



# **AIDS and the Law in New Jersey**

A PRACTICAL GUIDE  
(SECOND EDITION)

*A publication of the  
New Jersey State Bar Foundation and the Hyacinth AIDS Foundation*

## **ACKNOWLEDGMENTS**

The information in this booklet is published as a public education service to help explain laws in New Jersey. It does not constitute legal advice, which can only be given by your attorney.

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# FOREWARD

The purpose of this publication is to help people with HIV infection and AIDS service providers in New Jersey identify and avoid legal problems common to persons with HIV/AIDS. The information contained on the following pages will not replace the advice of an attorney, but will help to explain when to consult an attorney, and is based upon the laws of the state of New Jersey and applicable federal laws as of March 2006.

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## HYACINTH

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Founded in 1985, the Hyacinth AIDS Foundation is New Jersey's first and largest AIDS service organization. Hyacinth's staff and volunteers provide services to help people live with HIV; HIV counseling and testing; prevention education to slow the spread of the epidemic; and training and education on HIV to service providers and the general public. Hyacinth providers also serve as a critical voice in the public policy debate surrounding AIDS in New Jersey. Hyacinth is based in New Brunswick and has six regional offices, located in Newark, Jersey City, Paterson, North Plainfield, New Brunswick and Trenton. In addition to legal services, Hyacinth provides a statewide toll-free hotline, prevention education, treatment education and adherence counseling, HIV educational trainings, HIV counseling and testing, information and referrals, HIV services in New Jersey's correctional institutions, and psychosocial support and wellness workshops and support groups.

The Hyacinth AIDS Foundation Legal Services Department is the only organized program in New Jersey that is solely devoted to providing comprehensive legal services to New Jerseyans with HIV/AIDS.

The Hyacinth AIDS Foundation Legal Services Department can provide New Jerseyans who have HIV/AIDS, the legal community, and HIV/AIDS service providers the following:

- **Direct Services:** Clients may receive advice, counsel, and direct representation in cases concerning confidentiality, discrimination, access to healthcare, health and life insurance, public entitlements, housing, immigration,

consumer law issues, and prisoners' rights. Clients can also receive assistance in the preparation of legal documents, including wills, powers of attorney, living wills, and guardianship agreements.

- **Pro Se Clinics:** Clients can undertake or begin certain legal procedures on their own (“pro se” means “for yourself”). The legal services department offers community-based pro se clinics, which are designed to help persons with HIV/AIDS initiate procedures regarding various legal issues such as; civil rights; legal documents; financial matters; federal/state entitlements; and family law to name a few.
- **Volunteer Training:** The Hyacinth AIDS Foundation provides training programs designed to introduce attorney-volunteers to the legal service needs of persons with HIV/AIDS, and to the medical, psychological, and social implications of AIDS as they may affect the delivery of legal services.
- **Professional Training and Community Education:** The Hyacinth AIDS Foundation and the New Jersey State Bar Foundation provide training programs on specific topics for members of the legal community, service providers, legal writers and educators, and others concerned with HIV/AIDS and the law. For more information on current topics call the Hyacinth AIDS Foundation at 732-246-0204 and/or the New Jersey State Bar Foundation at 732-249-5000.
- **Publications:** In addition to *AIDS and the Law in New Jersey: A Practical Guide (Second Edition)*, the staff and volunteers of the Hyacinth AIDS Foundation's Legal Services Department have created a *Legal Documents* pamphlet and the *Reference Manual for Volunteer Attorneys*, which is distributed to all legal services department volunteers.

# CONFIDENTIALITY

## **Can I be given an HIV antibody test without my consent?**

No. In New Jersey, you must give your informed consent before an HIV antibody test can be performed. Informed consent should be either verbal or written, and implies that the person giving consent is competent, understands the risks and benefits of giving consent and does so voluntarily and without coercion.

## **Does a minor (a person under the age of 18) need parental consent in order to get an HIV antibody test?**

In New Jersey, any minor at least 13 years of age has the authority to seek a test for HIV without parental consent.

## **To which agencies are my HIV antibody test results reported?**

All cases of HIV infection are reported to the New Jersey State Department of Health (DOH). The information sent to the DOH depends upon where and how you are tested. If you are tested at a state-sponsored HIV testing and counseling site (CTS), you can choose to be tested anonymously or confidentially. If you are tested anonymously, you will be identified only by a number, and the DOH will receive only demographic information, such as your age, sex, and race. If you are tested confidentially, you will be identified by name, and your name and address, plus your demographic information, will be reported to the DOH. If you are tested at a facility that is not a CTS, such as a hospital, a clinic, or a physician's office, you will not have the option of being tested anonymously.

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## **Who has access to my HIV antibody results?**

New Jersey law states that any person maintaining records that identify people with HIV/AIDS must keep these records confidential. Unless you give written consent, your HIV records can be released only in the limited circumstances allowed by state or federal law. For example, they can be released to qualified personnel involved with your medical treatment and diagnosis, or if a court orders the release of your records. You can request to fill out a medical release form in order to verify who is receiving the records and what information is being released.

## **What can I do if my HIV antibody test results are released improperly?**

If the records containing your HIV status are disclosed

improperly, you can sue under New Jersey's confidentiality law and ask for actual and punitive damages and attorneys' fees. If the fact that you have HIV/AIDS is disclosed improperly, even if the actual records were not released, you can sue for defamation or invasion of privacy.

## **DISCRIMINATION**

### **Which New Jersey law protects persons with HIV/AIDS from discrimination?**

The New Jersey Law Against Discrimination prevents private businesses and state government from discriminating against disabled persons, including persons living with HIV/AIDS, in employment, access to public accommodations (including stores, restaurants and most other public places) and real estate.

### **Which federal law protects persons with HIV/AIDS from discrimination?**

The Vocational Rehabilitation Act of 1973 prevents the federal government, or companies with federal contracts, from discriminating against disabled persons, including persons with HIV/AIDS. The Americans with Disabilities Act (ADA) prevents private business and state governments from discriminating against persons with disabilities, including HIV/AIDS, in employment matters and access to public accommodations. The ADA does not apply to employers with fewer than 15 employees. However, in New Jersey all employers are covered by the New Jersey Law Against Discrimination.

### **What is a reasonable accommodation?**

Both federal and state law require an employer to make reasonable accommodations regarding physical and mental limitations before the employer can refuse to hire you, choose not to promote you, or decide to fire you. There is no single definition of reasonable accommodation, but it can include job reassignment, job restructuring, or allowing part-time or flexible hours. An employer does not have to make a reasonable accommodation for you if you are not qualified for a job or if the accommodation will cause the employer "undue

hardship.” To determine undue hardship, a court or regulatory agency will look at the nature and cost of the accommodation as well as the size and financial resources of the employer.

### **Can my employer treat me differently because I am HIV positive?**

No. Persons with HIV/AIDS are protected against discrimination in working conditions, as well as in hiring and firing decisions, by New Jersey and federal law. If an employer demonstrates that you cannot perform the essential duties of the job with or without reasonable accommodations, your employer may act accordingly, whether or not you are HIV positive.

### **If my employer suspects that I have AIDS am I protected from discrimination?**

Yes. The New Jersey Law Against Discrimination and the 1973 Vocational Rehabilitation Act prevent an employer from discriminating against an employee because of the employer's belief, true or false, that the employee has a disability, including HIV/AIDS.

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### **Can my employer tell other employees that I have HIV/AIDS?**

No. HIV infection is not a hazard in most work environments since HIV infection is not transmitted by casual contact. Your employer has no duty or reason to tell other employees that you have HIV/AIDS. Disclosure of an individual's status can be held as a violation of privacy and may be grounds for a civil lawsuit.

### **Can my employer fire me because I have HIV/AIDS and other employees refuse to work with me?**

No. If another employee refuses to work with you because of his or her fear of HIV/AIDS, New Jersey law and federal law protect you from discriminatory action by your employer.

### **Can my employer require me to take an HIV antibody test?**

Your current employer cannot require you to take an HIV antibody test unless the employer can prove that the test is necessary for you to perform the essential functions of your job safely. If you receive a new job offer, your prospective employer can require an HIV antibody test as part of a medical exam only if the test is required of all applicants for the job. Your job offer can be withdrawn only if the employer demonstrates that



you are no longer qualified to perform the essential functions of the job due to your HIV status.

**Do I need to inform my employer that I am HIV positive?**

No. You are not required to inform your employer that you are HIV positive, unless your HIV status no longer qualifies you to perform the essential functions of the job. At that point you can choose to leave your employment without disclosing your HIV status or inform your employer of your status to see if any arrangements can be made.

**Do I need to tell my employer that I am HIV positive if I am seeking “reasonable accommodations” due to my physical and mental limitations?**

No. If you have a disability, which includes HIV/AIDS, all you need is verification and proof by a physician that you have a disability that creates physical and mental limitations that warrant reasonable accommodations. Remember that your employer does not have to make a reasonable accommodation for you if you are not qualified for a job or if the accommodation will cause the employer “undue hardship.”

**Can I be fired for using illegal drugs?**

Maybe. The ADA states that a person who is using illegal drugs is not disabled, and therefore is not protected under the act. The ADA may protect a person against discrimination if he or she is in drug rehabilitation or previously used illegal drugs but has stopped.

**Can I be fired if I take off work to care for a person with HIV/AIDS?**

New Jersey’s Family Leave Act gives you the right to take a leave of absence, without pay, to care for a child, parent, or spouse with a serious health condition. You are entitled to a maximum leave of 12 weeks. When your leave is finished, your employer must give you back your previous job, or a similar job, unless there has been a layoff. The law applies only to employers with more than 50 employees.

The federal Family and Medical Leave Act also gives you the right to take a leave of absence, without pay, to care for a child, parent, or spouse with a serious health condition. The Federal Leave Act allows an employee who is suffering a serious medical condition or who must care for a parent, child, or spouse to take up to 12 weeks of unpaid leave within a 12-month period. The

employee must have been employed by his or her employer for at least 12 months, and must have worked at least 1,250 hours. If the serious medical condition was anticipated, such as childbirth, a 30-day notice to the employer is required. Only those employers who employ 50 or more people are obliged to comply with the act.

Violations may result in a civil suit for damages, and court costs and fees may be requested. In New Jersey, however, the New Jersey Family Leave Act takes precedence since it provides greater benefits.

### **Can a hospital, doctor, or dentist refuse to give me medical treatment because I am HIV positive?**

No. Hospitals cannot refuse treatment to persons with AIDS or HIV infection because New Jersey and federal laws against discrimination define a hospital as a public accommodation. The ADA requires that all places of public accommodation be accessible to individuals with disabilities, including persons with AIDS or HIV infection. The offices of doctors and dentists who are in private practice are also considered places of public accommodation under the ADA, and these practitioners cannot discriminate against persons with AIDS or HIV infection.

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### **Are there laws in New Jersey that prohibit discrimination against gays or lesbians?**

Yes. The New Jersey Law Against Discrimination prevents private businesses and state government from employment discrimination against persons based on affectional or sexual orientation. In addition, landlords may not refuse to rent to a person with AIDS, or who is perceived to have AIDS. However, the Law Against Discrimination does not apply to landlords who rent out a single room in an occupied dwelling or who rent an apartment in a two-family home when the landlord or members of the landlord's family live in the other apartment.

### **What can I do if I think that I have been discriminated against?**

If you think that you have been discriminated against because of HIV infection, you have two options. You can file a complaint with the New Jersey Division on Civil Rights within 180 days of the act of discrimination, or you can file a lawsuit in superior court. You must decide which avenue to pursue, however, since you cannot file both a complaint with the Division on Civil Rights and a lawsuit in superior court. If you pursue action with

the Division on Civil Rights, you must do so through the regional office that serves the county where the incident took place. Phone numbers for regional offices are listed in the Referrals section of this manual. Complaints must be in writing and contain the name and address of the individual or authorized representative filing the complaint. A complaint also must describe the alleged discriminatory action and be signed by the complainant or an authorized representative. An authorized representative is a person to whom you have granted power of attorney authorizing him or her to act on your behalf.

For more information, contact your local office of the New Jersey Division on Civil Rights.

To file a lawsuit, it is beneficial to have the assistance of a qualified attorney. Contact Hyacinth's Legal Services Department at 732-246-0204 for more information.

### **What can the New Jersey Division on Civil Rights do for me if I file a complaint?**

The Division on Civil Rights will investigate your complaint and try to settle it without a formal proceeding. If your complaint cannot be informally resolved, the Division on Civil Rights will decide if there is probable cause to believe that you are a victim of discrimination. If the division finds probable cause, an administrative law judge will hold a hearing on your complaint. If the division does not act on your complaint within 180 days, you can have the case transferred directly to an administrative law judge.

## **FAMILY CONCERNS**

### **Can I divorce my spouse if he or she is infected with HIV?**

Yes. There are several ways a divorce can be sought. If your spouse contracted HIV through an adulterous affair, then the divorce can be sought immediately. Additionally, a divorce may be sought on the grounds of extreme cruelty if your spouse has exposed you to HIV without your consent. However, if you seek a divorce on the sole grounds of extreme cruelty, you must wait three months from the time of the violation before filing suit for divorce.

### **Can I lose custody or visitation rights of my child if I am HIV positive?**

No. Since the current medical position is that HIV cannot be transmitted through causal contact, custody or visitation rights should not be denied on the basis of a fear that the child may contract the virus. In order for custody or visitation rights to be denied, it must be proven that a parent is physically and/or mentally incapable of caring for his or her child due to HIV infection.

## **FINANCIAL: Creditor/Debtor**

### **Can I stop collection agencies from contacting me?**

Yes. The Fair Collection Practices Act, a federal law, establishes certain rules for collection agencies that attempt to collect money owed not to them but to a third party. You are not obligated to speak with creditors if you are unable to make a payment arrangement. Under the Fair Debt Act, a collection agency's representative must stop calling you if you write a letter stating that you do not want to be contacted by phone. However, the collection agency can continue to contact you in writing, and your letter does not eliminate the debt and does not stop the creditor from taking action against you.

### **Can creditors collect what I owe them if I am living on a government benefit or pension?**

Creditors cannot recover the money that you owe them by taking state benefits (General Assistance, unemployment or temporary disability), federal benefits (Supplemental Security Income, Social Security Disability/Retirement, Temporary Assistance for Needy Families or veteran's benefits), or most private pensions. Therefore, bank accounts with only monies from the above sources cannot be seized by creditors. However, creditors can take money held in accounts that do not contain money from the above listed sources.

### **How can creditors collect what I owe them?**

The answer depends on whether your debt is secured or unsecured. A secured debt means that a creditor has taken an

interest in your property (such as a car or a house) to make certain that you pay. If you do not pay on a secured debt, the creditor can take the security (by repossessing a car or foreclosing on a mortgage), sell it, and then sue you for the difference between what the creditor got from the sale and what you still owe the creditor. An unsecured debt means that the only security is your promise to pay. If you do not pay, the creditor must get a judgment against you and then try to find assets, like a bank account or your salary, but not government benefits or most private pensions. Also, if you do not have any assets and are not working, you are “judgment proof,” which means the creditor will not be able to collect.

### **What is bankruptcy?**

The federal bankruptcy statute allows a person to file a bankruptcy petition to eliminate his or her responsibility for most debts or create a payment plan to satisfy payment of debt. A bankruptcy petition will also prevent creditors from trying to collect what you owe them while the petition is being decided. There are two disadvantages to a bankruptcy petition; it can take several months to complete the process, and the bankruptcy will become part of your credit record, making it difficult to get credit in the future. Before you file for bankruptcy, you should consider working with a reputable consumer counseling agency to set up a repayment plan. The agencies generally charge a fee for this service. One such agency is the Consumer Credit Counseling Service of New Jersey at 888-726-3260 or online at [www.cccsnj.org](http://www.cccsnj.org).

## **FINANCIAL: Benefits/Entitlements**

This section examines some government entitlements for which you may be eligible. Your eligibility for each entitlement may depend on how long you were employed, how much money you make, how long you will be unable to work, or what assets you own. The Hyacinth AIDS Foundation offers entitlement counseling and will assist you in completing applications and resolving entitlement-related problems. For information, call the Hyacinth Hotline toll-free at 1-800-433-0254.

### **What are unemployment benefits?**

If you are able to work but have lost your job through no fault of your own, you can apply for unemployment benefits. You must actively look for a job in order to keep receiving unemployment benefits. Unemployment benefits may replace part of your lost income while you are pursuing a discrimination claim, but they are not a substitute for temporary disability. For more information, call your local Unemployment Insurance Claims office, listed in the blue pages of your telephone book or online at the New Jersey Department Labor and Workforce Development's website at [www.nj.gov/labor](http://www.nj.gov/labor).

### **What is temporary disability?**

All New Jersey employers offer temporary disability benefits, either through the New Jersey state plan or through a private insurance company. You should apply for temporary disability if you cannot work because of sickness or injury not caused by your job and are under a doctor's care. If you are covered by the state plan, you must apply within 30 days of your last day of work. If you are covered by a private plan, ask your employer how to apply for coverage. Most temporary disability plans will last a maximum of six months. For more information, call the New Jersey Temporary Disability Customer Service Information Center at 609-292-7060 or online at New Jersey Department Labor and Workforce Development's website at [www.nj.gov/labor](http://www.nj.gov/labor).

### **What are Social Security Disability and Supplemental Security Income (SSI)?**

The Social Security Administration has two programs for disabled persons who are unable to work because of a physical and/or mental impairment that has lasted or will last more than one year. To qualify for Social Security Disability, you must have paid Social Security taxes for a specified amount of time, depending upon your age at the time of disability. If eligible, your monthly benefit will depend on how much money you earned while you were working. Supplemental Security Income (SSI) is for persons who do not qualify for Social Security Disability because they did not work long enough at jobs that paid Social Security taxes. Unlike Social Security Disability, SSI requires that you have limited income and assets in order to be eligible for benefits. The criteria for determining disability are the same for Social Security Disability and SSI. For more information, contact the Social

Security Administration at 800-772-1213 or online at [www.ssa.gov](http://www.ssa.gov).

### **What are General Assistance and Temporary Assistance for Needy Families (TANF)?**

You can apply for General Assistance, also known as municipal welfare, if you cannot work and do not qualify for temporary disability, or if you are waiting for Social Security Disability or SSI. For more information, call your local welfare office. You should apply for Temporary Assistance for Needy Families (TANF) instead of General Assistance if you have dependent children. Usually any child 18 years of age or younger will qualify as a dependent. For more information contact your county board of social services. Both General Assistance and TANF have limited income and assets requirements in order to qualify. Both programs also have a five-year lifetime limit of assistance, although there are exemptions and extensions available if you qualify.

### **What is the Emergency Assistance (EA) Program?**

The Emergency Assistance (EA) program is for General Assistance, TANF, and SSI recipients. EA can provide: up to three months of back rent or back utility payments in order to prevent eviction; emergency shelter; security and utility deposits; temporary rental assistance (TRA) to help pay for a new apartment; and money for furniture. General Assistance and SSI recipients should contact their local welfare office for more information. TANF recipients should contact their county board of social services.

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### **What benefits can veterans receive?**

Veterans are eligible for many benefits, including medical benefits, compensation for service-connected disabilities and pensions for disabilities unrelated to military service, based on need. To be eligible for veteran's benefits, you must have been discharged from the service "under circumstances other than dishonorable." For more information, contact the Department of Veterans Affairs at 800-827-1000 or online at [www.va.gov](http://www.va.gov).

### **What is Medicaid?**

Medicaid is a jointly sponsored state and federal program that pays the medical expenses (including outpatient care, inpatient hospitalization and pharmaceutical costs) of persons

with low incomes and limited assets. You will automatically qualify for Medicaid if you receive SSI. Call your county Medicaid office for more information.

### **What is the AIDS Community Care Alternatives Program (ACCAP)?**

ACCAP is a special Medicaid program that provides full Medicaid coverage plus home care for persons with AIDS who need home healthcare or homemaker services. For more information contact your county Medicaid office.

### **What is New Jersey FamilyCare?**

New Jersey FamilyCare is a health insurance program that is designed to provide low-cost or no-cost health insurance for New Jersey's kids and certain low-income parents. For more information, contact New Jersey FamilyCare at 800-701-0710 or online at [www.njfamilycare.org](http://www.njfamilycare.org).

### **Can I receive free or reduced-cost hospital care if I am unable to pay, but do not have Medicaid?**

Yes. New Jersey law requires hospitals to provide free or reduced-cost hospital care (Charity Care Program) for persons who are financially unable to pay for hospital care and do not qualify for other programs like Medicaid and New Jersey FamilyCare. Every hospital providing general care is required to tell you about Charity Care and help you apply for it.

### **Am I eligible for assistance with my medical expenses if I am receiving General Assistance or TANF?**

General Assistance will pay for outpatient medical expenses and prescriptions. You will, however, have to apply and qualify for Charity Care in order to have your inpatient hospital expenses paid. If you qualify for TANF, you will automatically qualify for Medicaid. If you lose TANF because of an increase in income, you still will be eligible for Medicaid for two years through Transitional Medicaid.

### **What is Medicare?**

Medicare is a federal program that provides hospital insurance (Part A) and medical insurance (Part B). You qualify for Medicare after you have received Social Security Disability for two years. If you are 65 years of age, there is no waiting period for Medicare. For more information,



contact Medicare Services at 800-MEDICARE or online at [www.medicare.gov](http://www.medicare.gov).

### **What is the Medicare Prescription Drug Plan?**

The Medicare Prescription Drug Program, or Medicare Part D, covers prescription drugs for Medicare recipients. In order to participate in the program you will have to enroll in a Medicare prescription drug plan. You will have to pay a monthly premium and a yearly deductible. You will also pay a part of the cost of your prescriptions, including a co-payment or coinsurance. For more information, contact Medicare Services at 800-MEDICARE or online at [www.medicare.gov](http://www.medicare.gov).

### **What is Pharmaceutical Assistance to the Aged and Disabled (PAAD)?**

PAAD is a state program that works in conjunction with the Medicare Prescription Drug Plan to cover your prescription drugs. If you qualify, PAAD will assist you by covering most of the Medicare Prescription Drug Plan's co-payment and deductible requirements. In order to qualify for PAAD you must be either 65 years old or a recipient of Social Security Disability benefits. For more information, contact the PAAD hotline at 800-792-9745 or online at [www.state.nj.us/health/seniorbenefits/pbp](http://www.state.nj.us/health/seniorbenefits/pbp).

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### **What is the AIDS Drug Distribution Program (ADDP)?**

ADDP is a state program that pays for some HIV-related drugs. This program has an income limit, but it is higher than most other programs, so you may qualify even if you are working. To obtain an application, contact ADDP at 877-613-4533 or online at [www.state.nj.us/health/aids/application.htm](http://www.state.nj.us/health/aids/application.htm).

### **What are food stamps?**

The Food Stamps Program helps low-income people buy food. Your eligibility for food stamps will depend on your income, assets, and household size. For more information, contact your county board of social services or New Jersey's Food Stamp Information Line at 800-687-9512.

### **What is Lifeline?**

Lifeline is a state program that gives eligible persons annual credits for utility services. You may be eligible for Lifeline if you meet the income requirement and are at least 65 years old and receive Social Security Disability benefits, New Jersey

FamilyCare, or SSI. Tenants can be eligible for Lifeline even if the cost of utilities is included in their rent. SSI recipients receive Lifeline automatically with their SSI check. For more information, contact Lifeline at 800-792-9745.

### **Are there programs that can help me pay for utilities?**

Yes. The Low Income Home Energy Assistance Program (LIHEAP) and the Universal Service Fund (USF) may be able to help. LIHEAP is a federal program that helps the elderly, disabled, and low-income residents of New Jersey pay for heating costs and may cover certain medically necessary cooling expenses. Even if your heat is included in your rent, you may qualify. For more information call the Home Energy Assistance Hotline at 800-510-3102. USF is a state program to help make energy bills more affordable for low-income customers. If you are eligible, USF can lower the amount you have to pay for natural gas and electricity. For more information about USF, call 866-240-1347. Both programs have income eligibility requirements, depending on the size of your household.

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### **What is the Homelessness Prevention Program (HPP)?**

The Homelessness Prevention Program (HPP) is a state program that can assist homeless persons, persons at risk of eviction, or persons at risk of foreclosure on their homes. The program can prevent eviction by paying the rent that is owed or helping with back mortgage payments. For homeless persons who have located permanent housing, the program can provide a security deposit and a few months' rent as long as you can prove that you will be able to continue paying the rent after the assistance is provided. In order to qualify for the program you must meet the income requirements and prove that your inability to pay the rent or mortgage is temporary. For more information, contact HPP at 609-633-6266 or 866-889-6270.

### **If I am disabled, do I qualify for a reduction on my property taxes?**

Yes. If you are disabled and meet an income guideline you can receive a property tax credit known as a FAIR rebate. You submit an application for the FAIR rebate when you file your New Jersey income tax. If you do not have to file for New Jersey income taxes because your income is low, you must still file a FAIR rebate application. For more information, contact

the New Jersey Division of Taxation at 800-323-4400 or online at [www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation).

### **Who can park in a designated disabled parking place?**

If you receive Social Security Disability or SSI, you can apply to the New Jersey Motor Vehicle Commission for special license plates or a placard that allows you to park in any designated disabled parking space. If you are temporarily disabled, you can apply to your municipality's chief of police for a placard that is valid for up to six months. For more information, call the New Jersey Motor Vehicle Commission at 888-486-3339 or your municipality's chief of police.

### **If I am disabled, do I qualify for a reduction on my car registration fee?**

Yes. You qualify for a reduced fee on car registration if you are currently enrolled in SSI, PAAD or Lifeline. For more information contact the New Jersey Motor Vehicle Commission at 888-486-3339 or online at [www.state.nj.us/mvc/index.htm](http://www.state.nj.us/mvc/index.htm).

### **If I am disabled, can I qualify for reduced fares from New Jersey Transit?**

Yes. New Jersey Transit's Reduced Fare Program allows temporary or permanently disabled persons to ride New Jersey Transit trains and buses for 50 percent of the regular fare. For an application or more information, contact the Reduced Fair Office at 973-378-6401 or online at [www.njtransit.com](http://www.njtransit.com).

### **If I have a limited income, do I qualify for a reduction on my phone installation and my monthly telephone service bill?**

If you are receiving a government entitlement, you may qualify for Verizon's Link Up America program, which provides a 50 percent discount on telephone connection charges. The remaining 50 percent may be billed in 12 monthly payments. Verizon's Communications Lifeline provides a \$13.26 maximum credit toward your monthly telephone bill including a full credit for touch-tone service. For more information, contact your county welfare office.

### **What benefits are available to pay for funeral expenses?**

If you were receiving, or died before receiving but would have been eligible for, General Assistance, TANF, SSI or Medicaid only, you may be entitled to funeral expenses. You

will also be eligible for assistance with funeral expenses if you die without family, property, insurance, or assets that would pay for a funeral.

## IMMIGRATION

### **Does being HIV positive affect issues of immigration in the United States?**

Yes. Being HIV positive is grounds for inadmissibility for non-citizens trying to enter or stay in the United States. Even if you are a legal permanent resident, you can be denied entry into the United States if a customs officer suspects you of being HIV positive or if you have been out of the country for longer than 180 days, which can require you to undertake an admissibility screening.

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### **Will I have to take an HIV antibody test if I apply for legal permanent residency in the United States?**

Yes. When you apply for legal residency, you will be required to take an HIV antibody test as part of a medical examination. Your application for residency can be denied if you test HIV positive. If you are HIV positive, you can apply for an HIV waiver in order to eliminate the restrictions on HIV positive non-citizens. Among the HIV waiver requirements, you must prove that you will not become a public charge. You should consult an immigration lawyer or an immigration counseling agency before you file a petition or contact the United States Citizenship and Immigration Services.

### **Can I receive government benefits if I have AIDS and am an undocumented alien?**

An undocumented alien usually cannot receive state or federal benefits. You might qualify for some public benefits if you are a qualified non-citizen. Qualified non-citizens include asylees, refugees, abused immigrants, and those granted withholding of deportation or removal by an immigration judge. You should consult an immigration lawyer or an immigration counseling agency before applying for any of the above categories that would make you a qualified non-citizen.

## **Will some countries prevent me from entering if I am HIV positive?**

Some countries do not allow entry to foreign visitors who are HIV positive. It is unlikely that immigration personnel will know that you are HIV positive unless you are traveling with HIV-related medication or appear to be disabled. However, there will be no difficulty in re-entering the United States if you are a United States citizen.

# **INSURANCE**

## **How can I continue my health insurance if I leave my job?**

The Consolidated Omnibus Budget Reconciliation Act, a federal law, commonly known as COBRA, gives you the right to continue your group health insurance if you leave your job unless you are fired for “gross misconduct.” COBRA covers all employees, except the federal government, that have 20 or more employees. To keep your coverage under COBRA, you must notify your employer within 60 days of leaving your job. You must also pay the premiums at the group rate, plus a small administrative fee. Your COBRA coverage will last for 18 months, or for 29 months if you leave your job because of disability and are later determined by the Social Security Administration to be disabled. During the 11-month extension, plans can charge up to 150 percent of the premium cost. COBRA also applies to persons leaving group health insurance for other reasons, such as divorce from an insured spouse. For certain policies, New Jersey law will allow you to keep your coverage indefinitely, as long as you pay the premiums.

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## **What options do I have when my COBRA coverage ends?**

When your COBRA coverage ends, you can convert group health insurance to an individual plan. The individual plan will not be at the group rate, and the coverage might not be comprehensive. You should notify your former employer at the time your COBRA coverage expires that you wish to convert to an individual plan. If you have been on Social Security Disability for 24 months, you are eligible for Medicare, a federal health insurance plan. (For more information on

Medicare see the Financial: Benefits/Entitlements section in this booklet.)

### **Can I continue my life and disability insurance under COBRA if I leave my job?**

COBRA only applies to health insurance, not to life and disability insurance. However, in New Jersey, you can convert your group life insurance policy into an individual life insurance policy. Insurance companies are not required to offer you an individual disability insurance policy when you leave a group insurance policy.

### **Can I be required to take an HIV antibody test for an existing group health, life, or disability insurance policy offered by my employer?**

You cannot be required to take an HIV antibody test before you are covered under an existing group health insurance policy. However, you may be required to take an HIV antibody test for a group life or disability insurance policy.

### **Can I be required to take an HIV antibody test for an individual insurance policy?**

Yes. You may be required to take an HIV antibody test for an individual life, health, or disability insurance policy. According to the New Jersey State Department of Insurance, you can be tested for a health insurance policy only if the test is medically justified, not just because of assumptions about your HIV status. Further, the insurance company should obtain your written consent before it tests for HIV antibodies.

### **Can I obtain an individual life insurance policy or an individual disability insurance policy if I am HIV positive?**

If you apply for a limited amount of life insurance, the life insurance company might not require an HIV antibody test. An insurance company may require an HIV antibody test for individual disability insurance.

### **Can I obtain an individual health insurance policy if I am HIV positive?**

Yes. However, the individual health insurance policy will treat your HIV status as a pre-existing condition and the insurance company will not pay HIV-related claims for a specified period of time, usually six months to two years.

### **What is a pre-existing condition?**

A pre-existing condition is a medical condition you knew or should have known about, or for which you were treated before you obtained the insurance policy. Most insurance policies contain a pre-existing condition clause stating the claims will not be paid on a pre-existing condition for a specified period of time, usually six months to two years.

### **Can a claim be denied on a pre-existing condition?**

Yes. A claim can be denied if the waiting period for your pre-existing condition has not expired. Once the waiting period is over, the insurance company should pay your claims related to that condition. A claim can also be denied if the insurance company determines that the claim relates to a pre-existing condition that you did not disclose on your original application.

### **What is misrepresentation?**

A misrepresentation is an untrue statement made by you on your insurance application. A misrepresentation can either be intentional (you meant to make an untrue statement) or unintentional (your statement is untrue, but you did not know that it was).

### **What is material misrepresentation?**

If an insurance company determines that you made a misrepresentation that is so significant that it would not have issued a policy to you, the misrepresentation is considered material. The insurance company can cancel your individual health, life, or disability policy and return your premiums to you once it determines that you made a material misrepresentation. Any false statement, even if the statement is not related to a medical condition involving your claim, can result in a denial of coverage.

### **What should I do if I think that my insurance company cancelled my policy incorrectly?**

If your insurance policy is cancelled, the insurance company will send you a check for the money that you paid in premiums. Do not cash the check if you want to challenge the insurance company's decision. You can file a written complaint with the New Jersey Department of Insurance, Division of Investigations and Complaints, or file a lawsuit. The address and phone number for the Division of Investigations and Complaints can

be found in the Referrals section of this booklet.

### **What is incontestability?**

An insurance policy is incontestable when an insurance company cannot contest or challenge your policy and must pay any claim covered under the policy, as long as the premiums are paid. In New Jersey, a life insurance policy is incontestable after two years. Also, in New Jersey, a health insurance policy cannot be contested because of an unintentional misrepresentation after two years. An insurance company can always contest a health insurance policy because of an intentional or material misrepresentation.

### **Can my employer review my health insurance claims?**

Insurance companies can discuss medical claims with employers to explain the cost of the group health insurance. Also, some employers require that you submit insurance claims to another employee in your company, for example, a member of the human resource department. However, anyone with HIV-related information must keep this information confidential under New Jersey's confidentiality law.

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### **Will my health insurance company discontinue coverage if I submit an HIV-related claim?**

Health insurance is a contract between you and the insurance company and cannot be cancelled because of HIV-related claims, unless you misrepresented your medical condition on your original application. If you are covered under group health insurance, your coverage cannot be discontinued unless the insurance company discontinues the entire group.

## **LANDLORD/TENANT**

### **Can a landlord refuse to rent an apartment to me or evict me because I have HIV/AIDS?**

Not in most cases. The New Jersey Law Against Discrimination covers discrimination in housing and prohibits landlords from refusing to rent to a person with HIV/AIDS or who is perceived to have HIV/AIDS. However, the law does not apply to landlords who rent a single room in an occupied



dwelling, or who rent an apartment in a two-family home when the landlord or members of the landlord's family live in the other apartment.

### **Can my landlord evict me if I am disabled and cannot pay my rent?**

Yes. New Jersey does not have a law protecting you against eviction for non-payment of rent due to disability or loss of income.

### **Can I get out of my lease because I have AIDS and cannot work?**

Yes. You can end your lease if you cannot work and cannot pay rent because of a disability. To end your lease, you must give your landlord notice, using a state form that asks for a statement from your doctor and a statement from you. The notice takes effect 40 days after your landlord receives it. You must move out within 35 days after your landlord receives the form. You are responsible for paying your rent until you move out. For a copy of this form, contact the New Jersey Department of Community Affairs at 609-292-6420.

### **Can I stay in my apartment if I have HIV/AIDS and my landlord is converting the building into a co-op or a condominium?**

If your landlord is converting the building into a co-op or a condominium, you can stay in your apartment as a tenant if you are permanently disabled, meet the income guideline set by your county and have lived in the building, with at least five rental units, for at least one year. You are required to continue paying rent for as long as you stay in the apartment. Your municipality will send you the application for this protection.

## **LEGAL DOCUMENTS**

### **What is a will?**

A will is a document that states how you want your property to be disposed of after your death.

### **What should I include in my will?**

In your will, you should name an executor and the people to whom you wish to leave your property. The executor will distribute your property and pay your bills. You should also appoint a guardian for any children under the age of 18. Finally, you should list an alternative executor, an alternate guardian and alternate beneficiaries in case your first choices die before you.

### **Can I leave my property to whomever I choose?**

You can leave your property to anyone regardless of their relationship to you. In New Jersey, if you are married at the time of your death, your spouse may have rights to part of your estate, (unless he or she agreed to forfeit that right) even if you do not leave him or her anything in your will. If you are divorced, your former spouse has no right to your estate.

### **What should I prepare before I meet with a lawyer about my will?**

Before you draw up a will, you should prepare the following: (1) a summary of what you want to include in your will; (2) a list of the names and addresses of your primary and alternative beneficiaries, executors and guardians of your children who are minors; (3) a list of the names and addresses of your family members, even if they are not your beneficiaries; and (4) a description of your real estate and personal property, where it is located and the intended inheritors of that property.

### **What are the legal requirements for a valid will?**

A valid will can be typed or handwritten. To draw up a valid will, you must be at least 18 years old and considered competent. You must sign the will in the presence of at least two witnesses who are at least 18 years old and considered competent. If you and the witnesses sign a statement under oath in front of a notary or an attorney, the will is then self-proving, and the witness will not have to come to court when the will is filed with the court after your death. You should not wait until the last minute to make a will. For assistance and a copy of a will, contact Hyacinth's legal services department at 732-246-0204.

### **Should my life insurance be mentioned in my will?**

You have two options regarding life insurance policies and

similar assets such as an IRA (individual retirement account). You can name a particular person as your beneficiary on your asset. Upon your death, the asset will go directly to the person you chose and will not pass through your estate. Additionally, your creditors cannot collect from life insurance proceeds if they pass directly to a beneficiary and not through your will. If you change your mind about the beneficiary, you must notify the insurance company or bank. Another option is to name your estate as the beneficiary. Upon your death, the asset will go to your estate and then to the person or persons whom you name in your will. If you change your mind concerning the beneficiary, you must change your will.

### **How does my will affect property that I own with another person?**

The answer to this question depends on the form of co-ownership. The three forms of co-ownership are tenancy in common, joint tenancy, and tenancy by the entirety. A tenancy in common exists when two or more people own undivided interests in the same property. If one tenant in common dies, his or her interests pass to his or her heirs. In a joint tenancy, each joint tenant has the right of survivorship. If the joint tenant dies, his or her interests pass automatically to the other joint tenant. A tenancy by the entirety is a joint tenancy between husband and wife.

If you own property as tenants in common and you change your mind about who you want to inherit the property, you will have to change your will. If you own property with someone as joint tenants and you change your mind about who you want to inherit the property, you can change the ownership of the property if the other joint tenant agrees. For example, you could change the jointly owned property to a tenancy in common. If the other joint tenant does not agree to the change, you will have to go to court to end the joint tenancy.

### **Should my will include my funeral arrangements?**

There is no law that requires other people to follow your wishes about your funeral arrangements. You can express your wishes in a will or in a letter of instruction. You can also pay for your funeral in advance. Expressing your wishes in a will has a limited effect. A will may not be probated before a funeral, and, therefore, will not be valid in time to demonstrate your wishes. (See question on probate in this section.)

**What should I do with my will after it is completed?**

After your will is completed, you should store it in a safe place, tell your executor where you have stored the original and give your executor a copy. After your will is stapled, you should not undo the staples; the court may conclude that someone has tampered with your will, complicating matters for the executor.

**What should I do if I want to change my will?**

If you want to change your will you should either have a new will drawn up or have an addition, called a codicil, drawn up by a lawyer. You cannot legally change your will by crossing out or adding clauses.

**What happens if I die without a will?**

If you die without a will, state law will determine who will inherit your property and other assets, with preference for your spouse and blood relatives. That may or may not be what you intended. New Jersey does not recognize common law marriages. You must have been legally married or have an official domestic partnership arrangement for your partner to be recognized by the state. If you die without a will, the surrogate can appoint an administrator of your estate. Once the administrator is appointed, the administrator performs the same tasks as an executor. If the estate is under \$10,000 and there is a surviving spouse, the spouse can file an affidavit in lieu of administration and receive all the assets of the estate.

**What is a domestic partnership?**

The New Jersey Domestic Partnership Act provides certain rights to same-sex couples and couples over the age of 62. These rights include: the same rights as a surviving spouse with respect to the decedent's funeral and the disposition of his or her property, if the decedent has not left a will; visitation and authority over decision making regarding medical issues; tax-related benefits; guardianship; and statutory protection against discrimination based on domestic partnership status. In order to qualify for a domestic partnership you must: (1) be either a same-sex couple or a couple over the age of 62; (2) share a common residence; (3) take responsibility for each other's welfare and; (4) file an affidavit of partnership. You can file an affidavit of partnership at your local town registrar.

### **What is probate?**

A will is probated when filed with the surrogate of the county where the decedent lived at the time of his or her death. A will cannot be probated until 10 days after death. Probate procedures are different in each county. Contact your surrogate's office for the exact procedure in a particular county. Probate is usually a straightforward process. Once the will is admitted to probate and the surrogate approves the executor, the executor assembles the property of the estate, pays the debts and files federal and state tax returns for the estate.

### **What is a power of attorney?**

A power of attorney is a document that allows another person to act for you in a variety of ways. A power of attorney can be general, which means that your agent can perform any act that you would be allowed to do, or you can specify in the power of attorney which acts your agent is allowed to perform on your behalf. It is not necessary for an attorney to prepare your power of attorney. You can use a standard power of attorney form available from the legal services department at Hyacinth, as long as you have it notarized. If you want your power of attorney to remain in effect if you become disabled, you will need to prepare a "durable" power of attorney. For more information on a durable power of attorney contact the legal services department at Hyacinth.

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### **What should I keep in mind when I prepare a power of attorney?**

You should remember that you are giving a great deal of power to your agent. Make certain the person is someone you trust. Also, you should make several copies and have each one notarized. To make certain your power of attorney remains valid, you should sign a new one every 10 years.

### **What is the difference between a power of attorney and a will?**

A power of attorney and a will serve different purposes. A power of attorney allows someone to act for you while you are alive. It is revoked upon your death. A will gives someone the power to manage your affairs after your death. You can name the same person as your agent in a power of attorney and as your executor in your will.

### **What is a living will?**

A living will, or health directive, is a document that explains what medical treatment you want and what medical treatment you do not want if you are seriously ill and are unable to express your wishes concerning your medical treatment. For assistance and a copy of a health directive, please contact the legal services department at Hyacinth at 732-246-0204.

### **Are living wills valid in New Jersey?**

Yes. New Jersey recognizes living wills. Also, the New Jersey Supreme Court has acknowledged that a person may refuse medical treatment and that a person's clear expression of his or her wishes about medical treatment should be followed.

### **What is a medical power of attorney?**

A medical power of attorney is a document that empowers someone you designate to act for you to make decisions about your medical treatment if you are unable to express your own wishes. Even if you have a living will, you should also have a medical power of attorney in case medical treatment is proposed that you did not mention in your living will. The appointment of someone to make medical decisions for you if you are unable to express your own wishes (called a healthcare representative in New Jersey) may be included in your health directive. It does not need to be set forth in a separate document.

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### **Is a medical power of attorney valid in New Jersey?**

Yes. The law recognizing living wills also includes a provision stating that medical powers of attorney are valid. A power of attorney is recognized as a legitimate expression of your wishes.

### **How can I arrange guardianship for my children?**

In your will, you can name a person to act as the guardian of your children who are under the age of 18. Your wishes in this respect may not be followed if the other parent objects, or if the person whom you nominated is found to be unsuitable by a judge. If you feel that the other parent is an unsuitable guardian, you should clearly state your reasons for preferring an alternate guardian. If you prefer to arrange guardianship before your death, you can go to court and appoint a person who would become the child's guardian effective immediately.

Under the New Jersey Standby Guardianship Act, you may also choose a standby guardian in the event you are temporarily hospitalized or incapacitated. For more information, contact Hyacinth's legal services department at 732-246-0204.

## MENTAL HEALTH FACILITIES

### **Can I be forced to take an HIV antibody test in a mental health facility?**

No. Even if you are involuntarily committed to a mental health facility, you retain your right to be consulted about and consent to medical treatment.

## MILITARY SERVICE

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### **Can I join the military if I am HIV positive?**

No. The Department of Defense requires that all new service recruits take an HIV antibody test. If you test positive, you will not be allowed to join the military.

### **Will I be required to take an HIV antibody test if I am now in the military?**

Yes. The Department of Defense requires all active and reserve personnel to take the HIV antibody test on a regular basis.

### **Can I stay in the military if I test HIV positive?**

Perhaps. You can stay in the military if you can pass the military's medical examination. Your duties may be restricted or changed, and you will have to have a medical examination at least once a year. You also will be told to use condoms and to inform your sexual partners that you are HIV positive. If you do not follow these procedures, the military may discipline you.

# SCHOOLS

## **Can a child who is HIV positive attend a public school?**

Yes. A child who is HIV positive must be allowed to attend a public school. Also, children cannot be prevented from attending a public school because they live with or are related to people who are HIV positive.

## **Can I work in a public school if I am HIV positive?**

Yes. You can work in a public school if you are HIV positive unless you have another medical problem that would restrict your job performance.

# REFERRALS

## **Attorneys**

The legal services department of the Hyacinth AIDS Foundation provides direct services for New Jersey residents who have HIV/AIDS. The legal services department provides referrals to private attorneys with experience in AIDS-related legal matters. All information and referrals are free. Clients who are unable to afford a private attorney may receive the *pro bono* services of an attorney through the department's volunteer program.

Hyacinth AIDS Foundation  
317 George Street, Suite 203, New Brunswick, NJ 08901  
732-246-0204    [www.hyacinth.org](http://www.hyacinth.org)

The lawyer referral service operated by county bar associations can give you the names of attorneys with expertise in a variety of areas. Look in the Yellow Pages of your telephone directory under "Lawyer Referral Services."

## **Discrimination**

### **New Jersey Division on Civil Rights**

Atlantic City: 609-441-3100  
Camden: 856-614-2550  
Newark: 973-648-2700



Paterson: 973-977-4500  
Trenton: 609-292-4605  
[www.state.nj.us/lps/dcr](http://www.state.nj.us/lps/dcr)

### **Benefits/Entitlements**

The Hyacinth AIDS Foundation Hotline can answer your questions concerning a variety of entitlement programs at 800-433-0254.

### **Immigration**

#### **New Jersey Immigration Policy Network**

89 Market Street, 7th floor, Newark, NJ 07102  
973-621-0031    [www.njipn.org](http://www.njipn.org)

#### **Legal Services of New Jersey Immigration Representation Project**

100 Metroplex Dr., Suite 402, P.O. Box 1357, Edison, NJ 08818-1357  
888-576-5529    [www.lsnj.org](http://www.lsnj.org)

#### **American Friends Service Committee Immigration Rights Program**

89 Market Street, 6th floor, Newark, NJ 07102  
973-643-1924    [www.afsc.org](http://www.afsc.org)

#### **Catholic Community Services**

976 Broad Street, Newark, NJ 07102  
973-733-3516

### **Insurance**

#### **New Jersey Department of Banking and Insurance**

20 West State Street, P.O. Box 329, Trenton, N.J. 08625  
609-292-5360

### **Legal Services**

Low-income clients may qualify for free legal assistance from the legal services program in your county. This agency represents and advises low-income persons in civil cases. The telephone number for your county's legal services office can be found in your telephone directory or online at [www.lsnj.org](http://www.lsnj.org).

### **Mental Health**

#### **Community Health Law Project**

[www.chlp.org](http://www.chlp.org)

*North Jersey Office*

650 Bloomfield Avenue, Suite 210, Bloomfield, NJ 07003  
973-680-5599

*East Jersey Offices*

65 Jefferson Avenue, Suite 402, Elizabeth, NJ 07201  
908-355-8282

601 Grand Avenue, Suite 505, Asbury Park, NJ 07712  
732-502-0059

*Central Jersey Office*

225 East State Street, Trenton, NJ 08608  
609-392-5553

*South Jersey Office*

Station House Office Building, 900 Haddon Avenue, Suite 400  
Collingswood, NJ 08108  
(Phone/TTY) 856-858-9500

**Prisoners**

**American Civil Liberties Union of New Jersey**

P.O. Box 32159, Newark, New Jersey 07102  
973-642-2084    [www.aclu-nj.org](http://www.aclu-nj.org)

**Public Defender**

The New Jersey Public Defender provides legal representation to low-income people charged with major crimes. Check your telephone book for the number of the office in your county or contact the main office of the public defender in Trenton at 609-292-7087 or online at [www.thedefenders.nj.gov](http://www.thedefenders.nj.gov). Email: [thedefenders@opd.state.nj.us](mailto:thedefenders@opd.state.nj.us).

## **ABOUT THE NEW JERSEY STATE BAR FOUNDATION**

The New Jersey State Bar Foundation, founded in 1958, is the educational and philanthropic arm of the New Jersey State Bar Association. The Foundation is committed to providing free legal education programming for the public. Programs provided by the Foundation include seminars on such topics as wills, divorce, taxes, retirement planning, disability law and health issues; mock trial programs for students in grades K to 12; training sessions for teachers on the topics of conflict resolution, peer mediation and teasing and bullying prevention; plus publications including *Law Points for Senior Citizens (Second Edition)*, *Consumer's Guide to New Jersey Law*, *Legal Consequences of Substance Abuse*, *Disability Law: A Legal Primer (Fifth Edition)*, *Domestic Violence: The Law and You*, *Students' Rights Handbook*, cosponsored with the ACLU-NJ, and *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners*. Some publications are available in Spanish and all are available in alternative formats for the visually impaired. For more information or copies of program materials, visit the New Jersey State Bar Foundation online at [www.njsbf.org](http://www.njsbf.org) or call 1-800 FREE LAW.



317 George Street  
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## New Jersey State Bar Foundation

One Constitution Square  
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