

STIs/HIV and Alabama Law

**Satellite Conference and Live Webcast
Wednesday, May 9, 2007
1:00 - 3:00 p.m. (Central Time)**

Produced by the Alabama Department of Public Health
Video Communications and Distance Learning Division

Faculty

**Rick Meriwether
Project Coordinator
AIDS Training and Education Center
Division of Infectious Diseases
Department of Medicine
University of Alabama at Birmingham**

**John R. Wible
General Counsel
Alabama Department of Public Health**

Program Objectives

- Define and identify the following terms: confidential, confidentiality, law, rule, regulation, and statute.
- Discuss key Alabama and Federal law, rules and regulations regarding STIs/HIV, including specific requirements regarding consent and testing issues, reporting of results, and treatment issues.

Program Objectives

- Discuss and identify recent changes to Alabama law regarding testing for STIs/HIV when related to an alleged sex crime.
- Discuss how these laws apply to case management.

Comment

- Please note that many of the laws, 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 application.

Definitions

- **Law:** a piece of enacted legislation
- **Rule:** an authoritative direction for conduct or procedure
- **Regulation:** a principle, rule, or law for controlling or governing conduct
- **Statute:** a law enacted by a legislature
- **Confidentiality:** pertains to the disclosure of personal information; a right to know

Statutes to be Covered

- **Federal**
 - Ryan White Funding
 - HIPAA
- **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**
 - Provides formula-based assistance to states to provide healthcare and support services to individuals living w/a diagnosis of HIV/AIDS, as well as education and training for healthcare professionals.
 - Alabama’s 2002 grant was \$18,232,000.

HIPAA: Health Information Portability and Accountability Act

- Federal law that creates national standards for:
 - Privacy of protected health information.
 - Security of protected health information.
 - 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.

Alabama Notifiable Disease Act

- 22-11A-1 Designation of Diseases
- Rules: Chapter 420-4-1-.03
- Human Immunodeficiency Virus infection, Chancroid, Chlamydia, Gonorrhea, Granuloma inguinale, Lymphogranuloma venereum, and syphilis are reportable diseases or conditions that are to be reported in writing to the county or state health department within seven days of diagnosis.

22-11A-2 Persons responsible to report diseases; contents of report; confidential information; person making report immune from liability

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

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

- (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.

Notifiable Disease/Conditions Case Report Card

NOTIFIABLE DISEASE/CONDITIONS CASE REPORT-ALABAMA DEPARTMENT OF PUBLIC HEALTH

Please see reverse for list of notifiable diseases. Mail card to the county health department. PLEASE PRINT LEGIBLY

Disease _____ Onset Date _____		County Health Department _____	
Name Last _____ First _____ DOB _____	Reported on: / /		
Age: Yrs _____ Mos _____ (if 14 months or less) Sex: M ___ F ___ Race: White ___ Black ___ Hispanic ___ Asian ___ Other ___	Reported by: State Lab ___ MD ___		
Address _____ City _____	ICP _____ Hospital or ICP _____ City _____		
Zip _____ County _____ Phone (____) _____	LAB _____ Laboratory name _____ City _____		
Circle appropriate answer: Patient in Fosterhome: No Yes Child/Worker in Day Care: No Yes Nursing Home Worker/Resident: No Yes			
Family _____	Other _____ Type person Name Phone _____		
Send and _____ mg/dl Type of Specimen (circle one): Capillary Venous Unknown	Check here, if you need more tests <input type="checkbox"/>		
Surveys _____ Specimen _____	State Office Use		
Propylthiouracil _____ (number) _____	Rac #: _____ Date Spec: _____		
Physician _____ City _____ Phone _____	Status: _____ CDC: _____		
Hospital _____ City _____ Phone _____			

*H. A. influenza, H. meningitidis, Shigella, Campylobacter, Salmonella
ADPH 671-12 Rev. 1-89(14)

Confidential Disease Report Card/STDs

ALABAMA DEPARTMENT OF PUBLIC HEALTH-CONFIDENTIAL DISEASE REPORT

County _____ Date of report _____ SSN # _____

Phone: _____

Patient's name (Last) (First) (Middle)	CODE 1 2 3 4 5 6 7 8 9 0
SEX M F M F M F M F M F	RACE White Black Am. Indian Latin Am. Other
Residence Street City Zip	Marital Status S M W D Sep.
Age _____ DOB _____	1 2 3 4 5

<input type="checkbox"/> Primary (710)	<input type="checkbox"/> Symptomatic (300)	<input type="checkbox"/> Chancroid (100)
<input type="checkbox"/> Secondary (720)	<input type="checkbox"/> Asymptomatic (300)	<input type="checkbox"/> Granuloma Inguinale (500)
<input type="checkbox"/> Early Latent (less than 1 yr.) (730)	<input type="checkbox"/> G PID (321)	<input type="checkbox"/> Lymphogranuloma Venereum (600)
<input type="checkbox"/> Late Latent (more than 1 yr.) (740)	<input type="checkbox"/> PPNIG (350)	<input type="checkbox"/> Chlamydia (200)
<input type="checkbox"/> Late (Specify) (760)	<input type="checkbox"/> CMRNG (352)	<input type="checkbox"/> GH. PID (221)
<input type="checkbox"/> Congenital (790)	<input type="checkbox"/> TRNG (351)	
	<input type="checkbox"/> Other (Specify) (310)	

Reported by: Pri. Phy [1] Clinic [2] Military [3]

JEFFERSON COUNTY DEPT. OF HEALTH

Name _____ Address _____ F. D. BOX 2070

City _____

22-11A-17 Testing of correctional facility inmates for STDs; treatment; discharge of infectious inmates; victim may request results of HIV 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 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 advent of HIV.

22-11A-19 Minor 12 years or older may consent to medical treatment for STD; medical care provider may inform parent or guardian.

- 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.

22-8-4 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-21 Penalty for person afflicted with STD to transmit such disease to another person.

- (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-24 Commitment to department of public health for compulsory treatment when person exposed or afflicted and refuses 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 and/or ...

22-11A-24 Commitment to department of public health for compulsory treatment when person exposed or afflicted and refuses treatment.

- ... 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 ...

22-11A-24 Commitment to department of public health for compulsory treatment when person exposed or afflicted and refuses treatment.

- ... Alabama Department of Public Health for compulsory testing, treatment and quarantine.

22-11A-38 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 of third parties of disease; who may be notified;

- (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 of third parties of disease; who may be notified;

- (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 of third parties of disease; who may be notified;

- (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 (h)

- (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 zero-positive for HIV infection.

22-11A-38 (h)

- 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 (h)

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

22-11A-38 (h)

- ...necessary to the grand jury proceedings 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 (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 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...

15-23-102 Order to submit to testing; designation of attending physician; additional testing; access to results; post-test counseling (2006-572)

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

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 Required for HIV Testing

- (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).

15-23-102

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

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.

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:
 - The alleged victim.
 - The parent or guardian of the alleged victim.
 - The attending physician of the alleged victim.
 - The person tested.

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. 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 at the request of the alleged victim or the parent or the guardian of the alleged victim.

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

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

22-11A-52

- (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; counseling; referral to appropriate health care services;

- 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.

22-11A-53 Notification of positive test result; counseling; referral to appropriate health care services;

- Such notification shall include:
 - Face-to-face post-test counseling on the additional testing, and the need to eliminate behavior which may spread the disease to others.
 - 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; counseling; referral to appropriate health care services;

- 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, 22-11A-60 thru 22-11A-73 and Rules of the State Board of Health, Chapter 420-4-3

- 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.
 - Author: Charlotte E. Crysel, R.N. 334-206-2984

Spousal Notification of a Known HIV-infected Patient

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

420-4-1-.14 Testing of Pregnant Women for Sexually Transmitted Diseases

- (1) Practitioners attending a pregnant woman shall test her at initial prenatal visit for syphilis...and for HIV infection, unless she is already confirmed to be infected with HIV, since said individual's medical care may be modified by the presence or absence of HIV...prenatal visit for chlamydia and gonorrhea if she is 24 years of age or younger; or if 25 years of age or older, she is unmarried or has one or more risk factors.

Criminal Charges/Criminal Prosecutions

- 13A-6-2 Murder or attempted murder
- 13A-6-3 Manslaughter: "heat of passion"
- 13A-6-4 Criminally Negligent Homicide
- 13A-6-20 1st degree assault
- 13A-6-21 2nd degree assault
- 13A-6-22 3rd degree assault
- 13A-6-23 Menacing
- 13A-6-65 Sexual Misconduct many times involves a lack of consent

Risk Factors

- Multiple sex partners or an at-risk sex partner during pregnancy.
- A sexually transmitted disease during the pregnancy
- Use of illicit drugs.
- Exchanging sex for money or drugs.

Why Not Prosecute Someone Who May Use HIV as a "weapon"?

- Victim must be prepared to "go public."

Upcoming Programs

Practical Tips on Management of Patients with Dementia in the Home
Wednesday, May 16, 2007
2:00 - 4:00 p.m. (Central Time)

For a complete listing of upcoming programs visit: www.adph.org/alphtn