fifteen or more employees.

⁶ These statutes also cover those who provide treatment “under the supervision” of covered professionals.

⁷ The statute includes psychologists, clinical social workers, pastoral counselors, medical health counselors, and marriage and family therapists.

1. Persons Protected

- a) Persons with AIDS or who are HIV-positive, even if they are asymptomatic and have no outward or manifest signs of illness.
- b) Persons who are regarded or perceived as having HIV.
- c) Under the ADA, but not New Hampshire law, a person who does not have HIV, but who “associates” with a person with HIV - such as friends, lovers, spouses, roommates, business associates, advocates, and caregivers of person with HIV.

2. Claims of Employment Discrimination Based on Disability

There are two types of claims which may be brought against employers under disability discrimination laws.

a) Treating an Applicant or Employee Differently Based on HIV Status

An employer may not take adverse action against an applicant or employee simply on the basis that the person is HIV-positive or has AIDS. This means that an employer may not terminate, refuse to hire, rehire, or promote, or otherwise discriminate in the terms or conditions of employment, based on the fact that a person is HIV-positive or has AIDS.

The focus here is whether a person with AIDS or HIV was treated differently than other applicants or employees in similar situations.

Examples of unlawful discrimination:

- An employer may not refuse to hire a person with HIV based on fear that HIV will be transmitted to other employees or to customers.
- An employer may not refuse to hire or make an employment decision based on the possibility, or even probability, that a person will become sick and will not be able to do the job in the future.
- An employer cannot refuse to hire a person because it will increase health or workers' compensation insurance premiums.

b) An Employer's Failure to Provide a "Reasonable Accommodation" to a person with HIV or AIDS

NOTE: An employer is only obligated to provide a "reasonable accommodation" under federal law (ADA) and not under New Hampshire state law. Therefore, this protection does not apply to employers with fewer than 15 employees.

What is a "reasonable accommodation"?

Persons with disabilities, such as HIV/AIDS, may experience health-related problems which make it difficult to meet some job requirements or duties. For example, a person may be exhausted or fatigued and find it difficult to work a full-time schedule.

In certain circumstances, the employer has an obligation to modify or adjust job requirements or workplace policies in order to enable a person with AIDS to perform the job duties. This is known as a "reasonable accommodation."

Examples of reasonable accommodations include:

- modifying or changing job tasks or responsibilities;
- establishing a part-time or modified work schedule;
- permitting time off during regular work hours for medical appointments;
- reassigning an employee to a vacant job; or
- making modifications to the physical layout of a job site or acquiring devices such as a telephone amplifier to allow, for example, a person with a hearing impairment to do the job.

There is no fixed set of accommodations which an employee may request. The nature of a requested accommodation will depend on the particular needs of an individual employee's circumstances.

It is, with rare exception, the employee's initial responsibility to initiate the request for an accommodation. In addition, an employer may request that an employee provide some information about the nature of the disability. Employees with concerns about disclosing HIV/AIDS status to a supervisor should contact the AIDS Law Project's Legal Information Hotline in order to strategize about ways to meet any such requirements.

Does an employer have to grant a request for a reasonable accommodation?

An employer is not obligated to grant each and every request for an accommodation. An employer does not have to grant a reasonable accommodation which will create an “undue burden” (i.e. significant difficulty or expense for the employer’s operation). In addition, the employer does not have to provide a reasonable accommodation if the employee cannot perform the job function even with the reasonable accommodation.

When is a “reasonable accommodation” for an employee an “undue burden” for an employer?

In determining whether a requested accommodation creates an undue burden or hardship for an employer, courts examine a number of factors which include:

- the employer’s size, and budget and financial constraints;
- the costs of implementing the requested accommodation; and
- how the accommodation affects or disrupts the employer’s business.

Again, each situation is examined on a case-by-case basis.

An employer only has an obligation to grant the reasonable accommodation if, as a result of the accommodation, the employee is then qualified to perform the essential job duties. An employer does not have to hire or retain an employee who cannot perform the essential functions of the job, even with a reasonable accommodation.

3. Inquiries About Health

Prior to employment an employer cannot ask questions which are aimed at determining whether an employee has a disability. Examples of prohibited pre-employment questions are:

- Have you ever been hospitalized or under the care of a physician?
- Do you have any health problems which would make it difficult for you to do this job?
- What medications do you take?

Under the ADA, after an employer has made an offer of employment, s/he may require a physical examination solely for the purpose of determining if an employee can perform the essential job functions with reasonable accommodation. There are strict confidentiality requirements on the storage of this information.

New Hampshire law allows employers, after making an offer of employment, to inquire into and keep records of existing or pre-existing physical or mental conditions. RSA § 354-A:7, III.

4. Becoming Your Own Advocate

While it may be useful to consult with a lawyer, the following steps can be helpful in beginning to consider and assess a potential employment discrimination problem.

- a) Consider the difference between unfairness and illegal discrimination. The bottom line of employment law is that an employee can be fired for a good reason, bad reason, or no reason at all. A person can be legally fired for a lot of reasons, including a bad “personality match.” What they cannot be fired for is a discriminatory reason specifically outlawed by a statute.
- b) In order to prove a discrimination claim (i.e., that you were fired, demoted, etc. because of discrimination and not because of some legitimate reason), you must be able to show the following:
 - the employer knew or figured out that you are HIV-positive or have AIDS;
 - you were qualified to perform the essential functions of the job with reasonable accommodation; and
 - adverse action was taken against you because of your HIV or AIDS status and the pretextual reason given by the employer for the adverse action is false.
- c) If your employer knows that you have HIV or AIDS, identify exactly who knows, how they know, and when they found out. If you have not told your employer, is there any other way the employer would know or suspect your HIV status?
- d) Consider the reasons why you believe that you are being treated differently because of HIV status, including the following areas:
 - Have other employees in similar situations been treated differently or the same?
 - Has your employer followed its personnel policies?
 - Did the adverse treatment begin shortly after the employer learned of your HIV status?
 - Have you been out of work due to illness for any period of time and did the adverse treatment begin upon your return to work?

- What will your employer’s version of events be? How will you prove that the employer’s version is false?
- e) Do you have any difficulty fulfilling the duties of your job because of any HIV-related health or medical issue? Does your condition prevent full-time work, or require time off for medical appointments, lighter duties or a less stressful position? If your workplace has more than 15 employees, you might want to try brainstorming to create a reasonable accommodation that you can propose to your employer. Here are some points to consider:
- How does the company operate and how would the accommodation work in practice?
 - Put yourself in the supervisor’s shoes. What objections might be raised to the requested reasonable accommodation? For example, if you need to leave at a certain time for medical appointments, who would cover your duties?

5. Health Care Workers

HIV-positive health care workers are urged to be particularly vigilant about consulting an attorney to understand their legal rights. Although there is virtually no risk that an HIV-positive health care worker will transmit HIV to a patient, health care providers should know that New Hampshire has a particularly harsh statute which on its face prohibits a health care worker infected with HIV or Hepatitis B from performing what is called an “exposure prone invasive procedure” without an application seeking permission to do so from the Commissioner of Health and Human Services. Under the statute, an expert review panel is appointed to decide whether the health care worker can continue performing such procedures and, if so, whether any restrictions will be imposed. RSA § 141-F:9.

It is crucial to understand your rights as a health care worker. For example, the term “exposure-prone invasive procedure” is problematic and not adequately defined. *Any health care worker should contact GLAD, another attorney, or a public health advocate, before taking any steps to notify the Commissioner under this statute.*

B. DISCRIMINATION IN PUBLIC ACCOMMODATIONS

Under both New Hampshire law and the ADA, it is unlawful to exclude a person with HIV from a public place (what the law refers to as a “public accommodation”) or to provide unequal or restricted services to a person with HIV in a public place. It is also unlawful to release any written communication (such as a notice or advertisement) indicating that such accommodation will be denied to persons with HIV, or that their presence is unwelcome. RSA § 354-A:17.

The ADA defines “public accommodation” as virtually any place of business, and also includes non-business entities such as schools. New Hampshire law most likely includes a private medical office within the definition of “public accommodation” although no court has formally decided this issue.

Therefore, people with HIV are protected from discrimination in virtually every public place or business, including bars, restaurants, hotels, stores, schools, vocational or other educational programs, taxi cabs, buses, airplanes, and other modes of transportation, health clubs, hospitals, and medical and dental offices - as long as these facilities are generally open to the public and are not private membership clubs.

Discrimination in Medical and Dental Care

Believe it or not, persons with HIV are still faced with discrimination by hospitals, doctors, dentists, and other health care providers. This discrimination can take the form of an outright refusal to provide medical services or an illegal referral because of a patient’s HIV status.

Both an outright refusal to provide medical treatment and unnecessary referrals on the basis of a person’s disability are unlawful under New Hampshire law and the ADA.

Typical arguments raised by health care providers:

1. “Treating People with HIV is Dangerous.”

Doctors and dentists may claim that a refusal to treat a patient with HIV is legitimate because they fear they might contract HIV themselves through needlesticks or other exposures to blood. However, studies of health care workers have concluded that risk of contracting HIV from occupational exposure is minuscule, especially with the use of universal precautions.

For this reason, in 1998, the United States Supreme Court ruled in the case Bragdon v. Abbott that health care providers cannot refuse to treat people with HIV based on concerns or fears about HIV transmission.

In addition to the legal perspective, both the American Medical Association and the American Dental Association have issued policies that it is unethical to refuse treatment to a person with HIV.

2. Slightly More Subtle: “I Am Not Qualified to Treat an HIV-Positive Patient.”

A slightly more subtle form of discrimination occurs when doctors or dentists claim that they are not qualified or equipped to treat the patient and refer that patient elsewhere. In these cases, the merits of a discrimination claim depend upon whether, based on objective medical evidence, the services or treatment needed by the patient require a referral to a specialist or are within the scope of services and competence of the provider.

In United States v. Morvant, the Court rejected a dentist’s claim that patients with HIV require a specialist for routine dental care. The court agreed with the testimony of experts who said that no special training or expertise, other than that possessed by a general dentist, is required to provide dental treatment to people with HIV. The Court specifically rejected the dentist’s arguments that he was unqualified because he had not kept up with the literature and training necessary to treat patients with HIV. While this case arose in the context of dental care, it is applicable to other medical settings as well.

Under Title III of the ADA (codified as Title 42 of the United States Code, Sections 12181-12188), and similar provisions of New Hampshire law, it is illegal for a health care provider to:

- a) Deny an HIV-positive patient the “full and equal enjoyment” of medical services or to deny an HIV-positive patient the “opportunity to benefit” from medical services in the same manner as other patients.
- b) Establish “eligibility criteria” for the privilege of receiving medical services which tend to screen out patients who have tested positive for HIV.
- c) Provide “different or separate” services to patients who are HIV-positive or fail to provide services to patients in the “most integrated setting.”
- d) Deny equal medical services to a person who is known to have a “relationship” or “association” to a person with HIV, such as a spouse, partner, child, or friend.

Applying these specific provisions of the ADA to the practice of health care, the following practices are illegal:

- A health care provider cannot decline to treat a person with HIV based on a perceived risk of HIV transmission or because the physician simply does not feel comfortable treating a person with HIV.

- A health care provider cannot agree to treat a patient only in a treatment setting outside the physician's regular office, such as a special hospital clinic, simply because the person is HIV-positive.
- A health care provider cannot refer an HIV-positive patient to another clinic or specialist, unless the required treatment is outside the scope of the physician's usual practice or specialty. The ADA requires that referrals of HIV-positive patients be made on the same basis as referrals of other patients. It is, however, permissible to refer a patient to specialized care if the patient has HIV-related medical conditions which are outside the realm of competence or scope of services of the provider.
- A health care provider cannot increase the cost of services to an HIV-positive patient in order to use additional precautions beyond the mandated OSHA and CDC infection control procedures. Under certain circumstances, it may be an ADA violation to even use unnecessary additional precautions which tend to stigmatize a patient simply on the basis of HIV status.
- A health care provider cannot limit the scheduled times for treating HIV-positive patients, such as insisting that an HIV-positive patient come in at the end of the day.

C. DISCRIMINATION IN HOUSING

It is illegal under both New Hampshire law (RSA § 354-A:8 *et seq.*) and the National Fair Housing Amendments of 1989 to discriminate in the sale or rental of housing on the basis of HIV status. A person cannot be evicted from an apartment because of their HIV or AIDS status, or because they are regarded as having HIV or AIDS.

In addition, a person cannot be discriminated against in housing because of a disability of the buyer or renter, a person intending to reside in the housing, or any person "associated with" the buyer or renter. RSA § 354-A:12. This means a person cannot be discriminated against because their roommate, lover, friend, relative, or business partner has HIV.

IV. ACCESS TO CLEAN NEEDLES

Under a New Hampshire law which goes into effect on January 1, 2001, a person who is over 18 years of age may legally purchase a hypodermic syringe or needle at a pharmacy without a prescription from a physician. A pharmacy may sell to any such person up to ten syringes or needles at any single purchase. RSA § 318:52-C.