

RULES OF THE STATE BOARD OF HEALTH
BUREAU OF DISEASE CONTROL
ADMINISTRATIVE CODE

CHAPTER 420-4-3
INFECTED HEALTH CARE WORKERS

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420-4-3-.01 **Purpose.** The purpose of the Chapter is to provide for administration and implementation of the "Infected Health Care Worker Management Act (IHCWMA) to prevent transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV), or other disease designated by the State Board of Health to patients during invasive procedures.

Authors: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health, Mary G. McIntyre, MD, Assistant State Health Officer for Disease Control and Prevention

Statutory Authority: Code of Ala. 1975, §§22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14 (g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed April 20, 2016; effective June 4, 2016.

420-4-3-.02 Definitions. When used herein, the following words and terms shall have the meanings respectively ascribed to them except where the context prohibits.

(a) "Affected institution: means any health care facility at which the infected health care worker routinely and commonly practices.

(b) "CDC" means the Centers for Disease Control and Prevention of the United States Public Health Service.

(c) "CDC Recommendations" means the July 21, 1991, CDC document (MMWR, Volume 40. No. RR-8) entitled "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures" or equivalent guidelines developed by the Alabama Department of Public Health and approved by the CDC and any appropriate supplements or revisions thereto.

(d) "Department" means the Alabama Department of Public Health.

(e) "Expert review panel" (ERP) means a panel of experts in composition and function as defined in the CDC recommendations and appointed or approved by the Department.

(f) "Health Care Worker" (HCW) means any individual who provides or assists in the provision of medical, dental or nursing services regardless of whether that individual is formally licensed.

(g) "Hepatitis B Virus Infection" (HBV) means the presence of the hepatitis B virus as determined by the presence of hepatitis B e antigen for six months or longer or by other means as determined by the State Board of Health.

(h) "Hepatitis C Virus Infection" (HCV) means the presence of the HCV as determined by the presence of antibodies to HCV or by other means as determined by the rules of the State Board of Health.

(i) "HIV Infection" (HIV) means the presence of antibodies to the Human Immunodeficiency Virus as determined by enzyme immunoassay and Western Blot, the presence of the Human Immunodeficiency Virus as determined by viral culture, or other means determined by the State Board of Health.

(j) "Infected health care worker" (IHCW) means any HCW as defined in (e) who is infected with HIV or HBV as defined in (f) and (g).

(k) "Internal Department Review" means investigation by Department staff with advice and consultation of individuals and organizations with expertise in a specified discipline to determine if an IHCW performs invasive procedures.

(l) "Invasive Procedures" include digital palpation of a needle tip in a body cavity or the simultaneous presence of the HCW's fingers and needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site.

1. Invasive dental procedures shall include those that provide the opportunity for an intraoral percutaneous injury to the dental HCW and could result in the blood of the HCW coming in contact with the blood or mucous membrane of the patient as adopted by the Board of Dental Examiners in rules developed pursuant to Section 11.

2. These procedures shall not include physical examinations; blood pressure checks; eye examinations; phlebotomy; administering intramuscular, intradermal, or subcutaneous injections; needle biopsies; needle aspirations; lumbar punctures; angiographic procedures; vaginal, oral, or rectal exams; endoscopic or bronchoscopic procedures; or placing and maintaining peripheral and central intravascular lines, nasogastric tubes, endotracheal tubes, rectal tubes, and urinary catheters.

(m) "Licensing Board" means the health professional licensing boards which are state agencies and which license and regulate specific HCWs such as the Board of Medical Examiners, the Medical Licensure Commission, the Board of Nursing, the Board of Dental Examiners and the Board of Podiatry.

(n) "Public law" means Public Law 102-141, Section 633, enacted October 28, 1991.

(o) "State Health Officer" as defined in the Code of Ala. 1975, Chapter 2, Section 22-2-8.

Authors: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health, Mary G. McIntyre, MD, Assistant State Health Officer for Disease Control and Prevention

Statutory Authority: Code of Ala. 1975, §§22-2-2 (6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14 (g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 17, 1995; effective December 22, 1995. **Amended:** Filed April 20, 2016; effective June 4, 2016.

420-4-3-.03 Implementation Of PL 102-141, Sec. 633, And CDC Recommendations; Assistance To Licensing Boards; Provision Of Records.

(a) The Department is authorized to enforce compliance and oversee the implementation of the Public Law and applicable CDC recommendations and any appropriate supplements and revisions to the CDC recommendations which apply to HCWs.

(b) The Department shall provide consultation and assistance to licensing boards, as appropriate, to ensure compliance with CDC recommendations.

(c) Any IHCW shall make available to the Department all records requested by the Department and shall cooperate fully with the Department in the investigation.

(d) Any person having knowledge of an IHCW, the administrator of any health care facility having knowledge of any IHCW, any person serving as guardian of or the conservator, administrator or executor of the estate or agent or representative of any IHCW or any person serving as the custodian of records of the patients of any IHCW or facility employing such worker shall provide in the manner requested by the State Health Officer (SHO) to the Department all requested documents and information and shall cooperate fully with the Department in any investigation.

Authors: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health, Mary G. McIntyre, MD, Assistant State Health Officer for Disease Control and Prevention

Statutory Authority: Code of Ala. 1975, §§22-2-2 (6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14(g), 22-11A-70

History: New Rule: Filed November 18, 1994: effective December 23, 1994. **Amended (Title Only):** Filed April 20, 2016; effective June 4, 2016.

420-4-3-.04 Reporting.

(a) Any IHCW who performs invasive procedures as defined herein shall notify the designee of the SHO by sending a letter marked "Personal and Confidential" to the Director of the Bureau of Communicable Disease, Alabama Department of Public Health, 201 Monroe Street, Suite 1400, P.O. Box 303017, Montgomery, Alabama 36130-3017, within 30 days of the time he or

she is aware of his or her infection. The letter shall include at a minimum the IHCW's name and diagnosis and information as to how he or she can be contacted. The IHCW shall subsequently make available to the Department all requested documents or records three years old or less and shall cooperate fully with the Department in the investigation. It shall be grounds for revocation, suspension, or restriction of the professional license of any licensed IHCW who shall be found to perform invasive procedures and shall have failed to notify the SHO.

(b) Any physician providing care to any IHCW shall notify the SHO of the infected status of his patient within seven (7) days of the time he or she diagnoses or provides such care. Such notification shall be on forms as designated by the Department and sent to the designee of the SHO by marking the envelope "Personal and Confidential" and sending it to the Director of the Bureau of Communicable Disease. (See report form, Appendix 1, which is attached.) Further, the physician shall make available to the Department all requested documents or records three years old or less and shall cooperate fully with the Department in the investigation.

(c) After reporting to the SHO, no IHCW shall perform or assist in performance of an invasive procedure, as defined in (1) above, until after an internal Department review by Department staff and written notification from the SHO regarding any necessary practice modification.

Authors: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health, Mary G. McIntyre, MD, Assistant State Health Officer for Disease Control and Prevention

Statutory Authority: Code of Ala. 1975, §§22-2-2 (6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14(g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 17, 1995; effective December 22, 1995. **Amended (Appendix I also):** Filed April 20, 2016; effective June 4, 2016.

420-4-3-.05 Internal Department Review. The internal Department review will confirm the diagnosis and determine if invasive procedures are being performed.

(a) If the IHCW is determined NOT to perform invasive procedures, a letter will be sent to him or her stating the following information:

1. No review panel shall be established.

2. No restrictions shall be placed on his or her practice.

3. All information obtained in the investigation shall be confidential as provided for in Section 10 of the IHCWMA.

4. Should his or her job duties change at any time requiring invasive procedures to be performed, he or she shall by law (Sections 3 and 13 of the IHCWMA) notify the SHO prior to performing or assisting in the performance of an invasive procedure.

5. Upon notification by the HCW of job duty changes, a new internal review will be conducted and actions taken according to new findings. The IHCW shall agree to cooperate with any investigation authorized in Section 4 of the IHCWMA and any necessary practice modification.

(b) If the IHCW IS determined to perform invasive procedures, the SHO shall cause an expert review panel to be formed. The SHO shall, as the situation requires, issue orders temporarily limiting the IHCW's practice as to performing invasive procedures since such could constitute a direct threat to the patients he (or she) is serving. The IHCW shall comply with such orders.

Author: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14 (g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994.

420-4-3-.06 Expert Review Panel (ERP).

(a) The SHO shall cause an ERP to be formed within 60 days if the IHCW is determined by internal Department review to perform invasive procedures.

(b) The ERP may include the physician of the IHCW and shall include the following by appointment of the SHO:

1. One Alabama licensed physician with expertise in infectious diseases other than the one providing care to the IHCW.

2. One additional Alabama licensed public health physician.

3. Two representatives of the relevant licensing board.
4. One HCW with expertise in procedures performed by the IHCW, selected by the licensing board of the HCW, if licensed.
5. One representative of each affected institution(s) appointed by the affected institution(s), if applicable. This (these) representative (s) must comply with the confidentiality provisions of this Act but is (are) otherwise permitted to issue a report to the Chief Executive Officer/Administrator of the affected institution (s).
6. Other individuals as deemed necessary by the SHO.
 - (c) The IHCW is entitled to be present, to hear charges, to present relevant testimony, and to confront witnesses against him or her.

(d) The IHCW will be excused during the ERP deliberations.

Author: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14 (g), and 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 17, 1995; effective December 22, 1995.

420-4-3-.07 Review Practice And Procedure And Subpoena Forms.

- (a) The ERP shall review the overall practice and procedures performed by the IHCW by considering:
1. the procedures performed by the IHCW;
 2. the adherence to universal precautions by the IHCW;
 3. the past history of the HCW of occupational injury while performing the invasive procedures;
 4. any prior evidence of the HCW related to patient transmission of HIV, HBV, HCV or other disease designated by the State Board of Health;

5. the presence of conditions such as dermatitis, dementia, neuropathy, or other conditions that may increase the risk of transmission of HIV, HBV, HCV or other disease designated by the State Board of Health; and

6. current CDC guidelines on the management of IHCWs.

(b) The performance of invasive procedures alone shall not present sufficient cause to limit the practice of the IHCW.

(c) Subsequent recommendations shall be made to the SHO within 30 days of convening concerning:

1. limitations on the performance of invasive procedures by the IHCW; and

2. the need to notify patients who previously may have had an invasive procedure performed by the IHCW. The provider will be responsible for notifying such patients and will then certify to the Alabama Department of Public Health that such has been accomplished.

(d) Reviews by an ERP shall be conducted in an informal manner without the application of strict rules of evidence. The presiding officer shall have the responsibility for executing the procedures required to make a determination.

(e) Reviews before an ERP shall not be open to the public and the findings thereof shall be confidential.

(f) After reviewing the evidence the ERP shall make necessary findings of fact and recommendations to the SHO. Such recommendations shall be made by majority vote of the ERP. Each member of the ERP, including the representative from each affected institution, will have one vote. The concurring or dissenting opinions will be noted and reported with the reasons therefor.

(g) The majority finding and recommendation with all dissenting or concurring opinions shall be compiled and signed by the presiding officer noting the vote on such and reported to the SHO.

Authors: John Wible, General Counsel, Alabama Department of Public Health, Mary G. McIntyre, MD, Assistant State Health Officer for Disease Control and Prevention

Statutory Authority: Code of Ala. 1975, §§22-2-2 (6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14 (g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 17, 1995; effective

December 22, 1995. **Amended:** Filed April 20, 2016; effective June 4, 2016.

420-4-3-.08 Final Order Of The State Health Officer; Notification Of Individuals And Institutions Or Licensing Boards.

After receiving recommendations from the ERP, the SHO shall make a determination and will provide written notification specifying restrictions, limitations, conditions, or prohibitions on the practice of the IHCW to:

- (a) the IHCW;
- (b) the administrator of the affected institutions;
- (c) the employers of the IHCW; and
- (d) the appropriate licensing board.

Author: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14 (g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 17, 1995; effective December 22, 1995.

420-4-3-.09 Appeal Process, Procedure And Forms.

(a) An IHCW may appeal the final order of the SHO to the State Committee of Public Health (SCPH) by delivery of written notice of appeal to the SHO not more than 30 days after the date of the SHO's final order. Absent a showing of good cause, the final order of the SHO is not stayed during the pendency of the appeal. The appeal shall be heard by an administrative law judge or hearing officer, appointed by the SHO, for trial and recommended decision. All such hearings shall be conducted in accordance with Alabama Administrative Code, Chapter 420-1-3, et seq.

(b) The Hearing Officer shall make Findings of Fact, Conclusions of Law, and Recommendations to the SCPH which shall review same en banc along with the record and shall issue a final order signed by the Chairman.

(c) An IHCW or any party as defined by Alabama Administrative Code, Chapter 420-1-3 who is aggrieved by the

outcome of appeal to the SCPH may file notice of further appeal in accordance with the "Alabama Administrative Procedures Act" in the circuit court of his or her county of residence or in the Circuit Court of Montgomery County within 30 days of issuance of final decision of the SCPH.

Author: John Wible, General Counsel, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14(g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 7, 1995; effective December 22, 1995.

420-4-3-.10 Verification And Documentation Of IHCW Compliance with Restrictions, Limitations Or Conditions Of Practice Of IHCW.

(a) If no limitations were imposed, the practice of the IHCW will be reviewed annually by internal Department review. If the review determines that practice restrictions may be necessary for an IHCW for whom practice restrictions were initially not necessary, the SHO shall convene an ERP.

(b) If limitations were previously determined to be necessary, the practice of the IHCW will be reviewed annually by internal Department review.

1. If review determines noncompliance of practice restrictions, the SHO shall forward evidence of such noncompliance to the appropriate licensing board or to the employer of the IHCW if he or she does not have a professional license.

2. If review determines that practice restrictions may be necessary for whom practice restrictions had not been previously necessary, the SHO shall convene an ERP.

Author: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14(g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994.

420-4-3-.11 Disciplinary Action For Violation Of ERP Recommendations Or Related Rule. An IHCW who violates a recommendation of the ERP as set forth herein the related rules

is subject to disciplinary action by the appropriate licensing board.

Author: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14(g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994.

420-4-3-.12 Liability.

(a) Members and staff of the State Board of Health, the State Committee of Public Health, the Board of Medical Examiners, the Medical Licensure Commission, the Board of Nursing, the Board of Dental Examiners, the Board of Podiatry, physicians, hospitals, other health care facilities, and other entities and persons required to report or furnish information under this Act and any expert review panels, consultants to any expert review panel, and agents and employees of the Alabama Department of Public Health shall not be subject to civil or criminal liability for making reports or furnishing any information required by this article or for actions taken in the line and scope of official or required duties during their investigations, hearings, rulings, and decisions.

Authors: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health, Mary G. McIntyre, MD, Assistant State Health Officer for Disease Control and Prevention

Statutory Authority: Code of Ala. 1975,

History: Amended: Filed April 20, 2016; effective June 4, 2016.

420-4-3-.13 Confidentiality. The records, proceedings, deliberations, and documents related to the investigation and review of any IHCW are confidential and shall be used by committees, licensing boards of licensed HCWs, panels, and individuals only in the exercise of their official duties and shall not be public records except as provided by law.

Author: Charlotte E. Crysel, Director, Division of Infection Control, Alabama Department of Public Health

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-11A-2, 22-11A-7, 22-11A-13, 22-11A-14(g), 22-11A-70.

History: New Rule: Filed November 18, 1994; effective December 23, 1994. **Amended:** Filed November 17, 1995 effective December 22, 1995.

ATTACHMENT TO RULE 420-4-3-.04
APPENDIX 1

ALABAMA DEPARTMENT OF PUBLIC HEALTH
PHYSICIAN'S NOTIFICATION OF
HIV AND/OR HBV INFECTED HEALTH CARE WORKER

Information: The Infected Health Care Worker Management Act was signed into law on August 24, 1993. The purpose of the law is to prevent transmission of the Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV), or other disease designated by the State Board of Health from infected health care workers (IHCWs) to patients during the performance of exposure-prone invasive procedures. The law mandates "Any physician providing care to an infected health care worker shall notify the State Health Officer about the presence of the infection in the health care worker in a time and manner prescribed by the State Board of Health".

(SEE INSTRUCTIONS ON BACK FOR COMPLETING AND MAILING REPORT)

I. PATIENT INFORMATION:

Name: _____ Sex: __Female__ Male

Address: _____

Home Phone: _____ Work Phone: _____

Date of Birth: _____ Social Security Number: _____

II. EMPLOYMENT INFORMATION:

Occupation: _____

Name of Employer: _____

Address of Employer: _____

III. MEDICAL INFORMATION:

A. DIAGNOSIS:

1) HIV Positive: ___Yes___ No

Date of Enzyme Immunoassay (EIA): _____

Date of Western Blot: _____

2) Hepatitis B DNA Positive: ___Yes ___No

#1 Test Date: _____

#2 Test Date: _____

3) Hepatitis C Antibody Reactive and HCV RNA: ___Yes ___No

#1 Test Date: _____

#2 Test Date: _____

B. PRESENCE OF SYMPTOMS OR CONDITIONS:

___Dementia

___Dermatitis (Body Site: _____)

___Neuropathy

___Others (Please List): _____

C. PAST HISTORY OF OCCUPATIONAL INJURY TO THE IHCW WHILE PERFORMING INVASIVE PROCEDURES:

___Yes ___No ___Don't Know

SUBMITTING PHYSICIAN: _____
Print or Type

Signature DATE: _____

INSTRUCTIONS: This form is to be completed and returned within seven (7) days of the time a diagnosis is made or provision of care of such. Completed forms are to be sent to the designee of the State Health Officer by marking the envelope "Personal and Confidential" and sending it to:

**Director, Bureau of Communicable Disease
Alabama Department of Public Health
201 Monroe Street, Suite 1400
P. O. Box 303017
Montgomery, Alabama 36130-3017**

Invasive Procedures as defined in the Infected Health Care Worker Management Act are:

(1) Those medical or surgical procedures characterized by the digital palpation of a needle tip in a body cavity or by the simultaneous presence of the health care worker's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site.

(2) Invasive dental procedures shall include those that provide the opportunity for an intraoral percutaneous injury to the dental health care worker and could result in blood of the health care worker coming in contact with the blood or mucous membrane of the patient as adopted by the Board of Dental Examiners in rules developed pursuant to Section 11.

(3) These procedures shall not include physical examinations; blood pressure checks; eye examinations; phlebotomy; administering intramuscular, intradermal, or subcutaneous injections; needle aspirations; lumbar punctures; angiographic procedures; vaginal, oral, or rectal exams; endoscopic or bronchoscopic procedures; or placing and maintaining peripheral and central intravascular lines, nasogastric tubes, endotracheal tubes, rectal tubes, and urinary catheters.

**ALABAMA PROCEDURES FOR ASSESSMENT AND PRACTICE MANAGEMENT OF
HBV-, HCV-, AND HIV-, OR OTHER DISEASE SPECIFIED BY THE STATE
BOARD OF HEALTH, INFECTED HEALTH CARE WORKERS (HCWs)
FLOW CHART OF PROCEDURES**

