

CHAPTER 23-07.4

HUMAN IMMUNODEFICIENCY VIRUS INFECTION HEALTH PROCEDURES

23-07.4-01. Public health procedures for persons with human immunodeficiency virus infection. Subject to this chapter, the state health officer or a designee of the state health officer may examine or cause to be examined a person reasonably believed to be infected with or to have been exposed to the human immunodeficiency virus.

1. Orders or restrictive measures directed to a person with human immunodeficiency virus infection must be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts, which must be documented, to obtain the voluntary cooperation of the person who may be subject to the order or measure. The orders and measures must be applied serially with the least intrusive measures used first. The burden of proof is on the state health officer or a designee of the state health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.
2. When the state health officer or a designee of the state health officer knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and is a danger to the public health, that official may issue an order, according to the following priority, to:
 - a. Require the person to be examined and tested to determine whether the person has human immunodeficiency virus infection;
 - b. Require a person with human immunodeficiency virus infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others; or
 - c. Direct a person with human immunodeficiency virus infection to cease and desist from specified conduct that endangers the health of others, but only if that official has determined that clear and convincing evidence exists to believe that the person has been ordered to report for counseling as provided in subdivision b and continues to demonstrate behavior that endangers the health of others.
3. If a person violates an order issued under subdivision c of subsection 2 and it is shown that the person is a danger to others, the state health officer or a designee of the state health officer may enforce the order by imposing such restrictions upon the person as are necessary to prevent the specific conduct that endangers the health of others. Restrictions must be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed ninety days, during which the order remains effective, the terms of the restrictions, and any other conditions as may be necessary to protect the public health. Restrictions must be imposed in the least restrictive manner necessary to protect the public health.
4. Upon issuance of any order under subsection 2 or 3, the state health officer or a designee of the state health officer shall promptly, personally, and confidentially notify the person who is the subject of the order, stating the grounds and provisions of the order and the right to contest the order, the right to be present at a judicial hearing in the district court serving the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person who is the subject of the order refuses to comply with the order and refuses to cooperate voluntarily with the state health officer or a designee of the state health officer, the state health officer or designee may petition the district court serving the county in which the person resides for an order of compliance. The state health

officer or designee shall request the state's attorney in the county in which the person resides to file the petition in the district court. If an order of compliance is requested, the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing must be made by personal service or, if the person is not available, must be mailed to the person who is the subject of the order by certified mail at the person's last-known address. Proof of mailing by the state health officer or designee is sufficient notice under this section. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

5. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

23-07.4-02. Emergency public health procedures.

1. When the procedures under section 23-07.4-01 have been exhausted or cannot be satisfied and the state health officer or designee knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and that the person continues to engage in behavior that presents an imminent danger to the public health, the state health officer or designee may bring an action in the district court serving the county in which the person resides to enjoin the person from engaging in or continuing to engage in such behavior. The state health officer or designee shall request the state's attorney to file the action in district court.
2. In addition to issuance of an injunction order requested under subsection 1, the court may issue other appropriate orders including an order to take the person into custody, for a period not to exceed ninety days and place the person in a facility designated or approved by the state health officer. A custody order issued for the purpose of counseling and testing to determine whether the person has human immunodeficiency virus infection must provide for the immediate release from custody and from the facility for any person whose confirmed test results are negative and may provide for counseling or other appropriate measures to be imposed on any person whose confirmed test results are positive. The person who is the subject of the order must be given prompt, personal, and confidential notice of the order stating the grounds and provisions of the order and notifying the person of the right to contest the order, the right to be present at a judicial hearing in the district court serving the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person contests testing or treatment, no invasive medical procedures may be carried out before a hearing is held under subsection 3.
3. Any order issued by the district court under subsection 2 is subject to review in a court hearing. Prompt, personal, and confidential notice of the place, date, and time of the court hearing and of the person's right to be present at the hearing and the right to representation by counsel during the hearing must be given to the person who is the subject of the court order. The hearing must be conducted by the court

within forty-eight hours after the order is issued. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that grounds exist for the order issued by the court under subsection 2 and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person subject to the order has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

4. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

23-07.4-03. Closed hearing - Confidentiality of information. A hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter is confidential.