

Sexually Transmitted Infections (STIs) and the Law in Alabama: Examining the Legal Responsibilities and Supportive Services for Persons Living with HIV/STIs

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Comment

- **Please note that many of the laws and rules and regulations that will be discussed in this presentation were drafted and passed into legislation prior to the onset of the HIV epidemic AND their applicability to HIV / AIDS has not been clearly defined either by practice or legal proceedings**

A Disclaimer of Sorts

- **The following excerpts were taken from the various sections of the Code of Alabama and the Rules of the State Board of Health, Bureau of Disease Control addressing notifiable diseases**

Resources

- **www.cdc.gov**
 - **Diseases, conditions, etc.**
- **www.aidsetc.org**
 - **AIDS Education and Training Center**
- **www.kff.org**
 - **Kaiser Family Foundation**

Resources

- www.guttmacher.org
– Guttmacher Institute
- www.hivlawpolicy.org
– Click “Resource Bank”

Resources

- This is not an exhaustive listing of Public Health Laws or Rules of the State Board of Health, but merely highlights of those laws and rules and regulations addressing Sexually Transmitted Infections, including HIV

Resources

- It is suggested that the reader consult with their administrator or their institution’s legal counsel if there are any questions regarding interpretation of the laws and / or rules and regulations dealing with notifiable diseases / infections in Alabama

Contacts and Sources

- If there is a question regarding a situation involving a HIV / STI, the reader may consult with either the ADPH Division of HIV/AIDS Prevention and Control (334-206-5364) or the ADPH Office of General Counsel

Contacts and Sources

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Definitions

- Law
– A piece of legislation
- Rule
– An authoritative direction for conduct or procedure
- Regulation
– A governmental order having the force of law

Definitions

- **Statute**
 - A law enacted by a state legislature or Congress
- **Confidential**
 - Defines who may have access to information of a private / personal nature about an individual
 - **Sharing of information**

Definitions

- **Ethics**
 - A set of principles of right conduct

Statutes to be Covered

- **Federal**
 - Ryan White funding
 - HIPAA

Statutes to Be Covered

- **Alabama**
 - Notifiable Diseases / Conditions
 - Confidentiality
 - Consents
 - Access to records
 - Notification of Third Parties
 - Reporting
 - Commitment

Ryan White Funding

- **The Ryan White C.A.R.E. Act (P.L.101-381, 42 USC 3000ff-11, et seq.)**
 - Provides formula-based assistance to states to provide health care and support services to individuals living with a diagnosis of HIV/AIDS, as well as education and training for health care professionals

Ryan White Funding

- Alabama's 2010 Grant was \$27,685,828
- Parts B, C, D, and other

HIPAA: Health Information Portability and Accountability Act

- Cited at P.L. 104-191 (1996)
- Federal law that creates national standards for:
 - Privacy of protected health information
 - Security of protected health information

HIPAA: Health Information Portability and Accountability Act

- Automating the business process of claims administration

How Does HIPAA Affect Disease Reporting to Public Health?

- HIPAA was not intended to affect public health reporting
- The comments in the preamble to the HIPAA Privacy Rule explicitly protect state public health laws:

How Does HIPAA Affect Disease Reporting to Public Health?

- ...nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention

HIPAA: Some of What It Doesn't Do

- Does not override state laws that provide more patient privacy than HIPAA
- Does not require that all risk of incidental disclosures of patient information be eliminated
 - i.e. cubicles, shield-type dividers, sign-in sheets, etc.

HIPAA: Some of What It Doesn't Do

- Does not change the reporting requirements of providers regarding communicable / notifiable conditions / diseases

ADPH Policy on Notice of Privacy Practices

- Policy ID #03-10, Date 2-19-03
- Don Williamson, MD, State Health Officer issued a Memorandum outlining the ADPH's policy regarding HIPAA regulations for privacy practices and for giving notice of such practices

ADPH Policy on Notice of Privacy Practices

- The policy requires that a copy of the Notice be offered to every person entering the clinic for services, be given to every home care patient, and be posted at every clinic site
- A master version of this policy statement is available at: www.adph.org

Alabama Notifiable Disease Act

- 22-11A-1 Designation of Diseases
- Rules: Chapter 420-4-1-.03

Alabama Notifiable Disease Act

- Human Immunodeficiency Virus infection, Chancroid, Chlamydia, Gonorrhea, Granuloma inguinale, Lymphogranuloma venereum, and syphilis are reportable diseases / conditions that are to be reported in writing to the county / state health department within 7 days of diagnosis

22-11A-2: Reporting

- Persons responsible to report diseases; contents of report; confidential information; person making report immune from liability

22-11A-2: Reporting

- Each physician, dentist, nurse, medical examiner, hospital administrator, laboratory director, school principal, and day care center director shall be responsible to report cases or suspected cases of notifiable diseases and health conditions . . .

22-11A-4: Reporting

- Physician, hospital, etc. records available to health officer (or his designee)

22-11A-4: Reporting

- Any physician, hospital, laboratory, or other provider of medical services having rendered treatment, care, diagnostic, or laboratory services to any person suspected of having a notifiable disease or health condition shall make his or its records on that individual readily available to the state health officer or his designee

22-11A-13 Sexually Transmitted Diseases

- Sexually transmitted diseases which are designated by the State Board of Health are recognized and declared to be contagious, infectious and communicable diseases and dangerous to public health. The State Board of Health is authorized and directed to promulgate rules for the testing, reporting, investigation and treatment of sexually transmitted diseases.

22-11A-14: Reporting STDs

- Cases of STDs to be reported; contents of report; reports confidential; penalty for violation; measures for protection of others

22-11A-14: Reporting STDs

- (b) The report shall be upon a form prescribed by the State Board of Health and, at a minimum, shall state the patient's full name, date of birth, race, sex, marital status, address, telephone number, place of employment, stage of disease, medication and amount given, and date of onset

22-11A-14: Reporting STDs

- (e) The reports required by this section shall be confidential and shall not be subject to public inspection or admission into evidence in any court except proceedings brought under this article to compel the examination, testing, commitment, or quarantine of any person or upon the written consent of the patient

22-11A-17: Inmate Testing

- Testing of correctional facility inmates for STDs; treatment; discharge of infectious inmates; victim may request results of HIV testing

22-11A-17: Inmate Testing

- (a) All persons sentenced to confinement or imprisonment in any city or county jail or state correctional facility for 30 or more consecutive days shall be tested for those STDs designated by the State Board of Health, upon entering the facility, and any inmate so confined for more than 90 days shall be examined for those STDs 30 days before release . . .

22-11A-18: Isolation

- Isolation of person believed to have STD; such person required to report for treatment; costs; compulsory treatment and quarantine
 - This particular law was written and passed into legislation long before the emergence of HIV

22-8-4 When Minor May Give Consent Generally

- Any minor who is 14 years of age or older, or has graduated from high school, or is married, or having been married is divorced, or is pregnant may give effective consent to any legally authorized medical, dental, health, or mental health services for himself or his child, or for herself or her child

22-11A-19: Minor Consent

- A minor 12 years or older may consent to medical treatment for STD; medical care provider may inform parent or guardian

22-11A-19: Minor Consent

- . . . a minor 12 years of age or older who may have come in contact with any STD as designated by the State Board of Health may give consent to the furnishing of medical care related to the diagnosis or treatment of such disease, provided a duly licensed practitioner of medicine in Alabama authorizes such diagnosis and treatment . . .

22-11A-21: Penalties

- Penalties for treating or prescribing medicine without a license; penalty for a person afflicted with STD to transmit such disease

22-11A-21: Penalties

- (a) Any person who shall treat or prescribe for any person having a STD except a physician licensed to practice medicine in Alabama by the Medical Licensure Commission shall be guilty of a Class C misdemeanor

22-11A-21: Penalties

- (b) Any druggist or other person who shall sell any drug, medicine or preparation, or preparations advertised, called for, labeled or intended to be used as a cure or treatment for a STD, except on the written prescription of a licensed physician, shall be guilty of a Class C misdemeanor

22-11A-21: Penalties

- (c) Any person afflicted with a STD who shall knowingly transmit, or assume the risk of transmitting, or do any act which will probably or likely transmit such disease to another person shall be guilty of a Class C misdemeanor

22-11A-21: Penalties

- NOTE: the following have been designated by the State Board of Health as being sexually transmitted diseases / infections:
 - Chancroid, Chlamydia, Gonorrhea, Granuloma inguinale, HIV, Lymphogranuloma venereum, and Syphilis

**22-11A-24:
Commitment to Treatment**

- Commitment to Department of Public Health for compulsory treatment when person exposed or afflicted and refuses treatment

**22-11A-24:
Commitment to Treatment**

– When any person exposed to a disease or where reasonable evidence indicates exposure to a disease or infection designated under this chapter refuses testing or when any person afflicted with a disease designated under this chapter refuses treatment . . .

**22-11A-24:
Commitment to Treatment**

– . . . and / or conducts himself so as to expose others to infection, the state or county health officer or the designee may petition the probate judge of the county in which such person is located to commit him to the custody of the Alabama Department of Public Health for compulsory testing, treatment, and quarantine

22-11A-38: Notification

- Notification of third parties of disease; who may be notified
 - (a) The State Committee of Public Health is hereby authorized to establish the rules by which exceptions may be made to the confidentiality provisions of this chapter

22-11A-38: Notification

- (b) Pre-hospital transport agencies and emergency personnel . . . funeral home director
- (c) The attending physician or the State Health Officer or his designee may notify the appropriate Superintendent of Education

22-11A-38: Notification

– (d) Physicians or the State Health Officer or his designee may notify a third party of the presence of a contagious disease in an individual where there is a foreseeable, real, or probable risk of transmission of the disease

22-11A-38: Notification

– (e) Any physician attending a patient with a contagious disease may inform other physicians involved in the care of the patient and a physician to whom a referral is made of the patient's condition

22-11A-38: Notification

–(h) Notwithstanding the provisions of this section or any other provisions of the law, the State Health Officer or his designee shall under the circumstances set forth below disclose such information as is necessary to establish the following: that an individual is sero-positive for HIV infection. . . .

22-11A-38: Notification

– . . . Confirmed by appropriate methodology as determined by the State Board of Health; that the individual has been notified of the fact of his or her infections; and that the individual has been counseled about appropriate methods to avoid infecting others with the disease. . . .

22-11A-38: Notification

– . . . Such information shall be provided only under either of the following circumstances:

22-11A-38: Notification (h)

• (1) In response to a subpoena from a grand jury convened in any judicial circuit in the state, when such a subpoena is accompanied by a letter from the Attorney General or an Alabama District Attorney attesting that the information is necessary to the grand jury proceedings . . .

22-11A-38: Notification (h)

• . . . in connection with an individual who has been charged with or who is being investigated for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is demonstrated to be HIV infected. . . .

22-11A-38: Notification (h)

• (2) In response to a subpoena from the State of Alabama or the defendant in a criminal trial in which the defendant has been indicted by a grand jury for murder, attempted murder, felony assault as a result of having intentionally or recklessly exposed another . . .

22-11A-38: Notification (h)

- . . . to HIV infection where the exposed person is later demonstrated to be HIV infected, and, if subpoenaed by the State of Alabama, such material has previously been presented to the appropriate grand jury for review pursuant to subdivision (1), above. . . .

22-11A-51: Informed Consent

- Required for HIV testing
 - (a) Before any HIV test is performed, the health care provider or testing facility shall obtain from the person a voluntary informed consent to administer the test

22-11A-51: Informed Consent

- (b) A general consent form should be signed for medical or surgical treatment which specifies the testing for HIV infection by any antibody tests or other means and may be considered as meeting the standard of informed consent in subsection (a)

22-11A-52: Informed Consent

- Implied under certain circumstances
 - When a written consent for HIV testing has not been obtained, consent shall be implied when an individual presents himself to a physician for diagnostic treatment or other medical services and the physician shall determine that a test for HIV infection is necessary for any of the following reasons:

22-11A-52: Informed Consent

- (1) Said individual is, based upon reasonable medical judgment, at high risk for HIV infection; (Note: in October, 1993, a United States District Judge ruled the following: 'The court finds that there is no conceivable basis which would sustain this exception . . .

22-11A-52: Informed Consent

- . . . and that it violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.'

22-11A-52: Informed Consent

- (2) Said individual's medical care may be modified by the presence or absence of HIV infection; (let stand)
- (3) The HIV status of the said individual shall be necessary in order to protect health care personnel from HIV infection; (let stand)

22-11A-53: Notification of Positive Test Result

- Notification of positive test result; counseling; referral to appropriate health care services

22-11A-53: Notification of Positive Test Result

- An individual tested shall be notified of a positive test result by the physician ordering the test, his designee, a physician designated by the applicant or by the Department of Public health
- Such notification shall include:

22-11A-53: Notification of Positive Test Result

- Face-to-face post-test counseling on the additional testing, and the need to eliminate behavior which may spread the disease to others

22-11A-53: Notification of Positive Test Result

- Information as to the availability of appropriate health care services, including mental health care, and appropriate social and support services

22-11A-53: Notification of Positive Test Result

- Explanation of the benefits of locating, testing, and counseling any individual to whom the infected individual may have exposed the HIV virus and a full description of the services of public health with respect to locating and counseling all such individuals

22-11A-54: Confidentiality

- A health care or other testing facility shall maintain confidentiality regarding medical test results with respect to the HIV infection or a specific sickness or medical condition derived from such infection and shall disclose results only to those individuals designated by this article or otherwise as authorized by law

Infected Health Care Worker / Rules of State Board of Health

- Infected Health Care Worker: 22-11A-60 through 22-11A-73
- Rules of the State Board of Health, Chapter 420-4-3

Infected Health Care Worker / Rules of State Board of Health

- These laws and rules and regulations provide for administration and implementation of the “Infected Health Care Worker Management Act” (IHCWMA) to prevent transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B (HBV) to patients during invasive procedures

Infected Health Care Worker / Rules of State Board of Health

- Author: Charlotte Denton, RN (retired)

Spousal Notification of a Known HIV-infected Patient

- State Board of Health, Bureau of Disease Control, Chapter 420-4-1-11

Spousal Notification of a Known HIV-infected Patient

- (d) Persons performing post-test counseling must make a good-faith effort to notify the spouse of any HIV-infected patient that he or she may have been exposed to the human immunodeficiency virus and should seek testing. . . .

Spousal Notification of a Known HIV-infected Patient

- . . . Notification can be made by the HIV-infected individual, the provider who ordered the test, or by referral of the HIV-infected individual to the Health Department for partner notification services

Criminal Charges / Criminal Prosecutions

- 13A-6-2
 - Murder or attempted murder
- 13A-6-3
 - Manslaughter: “heat of passion”
- 13A-6-4
 - Criminally Negligent Homicide

Criminal Charges / Criminal Prosecutions

- 13A-6-20
 - 1st degree assault
- 13A-6-21
 - 2nd degree assault
- 13A-6-22
 - 3rd degree assault

Criminal Charges / Criminal Prosecutions

- 13A-6-23
 - Menacing
- 13A-6-65
 - Sexual misconduct many times involves a lack of consent

Why Not Prosecute Someone Who May Use HIV As a “Weapon”?

- Victim must be prepared to “go public”

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- (a) If district attorney files motion under section 15-23-101, court shall order person charged to submit to testing if court determines there is probable cause to believe the person charged committed the crime of rape, sodomy, or sexual misconduct and the transmission of body fluids was involved

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- (b) When a test is ordered under Section 15-23-101, alleged victim of the crime or a parent or guardian of the alleged victim shall designate an attending physician who has agreed in advance to accept the victim as a patient to receive information on behalf of the alleged victim

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- (c) If any sexually transmitted disease test results in a negative reaction, the court shall order the person to submit to any follow-up tests at the intervals and in the manner as shall be determined by the State Board of Health

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- (d) The result of any test ordered under this section is not a public record and shall be available only to the following:
 - (1) The alleged victim
 - (2) The parent or guardian of the alleged victim

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- (3) The attending physician of the alleged victim
- (4) The person tested

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- (e) If any sexually transmitted disease test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling

Mandatory HIV, STI Testing for People Charged with Rape, Sexual Assault (July 1, 2006) 15-23-102

- Counseling and referral for appropriate health care, testing, and support services as directed by the State Health Officer shall be provided to the alleged victim or the parent or guardian of the alleged victim

Resources

- **Code of Alabama:**
 - www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm
- **Alabama Administrative Code**
 - www.alabamaadministrativecode.state.al.us/alabama.html
- **Alabama Department of Public Health**
 - www.adph.org/