

1 **10A NCAC 41A .0202 IS AMENDED AS PUBLISHED IN 21 NCR 24 PP. 2253-2256 WITH CHANGES**  
2 **AS FOLLOWS:**

3 **10A NCAC 41A .0202 CONTROL MEASURES – HIV**

4 The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human  
5 Immunodeficiency Virus (HIV) infection:

6 (1) Infected persons shall:

- 7 (a) refrain from sexual intercourse unless condoms are used; exercise caution when  
8 using condoms due to possible condom failure;
- 9 (b) not share needles or syringes, or any other drug-related equipment, paraphernalia,  
10 or works that may be contaminated with blood through previous use;
- 11 (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova,  
12 tissues, organs, or breast milk;
- 13 (d) have a skin test for tuberculosis;
- 14 (e) notify future sexual intercourse partners of the infection;
- 15 (f) if the time of initial infection is known, notify persons who have been sexual intercourse  
16 and needle partners since the date of infection; and,
- 17 (g) if the date of initial infection is unknown, notify persons who have been sexual  
18 intercourse and needle partners for the previous year.

19 (2) The attending physician shall:

- 20 (a) give the control measures in Item (1) of this Rule to infected patients, in accordance  
21 with 10A NCAC 41A .0210;
- 22 (b) If the attending physician knows the identity of the spouse of an HIV-infected  
23 patient and has not, with the consent of the infected patient, notified and counseled  
24 the spouse, the physician shall list the spouse on a form provided by the Division of  
25 **Epidemiology Public Health** and shall mail the form to the **Division; the Division.**  
26 **The** Division shall undertake to counsel the **spouse; the spouse.** The attending  
27 physician's responsibility to notify exposed and potentially exposed persons is  
28 satisfied by fulfilling the requirements of Sub-Items (2)(a) and (b) of this Rule;
- 29 (c) advise infected persons concerning clean-up of blood and other body fluids;
- 30 (d) advise infected persons concerning the risk of perinatal transmission and  
31 transmission by breastfeeding.

32 (3) The attending physician of a child who is infected with HIV and who may pose a significant  
33 risk of transmission in the school or day care setting because of open, oozing wounds or  
34 because of behavioral abnormalities such as biting shall notify the local health director. The  
35 local health director shall consult with the attending physician and investigate the  
36 **circumstances. following circumstances:**

- 1 (a) If the child is in school or scheduled for admission and the local health director  
2 determines that there may be a significant risk of transmission, the local health  
3 director shall consult with an interdisciplinary committee, which shall include  
4 school personnel, a medical expert, and the child's parent or guardian to assist in the  
5 investigation and determination of risk. The local health director shall notify the  
6 superintendent or private school director of the need to appoint such an  
7 interdisciplinary committee.
- 8 (i) If the superintendent or private school director establishes such a  
9 committee within three days of notification, the local health director shall  
10 consult with this committee.
- 11 (ii) If the superintendent or private school director does not establish such a  
12 committee within three days of notification, the local health director shall  
13 establish such a committee.
- 14 (b) If the child is in school or scheduled for admission and the local health director  
15 determines, after consultation with the committee, that a significant risk of  
16 transmission exists, the local health director shall:
- 17 (i) notify the parents;
- 18 (ii) notify the committee;
- 19 (iii) assist the committee in determining whether an adjustment can be made to  
20 the student's school program to eliminate significant risks of transmission;
- 21 (iv) determine if an alternative educational setting is necessary to protect the  
22 public health;
- 23 (v) instruct the superintendent or private school director concerning protective  
24 measures to be implemented in the alternative educational setting  
25 developed by appropriate school personnel; and
- 26 (vi) consult with the superintendent or private school director to determine  
27 which school personnel directly involved with the child need to be notified  
28 of the HIV infection in order to prevent transmission and ensure that these  
29 persons are instructed regarding the necessity for protecting  
30 confidentiality.
- 31 (c) If the child is in day care and the local health director determines that there is a  
32 significant risk of transmission, the local health director shall notify the parents that  
33 the child must be placed in an alternate child care setting that eliminates the  
34 significant risk of transmission.
- 35 (4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or  
36 mucous membrane exposure to blood or body fluids that, if the source were infected with  
37 HIV, would pose a significant risk of HIV transmission, the following shall apply:

- 1 (a) When the source person is known:
- 2 (i) The attending physician or occupational health care provider responsible
- 3 for the exposed person, if other than the attending physician of the person
- 4 whose blood or body fluids is the source of the exposure, shall notify the
- 5 attending physician of the source that an exposure has occurred. The
- 6 attending physician of the source person shall discuss the exposure with
- 7 the source ~~and~~ and, unless the source is already known to be infected,
- 8 shall test the source for HIV infection ~~unless the source is already known~~
- 9 ~~to be infected.~~ without consent unless it reasonably appears that the test
- 10 cannot be performed without endangering the safety of the source person
- 11 or the person administering the test. If the source person cannot be tested,
- 12 an existing specimen, if one exists, shall be tested. The attending
- 13 physician of the exposed person shall be notified of the infection status of
- 14 the source.
- 15 (ii) The attending physician of the exposed person shall inform the exposed
- 16 person about the infection status of the source, offer testing for HIV
- 17 infection as soon as possible after exposure and at reasonable intervals up
- 18 to one year to determine whether transmission occurred, and, if the source
- 19 person was HIV infected, give the exposed person the control measures
- 20 listed in Sub-Items (1)(a) through (c) of this Rule. The attending
- 21 physician of the exposed person shall instruct the exposed person
- 22 regarding the necessity for protecting confidentiality.
- 23 (b) When the source person is unknown, the attending physician of the exposed persons
- 24 shall inform the exposed person of the risk of transmission and offer testing for HIV
- 25 infection as soon as possible after exposure and at reasonable intervals up to one
- 26 year to determine whether transmission occurred.
- 27 (c) A health care facility may release the name of the attending physician of a source
- 28 person upon request of the attending physician of an exposed person.
- 29 (5) The attending physician shall notify the local health director when the physician, in good
- 30 faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot
- 31 follow control measures and is thereby causing a significant risk of transmission. Any other
- 32 person may notify the local health director when the person, in good faith, has reasonable
- 33 cause to suspect a person infected with HIV is not following control measures and is thereby
- 34 causing a significant risk of transmission.
- 35 (6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is
- 36 mentally ill or mentally retarded, the local health director shall confer with the attending

1 mental health physician or mental health authority and the physician, if any, who notified the  
2 local health director to develop a plan to prevent transmission.

3 (7) The ~~Division of Public Health shall notify the~~ Director of Health Services of the North  
4 Carolina Department of Correction and the prison facility administrator ~~shall be notified~~  
5 when any person confined in a state prison is determined to be infected with HIV. If the  
6 prison facility administrator, in consultation with the Director of Health Services, determines  
7 that a confined HIV infected person is not following or cannot follow prescribed control  
8 measures, thereby presenting a significant risk of HIV transmission, the administrator and the  
9 Director shall develop and implement jointly a plan to prevent transmission, including  
10 making recommendations to the unit housing classification committee.

11 (8) The local health director shall ensure that the health plan for local jails include education of  
12 jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or  
13 transmitting this infection.

14 (9) Local health departments shall provide ~~counseling and~~ testing for HIV infection ~~with pre-~~  
15 ~~and post test counseling~~ at no charge to the patient. Third party payors may be billed for  
16 HIV counseling and testing when such services are provided and the patient provides written  
17 consent.

18 (10) ~~HIV pre-test counseling is not required. Counseling for HIV testing shall include risk~~  
19 ~~assessment, risk reduction guidelines, referrals for medical and psychosocial services, and,~~  
20 ~~when the person tested is found to be infected with HIV, control measures. Pre test~~  
21 ~~counseling may be done in a group or individually, as long as each individual is provided the~~  
22 ~~opportunity to ask questions in private.~~ Post-test counseling ~~for persons infected with HIV is~~  
23 ~~required,~~ must be ~~individualized, individualized, and shall include referrals for medical and~~  
24 ~~psychosocial services and control measures.~~

25 (11) A local health department or the Department may release information regarding an infected  
26 person pursuant to G.S. 130A-143(3) only when the local health department or the  
27 Department has provided direct medical care to the infected person and refers the person to  
28 or consults with the health care provider to whom the information is released.

29 (12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as  
30 a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan  
31 to assist the individual to comply with control measures. The plan shall be designed to meet  
32 the specific needs of the individual and may include one or more of the following available  
33 and appropriate services:

- 34 (a) substance abuse counseling and treatment;
- 35 (b) mental health counseling and treatment; and
- 36 (c) education and counseling sessions about HIV, HIV transmission, and behavior  
37 change required to prevent transmission.

1 (13) The Division of Epidemiology Public Health shall conduct a partner notification program to  
2 assist in the notification and counseling of partners of HIV infected persons.

3 (14) Every pregnant woman shall be given offered HIV pre-test testing counseling, as described  
4 in 15A NCAC 19A .0202(10), by her attending physician as early in the pregnancy as  
5 possible at her first prenatal visit and in the third trimester. At the time this counseling is  
6 provided, and after informed consent is obtained, the The attending physician shall test the  
7 pregnant woman for HIV infection, unless the pregnant woman refuses the HIV test. to  
8 provide informed consent pursuant to G.S. 130A-148(h). If there is no record at labor and  
9 delivery of an HIV test result during the current pregnancy for the pregnant woman, the  
10 attending physician shall inform the pregnant woman that an HIV test will be performed,  
11 explain the reasons for testing, and the woman shall be tested for HIV without consent using  
12 a rapid HIV test unless it reasonably appears that the test cannot be performed without  
13 endangering the safety of the pregnant woman or the person administering the test. If the  
14 pregnant woman cannot be tested, an existing specimen, if one exists that was collected  
15 within the last 24 hours, shall be tested using a rapid HIV test. The attending physician must  
16 provide the woman with the test results as soon as possible. However, labor and delivery  
17 providers who do not currently have the capacity to perform rapid HIV testing are not  
18 required to use a rapid HIV test until January 1, 2009.

19 (15) If an infant is delivered by a woman with no record of the result of an HIV test conducted  
20 during the pregnancy and if the woman was not tested for HIV during labor and delivery, the  
21 fact that the mother has not been tested creates a reasonable suspicion pursuant to G.S. 130A-  
22 148(h) that the newborn has HIV infection and the infant shall be tested for HIV. An infant  
23 born in the previous 12 hours shall be tested using a rapid HIV test. However, providers  
24 who do not currently have the capacity to perform rapid HIV testing shall not be required to  
25 use a rapid HIV test until January 1, 2009.

26 (16) Testing for HIV may be offered as part of routine laboratory testing panels using a general  
27 consent which is obtained from the patient for treatment and routine laboratory testing, so  
28 long as the patient is notified that they are being tested for HIV and given the opportunity to  
29 refuse.

30 *History Note:* Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h);  
31 Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;  
32 Eff. March 1, 1988;  
33 Amended Eff. February 1, 1990; November 1, 1989; June 1, 1989;  
34 Temporary Amendment Eff. January 7, 1991 for a period of 180 days to expire on July 6,  
35 1991;  
36 Amended Eff. May 1, 1991;  
37 Recodified from 15A NCAC 19A .0201 (d) and (e) Eff. June 11, 1991;  
38 Amended Eff. August 1, 1995; October 1, 1994; January 4, 1994; October 1, 1992;  
39 Temporary Amendment Eff. February 18, 2002; June 1, 2001;  
40 Amended Eff. November 1, 2007; April 1, 2005; April 1, 2003.