

## **HEALTH**

### **PUBLIC HEALTH SERVICES BRANCH**

#### **DIVISION OF HIV, STD, AND TB SERVICES**

##### **AIDS Drug Distribution Program and Health Insurance Premium Payment**

##### **Program; HIV Screening of Pregnant Persons and Newborns for HIV Infection**

##### **Readoption with Amendments: N.J.A.C. 8:61**

##### **Adopted Repeals: N.J.A.C. 8:61-2, 3.2, 4.4, 4.5, 4.7, 4.8, and 5**

##### **Adopted Repeals and New Rules: N.J.A.C. 8:61-3.1, 3.5, 4.1, 4.2, and 4.3**

##### **Adopted New Rules: N.J.A.C. 8:61-1.1, 1.3, and 3.6, and 8:61 Appendices A, B, and C**

Proposed: August 19, 2024, at 56 N.J.R. 1654(a).

Adopted: December 11, 2024, by Kaitlan Baston, MD, MSc, DFASAM, Commissioner, Department of Health, in consultation with the Public Health Council.

Filed: December 11, 2024, as R.2025 d.008, **without change**.

Authority: N.J.S.A. 26:2-111.2; 26:4-129; 26:5C-1 et seq., particularly 26:5C-6, 8, and 20; and 30:4D-17.18a.

Effective Dates:     December 11, 2024, Readoption;  
                              January 6, 2025, Repeals, New Rules, and Amendments.

Expiration Date:     December 11, 2031.

#### **Summary of Public Comments and Agency Responses:**

The Department of Health (Department) received comments from the following:

1. John Nelson, Associate Professor, Rutgers School of Nursing, Newark, NJ;  
and

2. Ana Vivar, RN, North Jersey Community Research Initiative, Newark, NJ

The numbers in parentheses following each comment correspond to the commenters listed above.

1. COMMENT: A commenter states, “For the following sentence, ‘The chapter also establishes standards by which health care providers are to perform HIV screening and testing of every pregnant person, absent refusal, and every newborn infant, when the infant’s delivering parent’s HIV status is positive or unknown upon delivery,’ should be changed to ‘every pregnant person, absent refusal, and every newborn infant upon delivery.’ A delivering parent may have had a prior negative HIV Ab/Ag test but seroconverted since that testing. Every newborn infant should be tested regardless of parental serostatus.” (1)

RESPONSE: The Department acknowledges the commenter’s preference that every newborn infant be tested for HIV at birth. However, N.J.S.A. 26:2-111.2(a) and (b) establish the Department’s authority to require HIV testing of newborns. That law empowers the Commissioner of the Department of Health (Commissioner) to require testing only of newborns whose delivering parent’s HIV status is unknown or HIV-positive. The change that the commenter suggests would exceed the scope of the Commissioner’s rulemaking authority and require a statutory change. Therefore, the Department will make no change upon adoption in response to the comment.

2. COMMENT: A commenter states, “Hello, I am the new Harm Reduction Health/ARCH Nurse for NJCRI,” and provides her contact information. (2)

RESPONSE: This comment does not address, and, therefore, exceeds the scope of the notice of proposal, and does not require response. Therefore, the Department will make no change upon adoption in response to the comment.

### **Federal Standards Statement**

The rules readopted with amendments, repeals, and new rules, at N.J.A.C. 8:61, would fulfill the Department’s rulemaking obligations pursuant to the Act, specifically at N.J.S.A. 26:1A-15, and the terms and conditions of Federal funding that the Department receives pursuant to the Ryan White Act, to establish the AIDS Drug Distribution Program. The rules readopted with amendments, repeals, and new rules, at N.J.A.C. 8:61 would meet but not exceed the standards of the Ryan White Act. The Department incorporates by reference into the chapter, otherwise non-mandatory Federal (CDC) guidelines and recommendations for the provision of prophylactic HIV treatment as a minimum standard to which health care professionals are to adhere in providing testing and treatment to pregnant persons and newborns.

Except as stated above, the Department does not readopt the rules with amendments, repeals, and new rules, at N.J.A.C. 8:61 pursuant to the authority of, or to implement, comply with, or participate in, any program established pursuant to Federal law or pursuant to a State statute that incorporates or refers to Federal law, standards, or requirements. Therefore, no Federal standards analysis is required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:61.

**Full text** of the adopted amendments and new rules follows:

TEXT