

/* Utah Administrative Code deals with insurance, schoolchildren, partner notification, EMS personnel testing, and communicable disease procedures which specifically address HIV. */

COMMUNITY HEALTH SERVICES, EPIDEMIOLOGY

R386-702-10. Special Considerations for the Control of HIV Infection.

1. Reporting of HIV Infection.

1.1. Any infection with Human Immunodeficiency Virus (HIV) shall be reported under the authority of Section 26-6-3 and in accordance with R386-702-3.

1.2. "HIV Infection" is defined as an indication of Human Immunodeficiency Virus (HIV) infection detected by any of the following:

1.2.1. Presence of antibodies to HIV, verified by a positive confirmatory test, such as Western blot or other method approved by the Utah Department of Health.

1.2.2. Presence of HIV antigen.

1.2.3. Isolation of HIV.

1.2.4. Demonstration of HIV proviral DNA.

1.3. For reporting purposes, Western blot interpretation shall be based on criteria recommended by the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD).

1.4. Evidence of antibodies to HIV obtained by Enzyme Immunoassay (EIA) shall be reported if repeatedly reactive and confirmatory testing was not performed. A repeatedly reactive EIA means two or more positive tests.

1.4.1. In repeatedly reactive cases, the Utah Department of Health or the local health department will ensure appropriate confirmatory tests and counseling are conducted. All identifying information on persons found to have negative results on confirmatory tests will be removed from the files of the local health department and the Utah Department of Health and destroyed by employees designated by the local health officer or, in the case of the Utah Department of Health, by the director of the Bureau of HIV/AIDS Prevention and Control.

1.5. Persons with repeatedly reactive EIA results and indeterminate confirmatory test results shall also be reported.

1.5.1. The Utah Department of Health or the local health department shall maintain records of persons with indeterminate tests in a separate and confidential file until a final diagnosis is made.

1.5.2. The Utah Department of Health or the local health department may contact persons with indeterminate test results or their medical providers to ensure appropriate follow-up testing and counseling are accomplished.

1.5.3. All identifying information on persons who, after appropriate follow-up, are determined to be uninfected shall be removed from the files of the local health department and the Utah Department of Health and destroyed by employees designated by the local health officer or, in the case of the Utah Department of Health, by the director of the Bureau of HIV/AIDS Prevention and Control.

2. Exemptions from Reporting of HIV Infection.

2.1. Utah Department of Health studies.

2.1.1. Seroprevalence and other epidemiological studies conducted by the Utah Department of Health are exempt from reporting of HIV infections. Exemption is allowed only for those tests conducted as part of the study; individuals found to be HIV infected through other testing are reportable.

2.2. Anonymous testing site.

2.2.1. "Anonymous Testing" is defined as testing individuals for infection with HIV without the individual's disclosing his name.

2.2.2. The executive director of the Utah Department of Health may allow one site or agency within the State to administer anonymous testing.

2.2.3. The anonymous testing site shall submit to the Utah Department of Health the demographic information (excluding the name) and HIV test results from each individual who is tested.

2.2.4. The anonymous testing site shall conduct HIV counseling and partner notification for all HIV infected individuals and submit to the Utah Department of Health information on counseling and partner notification as required by Section 26-6-3.

2.2.5. The Utah Department of Health will provide the annual statistical report to the Legislative Interim Health Committee.

2.2.6. If the Utah Department of Health finds that anonymous testing is not resulting in partner notification comparable to that in confidential testing programs throughout the State, the anonymous testing program shall be terminated.

2.3. Medical research studies.

2.3.1. As provided by Section 26-6-3, a university or hospital research study may be exempted from reporting requirements for HIV infection. In any case where an exemption from reporting is requested, the university or hospital shall submit to the Utah Department of Health the research protocol, the written approval of the institutional review board, and a letter showing the funding sources and the justification for requiring anonymity. Upon receipt of the required documents, the Utah Department of Health will review the application and grant an exemption from reporting if all requirements of Section 26-6-3 have been satisfied.

2.3.2. The university or hospital that receives an exemption from reporting shall provide to the Utah Department of Health a quarterly report indicating the number of HIV infected individuals enrolled in the study.

3. Partner Identification and Notification.

3.1. "Partner" is defined as an individual who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual.

3.2. "Partner Notification" is the identification, location, and counseling of those persons who are named as partners of an HIV infected individual.

3.3. When an individual is tested and found to have an HIV infection, the Utah Department of Health or local health department shall conduct partner notification activities. The Utah Department of Health shall establish standards for partner notification.

4. Retroactive Reporting.

4.1. Reporting of individuals who were found to have an HIV infection through testing conducted prior to the effective date of amendments to Section 26-6-3, April 24, 1989, is not required. The Utah Department of Health will continue to accept reports, on a voluntary basis, of HIV infections discovered prior to that date.

4.2. This subsection does not apply if the individual with an HIV infection is tested on or after April 24, 1989.

4.3. This subsection does not apply if the individual with an HIV infection is considered to have a suspect or confirmed case of Acquired Immunodeficiency Syndrome (AIDS).

R386-702-11. Penalties.

1. Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Code of Communicable Disease Rules, are prescribed under Section 26-23-6.

R388. Community Health Services, HIV/AIDS Prevention and Control.

R388-801. AIDS Testing and Reporting for Emergency Medical Services Providers Rule.

R388-802. HIV Positive Student or School Employee Rule.

R388-801. AIDS Testing and Reporting for Emergency Medical Services Providers Rule.

R388-801-1. Authority and Purpose.

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R388-801-3. Emergency Medical Services Provider Responsibility.

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R388-801-7. Department Responsibility.

R388-801-8. Confidentiality Responsibility.

R388-801-9. Penalties.

R388-801-1. Authority and Purpose.

1. Authority - The AIDS Testing and Reporting for Emergency Medical Services Providers Rule is established under authority of Section 26-6a-9.

2. Purpose - To establish procedures for patient testing and reporting following a significant exposure of an emergency medical services provider.

R388-801-2. Definitions.

1. "Department" means the Utah Department of Health.

2. "Designated agent" means a person or persons designated by an agency employing or utilizing emergency medical services providers as employees or volunteers to receive and distribute test results in accordance with this rule.

3. "Disease" means Acquired Immunodeficiency Syndrome, Human Immunodeficiency Virus (HIV) infection, or Hepatitis B antigen positivity.

4. "Emergency medical services (EMS) agency" means an agency, entity or organization that employs or utilizes emergency medical services providers as employees or volunteers.

5. "Emergency medical services provider" means an Emergency Medical Technician as defined in Section 26-8-2, a peace officer as defined in Section 77-1a-1, local fire department personnel, or officials or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency medical care for an emergency medical services agency either as an employee or as a volunteer.

6. "Patient" means any individual cared for by an emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

7. "Receiving facility" means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

8. "Significant exposure" means:

8.1. Contact of an emergency medical services provider's broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration, or;

8.2. That a needle stick, or scalpel or instrument wound has occurred to the emergency medical services provider in the process of caring for a patient.

R388-801-3. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility, the designated agent, and the department. The reporting process is as follows:

1.1. The exposed EMS provider shall complete the department Exposure Report Form (ERF) at the time the patient is delivered and provide a copy to a person at the receiving facility authorized by the facility to receive that form. In the event that the exposed EMS provider does not accompany the patient to the receiving facility, he may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive that form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

1.2. The exposed EMS provider shall, within three days of the incident, also submit copies of the ERF to the designated agent and, by registered mail or in person, to the department.

1.3. The exposed EMS provider should retain a copy of the ERF for his own records, in the event that it is subsequently necessary to file a workers' compensation claim under Sections 26-6a-10 through 26-6a-14.

R388-801-4. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available, within the receiving facility or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of patients when HIV testing has been requested by EMS providers. The counselor shall contact the patient prior to release from the facility, or if the patient remains in the facility, contact shall be made within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the patient to draw a blood sample for HIV testing. In conjunction with this request, the patient must be advised of his right to refuse testing and be advised that if he refuses to be tested that fact will be forwarded to the department and the designated agent. Testing is authorized only when the patient, his next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the

department. If consent is received, the receiving facility shall draw a sample of the patient's blood and send it, along with the ERF, to the Utah Department of Health, Division of Laboratory Services for testing.

3. The receiving facility shall arrange for Hepatitis B testing according to standard procedures and report the result to the designated agent at the EMS agency.

R388-801-5. EMS Agency Responsibility.

The EMS agency shall appoint a representative as designated agent to fulfill the responsibilities specified in these rules.

report the result, by case number, not name, to the exposed EMS provider.

3. The designated agent, upon receipt of the Hepatitis B test result from the receiving facility, shall immediately report the result to the exposed EMS provider.

4. The designated agent, upon receipt of refusal of testing, shall report that refusal to the EMS provider.

5. The designated agent shall maintain confidential records in conformance with Section 26-6a-7.

R388-801-7. Department Responsibility.

1. The department shall designate a representative or representatives in the Utah Department of Health, Division of Laboratory Services who shall receive the HIV blood sample with a copy of the ERF, conduct the test and report the test result to the Bureau of HIV/AIDS Prevention and Control, and return the copy of the ERF to the Bureau of HIV/AIDS Prevention and Control.

2. The department shall designate a representative(s) in the Bureau of HIV/AIDS Prevention and Control who shall:

2.1. Receive and process copies of all ERF's submitted by the EMS provider or receiving facility to the department;

2.2. Report refusals to test or the results of HIV testing, by case number, not name, to the designated agent; and

2.3. Report HIV test results to the patient and complete all post test counseling required by Chapter 6a, Title 26.

3. The department may assess a fee to the EMS agency with which the EMS provider is affiliated, for the cost of testing and post test counseling of the patient.

4. The department shall develop and make available a pre-test counseling protocol to all receiving facilities.

R388-801-8. Confidentiality Responsibility.

1. Information concerning test results obtained under these rules that identify the patient shall be maintained strictly

confidential by the hospital, health care or other facility that received or tested the patient, designated agent, EMS provider, EMS agency, and the department, except as provided by these rules. That information may not be made public upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided by this chapter.

2. The information described in R388-801-8.1 may be released with the written consent of the patient, or if the patient is deceased or incapable of giving informed consent, with the written consent of his next-of-kin, legal guardian, or executor of his estate.

3. Information concerning test results obtained under the authority of these rules may be released in a way that no patient is identifiable.

R388-801-9. Penalties.

Penalties for violation of R388-801 are prescribed under Sections 26-6a-7 and 26-23-6.

R388-801-10. Designated Agent Responsibility.

1. The designated agent, upon receipt of an ERF from the EMS provider, shall review the details regarding the significant exposure and recommend appropriate measures, if any, considering the most recent Centers for Disease Control guidelines, to EMS agency management.

2. The designated agent, upon receipt of the HIV test result from the department, shall immediately

R388-802. HIV Positive Student or School Employee Rule.

R388-802-1. Authority and Purpose.

R388-802-2. Definitions.

R388-802-3. Confidentiality.

R388-802-4. Anti-discrimination.

R388-802-5. Requirements for Determining if a Student or Employee Infected with HIV Should Remain in the Regular Classroom or Job Assignment.

R388-802-6. Liability.

R388-802-7. Appeal Process.

R388-802-8. Special Procedures.

R388-802-9. Procedures for Handling Blood or Body Fluids.

R388-802-10. Penalties.

R388-802-1. Authority and Purpose.

I. The HIV Positive Student or School Employee Rule is established under authority of Section 26-1-30.

2. The purpose of R388-802 is to establish standards relating to HIV infection in the schools in order to (a) reduce the risk to susceptible individuals and (b) protect infected individuals against both unreasonable health risks and unnecessary restrictions in activities and associations.

R388-802-2. Definitions.

1. "Director" means the executive director of the Utah Department of Health.
2. "Employee" means anyone employed by a school or serving as a volunteer with the permission of a school.
3. "HIV" means human immunodeficiency virus.
4. "HIV Infection" is defined as an indication of the presence of human immunodeficiency virus (HIV) as detected by any of the following:
 - 4.1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.
 - 4.2. Presence of HIV antigen.
 - 4.3. Isolation of HIV.
 - 4.4. Demonstration of HIV proviral DNA.
5. "Review committee" or "committee" means a group consisting of a school administrator, a representative from the local health department, the subject's physician, the subject or, in the case of a minor, the subject's parents or guardian. The committee is appointed and chaired by the school administrator.
6. "School" means a licensed or unlicensed public or private nursery school, preschool, elementary or secondary school, day-care center, child-care facility, family-care facility, or head-start program.
7. "School administrator" means the person designated by the superintendent to implement this rule.
8. "School board" means the board of education of an affected public school district or the governing body of an affected facility or program which is not part of a public school district.
9. "Student" means anyone enrolled in a school.
10. "Subject" means a person who is the focus of deliberations by a review committee.
11. "Superintendent" means the superintendent of an affected school district or the chief administrative officer of an affected school which is not part of a public school district.

R388-402-3. Confidentiality.

1. The identities or other case details of HIV-infected subjects shall not be disclosed to any person other than the members of the review committee and the pertinent superintendent.

2. Penalties for violation of confidentiality are prescribed under Section 26-25a-103.

R388-402-4. Anti-discrimination,

1. In the school setting, no person shall be discriminated against, or denied activities or associations, based solely upon a diagnosis of HIV infection except as permitted under this rule.

R388-402-5. Requirements for Determining if a Student or Employee infected with HIV Should Remain in the Regular Classroom or Job Assignment.

1. Upon notification that a student or employee has been diagnosed with HIV infection, the school administrator shall convene a review committee.

2. A student or employee infected with HIV shall continue in his regular classroom or job assignment until a review committee can meet and formulate recommendations.

3. The committee shall review all pertinent information including current findings and recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health; apply that information to the subject and the nature of activities and associations in which the subject is involved with the school; and establish written findings of fact and recommendations based upon reasonable medical judgments and other information concerning the following:

3.1. The nature of the risk of transmission of HIV relevant to the activities of the subject in the school setting;

3.2. The probability of the risk, particularly the reasonable likelihood that HIV could be transmitted to other persons by the subject in the school setting;

3.3. The nature and the probability of any health related risks to the subject;

3.4. If restrictions are determined to be necessary, what accommodations could be made by the school to avoid excessive limitations on activities and associations of the subject.

4. The review committee shall forward its findings and recommendations to the superintendent.

5. The school administrator will implement the recommendations without delay.

6. The school administrator shall immediately advise the subject or, in the case of a minor, the subject's parents or guardian, in writing, of the decision of the review committee and that continued participation in the school setting may result in exposure to other communicable diseases.

7. The school administrator shall review the committee's decision on a regular basis and may reconvene the committee if,

in his opinion, the facts of the case have changed.

R388-802-6. Liability.

Responsibility for continued participation in the classroom or job assignment, despite potential personal risk, shall be left to the discretion of the subject or, in case of a minor, the subject's parents or guardian.

R388-802-7. Appeal Process.

1. The superintendent or any member of the review committee may appeal the recommendation of the committee by submitting a written appeal within ten school days for students or ten working days for employees, after receiving notice of the committee's recommendations. If the appellant's concerns relate to medical issues, the appeal shall be submitted to the director, and the director, or designee, may order restrictions on the school-related activities or associations of the subject or may stay implementation of the committee's recommendations. If the concerns relate to the school's ability to provide an accommodation, the appeal shall be directed to the school board.
2. The appellant shall submit copies of any appeal to the director, the superintendent, and all other members of the review committee.
3. The director or the school board shall review the findings and recommendations of the committee and any additional information that the director or board finds to be pertinent to the question raised in the appeal, and shall render a final decision in writing within ten school days for students or ten working days for employees.
4. Copies of the decision shall be sent to the appellant, members of the review committee, and the superintendent.
5. The superintendent shall implement the decision without delay.
6. Judicial review of any decision rendered under this section by the director or the school board may be secured by persons adversely affected thereby by filing an action for review in the appropriate court of law.

R388-802-8. Special Procedures.

1. A superintendent may suspend a subject from school or school employment for a period not to exceed ten school days for students or ten working days for employees, prior to receiving the recommendation of a review committee if the superintendent determines that there are emergency conditions which present a reasonable likelihood that suspension is medically necessary to protect the subject or other persons.

2. If the subject is unable to obtain the services of a physician to serve on the review committee, the local health officer may appoint a licensed physician to provide consultation.

R388-802-9. Procedures for Handling Blood or Body Fluids.

1. Each school shall adopt routine procedures for handling blood or body fluids, including sanitary napkins, regardless of whether students or employees with HIV infections are known to be present. The procedures should be consistent with recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health.

R388-802-10. Penalties.

1. Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including R388-802, are prescribed under Section 2623-6.

R590-132. Insurance - Human Immunodeficiency (HIV) Infection. Treatment of Virus

R590-132-1. Authority, Purpose and Scope.

R590-132-2. Definitions.

R590-132-3. Rule.

R590-132-4. Dissemination.

R590-132-5. Penalties.

R590-132-6. Confidentiality.

R590-132-7. Severability.

R590-132-8. Effective Date.

R590-132-1. Authority, Purpose and Scope.

This rule is promulgated by the Insurance Commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers.

The purpose of this rule is to identify and restrict certain underwriting, classification, or declination practices regarding HIV infection, that the commissioner finds are or would be unfairly discriminatory if engaged in. This rule also provides guidelines for the confidentiality of AIDS related testing, which, if not followed, would be unfairly discriminatory or hazardous to members of the insuring public.

This rule applies to every licensee authorized to engage in the business of insurance in Utah under Title 31A of the Utah Code.

R590-132-2. Definitions.

For the purpose of this rule, the commissioner adopts the definitions set forth in Section 31A-1-301, U.C.A., and in addition thereto the following:

A. HIV infection is defined as the presence of Human Immunodeficiency Virus (HIV) in the blood of a person as detected by the following;

1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.
2. Presence of HIV antigen.
3. Isolation of HIV.
4. Demonstration of HIV proviral DNA.

R590-132-3. Rule.

A. Persons with HIV infection will not be singled out for either unfairly discriminatory or preferential treatment for insurance purposes.

B. To properly classify risks related to covering prospective insureds, insurers may require reasonable testing. Application questions must conform to the following guidelines:

1. No inquiry in an application for health or life insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation.

2. Sexual orientation may not be used in the under-writing process or in the determination of insurability.

C. When used, the blood testing of insurance applicants must not be administered on an unfair basis. If a prospective insured is to be declined or rated substandard because of HIV infection, such action must be based on appropriate confirmatory tests.

D. Notice and Consent. No person engaged in the business of insurance shall require an HIV test of an individual in connection with an application for insurance for HIV infection unless the individual signs a written release on a form which contains the following information:

1. A statement of the purpose, content, use and meaning of the test.

2. A statement regarding disclosure of the test results, including information explaining the effect of releasing information to a person directly engaged in the business of insurance. The applicant should be advised that the insurer may disclose test results to others involved in the underwriting and claims review processes. If the HIV test is positive the results will be reported by those conducting the test or providers receiving test results to the local health department and the Medical Information Bureau (MIB, Inc.) if the insurer is a member. The insurer shall report the results in a generic code which signifies only non-specific blood test abnormalities.

3. A provision where the applicant directs that any positive

screen results be reported to a designated health care professional of his/her choice for post-test counseling. For purposes of this section, insurers will use the American Council of Life Insurance (ACLI) Notice and Consent Form or a similar form that contains identical language. The ACLI form is incorporated herein by reference or may be obtained from the ACLI or the Utah State Insurance Department.

R590-132-4. Dissemination.

Each insurer is instructed to distribute a copy of this rule or an equivalent summary to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

R590-132-5. Penalties.

Any licensee that violates this rule will be subject to the forfeiture provisions set forth in Sections 31A-2-308 and 31A-23-216, U.C.A.

R590-132-6. Confidentiality.

Except as outlined in R590-132-3(D) above, all positive or indeterminate records of the applicant held by the licensee that refer to the HIV status shall be held as confidential records under restricted access and will not be re-released unless re-disclosure is specifically authorized by the applicant. Re-release and Re-disclosure are required when the test results are to be used for purposes other than those included in the initial release.

R590-132-7. Severability.

If any provision of this rule or its application to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances shall not be affected.

R590-132-8. Effective Date.

This rule shall take effect on September 14, 1989.