

## DIVISION 12

### PROCEDURAL RULES

#### ~~Acquired Immunodeficiency Syndrome~~

##### ~~333-012-0260~~

##### ~~Definitions~~

~~For purposes of OAR 333-012-0260 through 333-012-0270, the following definitions shall apply:~~

~~(1) "AIDS" refers to the acquired immunodeficiency syndrome, which is caused by infection with the human immunodeficiency virus (HIV). An individual is considered to have AIDS only when the consequences of the HIV infection has reached the stage that meets strict clinical criteria published by the United States Public Health Service's Centers for Disease Control and Prevention in the "Morbidity and Mortality Weekly Report", December 18, 1992, Volume 41, Number RR-17, pages 1-4, and revised by the Council of State and Territorial Epidemiologists Position Statement 05-ID-04 (available at <http://www.cste.org/PS/2005pdf/final2005/05-ID-04final.pdf>), which publications are hereby adopted by reference.~~

~~(2) "Division" means the Oregon Health Authority.~~

~~(3) "Employer Representative" means a person, representing the employer of the exposed worker, who is responsible for compliance with OR-OSHA regulations (as defined in OAR 333-012-0280(5)).~~

~~(4) "Exposed Patient" means a person receiving health care who receives an exposure that may, on evaluation, be determined to have been a substantial exposure from the health care worker administering health care to the patient.~~

~~(5) "Exposed Worker" means a worker who experiences a substantial occupational exposure.~~

~~(6) "Health Care Representative" means a person with authority to make health care decisions for another person who is incapable of consent to health care.~~

~~(7) "HIV Test" means a Food and Drug Administration (FDA) approved test of an individual for the presence of the human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically associated with HIV infection and not with other diseases or conditions.~~

~~(8) A "HIV Positive Test" means a positive result on the most definitive HIV test procedure used to test a particular individual. In the absence of the recommended confirming tests, this means the result of the initial test done.~~

~~(9) "Licensed Health Care Facility" means a health care facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS Chapters 426 or 430.~~

~~(10) "Licensed Health Care Provider" means a person licensed or certified to provide health care under ORS Chapters 677, 678, 689, 680, 684 or 685 or ORS 682.216, or under comparable statutes of any other state.~~

~~(11) "Licensed Physician" means any physician who is licensed by the Board of Medical Examiners for the State of Oregon, State Board of Podiatry Examiners, State Board of Chiropractic Examiners, or Naturopathic Board of Examiners.~~

~~(12) "Local Health Department" means the local health department administrator or his/her designated representative.~~

~~(13) "Occupational Exposure" means a substantial exposure of a worker during the performance of the worker's occupation.~~

~~(14) "Person(s)" includes, but is not limited to, any licensed physician; other licensed health care provider; licensed health care facility; mental health facility, alcohol treatment facility, or drug treatment facility not licensed as a licensed health care facility under ORS Chapter 441; clinical laboratory; blood or sperm bank; plasma center; insurer; insurance agent; insurance support organization as defined in ORS 746.600; government agency; employer; research organization; or agent of any of the foregoing.~~

~~(15) "Source Person" means a person whose body fluids were the source of a substantial exposure.~~

~~(16) "Substantial Exposure" means contact with blood or blood components, semen, or vaginal/cervical secretions through percutaneous inoculation or contact with an open wound, non-intact skin, or mucous membrane of the exposed person. Substantial exposure includes contact with other body fluids only if they are visibly contaminated with blood. In situations at accident sites and in other uncontrolled environments with poor lighting where it is not possible to evaluate if the fluids were visibly contaminated with blood, contact with fluids that reasonably may have been so contaminated constitutes substantial exposure.~~

~~(17) "Worker" means a person who is licensed or certified to provide health care under ORS Chapters 677, 678, 679, 680, 682, 684 or 685, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory, as defined in ORS 438.010(1), a firefighter, a law enforcement officer, as defined in ORS 414.805, a corrections officer or a probation officer.~~

~~[Publications: Publications referenced are available from the agency.]~~

~~Stat. Auth.: ORS 433.045 – 433.080~~

~~Stats. Implemented: ORS 433.006 & 433.065~~

## **333-012-0262**

### **Scope**

~~OAR 333-012-0265 and 333-012-0270 pertain to the provisions of ORS 433.045 regarding informed consent for HIV testing and confidentiality of HIV test results. OAR 333-012-0266 through 333-012-0269 pertain to the provisions of ORS 433.065 regarding procedures for testing of source persons involved in the occupational exposure to body fluids, ORS 433.075 regarding content of employer provided prevention, education and testing programs for human immunodeficiency virus, and ORS 433.080 regarding mandatory testing of source persons to help prevent further spread of HIV from persons exposed to the virus in occupational settings. OAR 333-012-0280 through 333-012-0400 are promulgated under the authority of ORS 431.110(1)(e) and 433.004(1)(d) and regard the prevention of transmission of hepatitis B virus and HIV from an infected health care worker to a patient in an occupational setting.~~

~~Stat. Auth.: ORS 431.110(1), 433.004(1) & 433.045—433.080~~

~~Stats. Implemented: ORS 431.110(1), 433.004(1) & 433.045—433.080~~

## **333-012-0264**

### **Procedures for Determining HIV and Hepatitis B Status of Source Person Following Occupational Exposure to Body Fluids**

~~(1) Any worker who experiences an occupational exposure may make a confidential written report of the incident and request for intervention to the health care provider and/or health care facility primarily responsible for the care of the source person. The employer representative may also make such a report and/or request.~~

~~(2) A health care facility shall establish and follow written procedures by which such reports and requests are first presented to the facility by the exposed worker and then, in turn, by the facility to the source person's primary health care provider;~~

~~(3) When the care of the source person is not being provided in a health care facility, the exposed worker or their employer representative may make the report and request for intervention directly to the source person's health care provider or if the source person's health care provider is unknown, the local health department (see sections 5(a)-(d) below);~~

~~(4) Once the report is received, the health care facility or source person's health care provider shall evaluate the evidence that the exposure was substantial. If the facility or source person's health care provider judge that the exposure was not substantial, the exposed worker may request their own health care provider to evaluate whether or not the exposure was substantial. If the respective health care providers do not agree, the local health department administrator or designee shall decide whether or not the exposure is substantial, upon request. If it is judged to have been a substantial exposure, the source person's health care provider shall notify the~~

~~exposed worker whether the source person has been tested for HIV or for hepatitis B or C, and, if so, what the test results were, provided that:~~

~~(a) The individual whose HIV or hepatitis B or C test information is released is notified in writing of this disclosure; and~~

~~(b) The identity of the person tested for HIV or hepatitis B or C is not explicitly disclosed during the notification process. Any individual who has HIV or hepatitis B or C information about another individual pursuant to this subsection shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as otherwise required or permitted by Oregon law.~~

~~(5) The exposed worker or their employer representative may make a written report of the substantial exposure and request for intervention to the local public health department for the jurisdiction in which the exposure occurred, if any of the following circumstances exist:~~

~~(a) A specimen is not obtained from the source person within two working days after the written report is received by the source person's health care provider, regardless of the reason;~~

~~(b) No health care provider for the source person is known;~~

~~(c) The health care provider who has received a report of an occupational exposure and request for intervention finds that the facts stated do not demonstrate that a substantial exposure has occurred;~~

~~(6) Under any of these circumstances, the local public health officer will review the facts and decide whether a substantial exposure did in fact occur.~~

~~(7) Intervention by the local public health department. When the local public health administrator is notified of an occupational exposure, within two working days he or she shall follow the procedures outlined above in sections 4(a) and (b).~~

~~(8) Pursuant to ORS 433.065 and 433.006, an exposed worker shall be offered information about HIV and Hepatitis B or C infections, methods of preventing HIV or Hepatitis B or C infections, HIV and Hepatitis B or C tests and assistance in following the procedures outlined above. For employed workers this information and assistance shall be provided by the employer of the worker. Persons who are self-employed may obtain this information and assistance from a representative of the local health department.~~

~~Stat. Auth.: ORS 433.045—433.080~~

~~Stats. Implemented: ORS 433.006, 433.065~~

**333-012-0265**

## **Informed Consent**

~~(1) General scope. Pursuant to ORS 433.045, no person shall submit the blood of an individual to an HIV test without first obtaining informed consent or ascertaining that informed consent is obtained. This requirement does not apply to the HIV testing of women during pregnancy or delivery (ORS 433.045, 433.017 and OAR 333-018-0030), or HIV testing of deceased persons in the anatomical gift setting or the official medical examiner setting or where a clinical laboratory performs an HIV test on a specimen obtained outside of Oregon.~~

~~(2) Who may give consent:~~

~~(a) Anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give consent for HIV testing of that individual;~~

~~(b) A minor under 15 years of age may also give consent.~~

~~(3) Statutory exceptions to the requirement of informed consent prior to HIV testing:~~

~~(a) Pursuant to ORS 433.055(3), informed consent for an HIV test need not be obtained from an individual if the test is for the purpose of research as authorized by the Division and if the testing is performed in a manner by which the identity of the individual is not known, and may not be retrieved by the researcher;~~

~~(b) Pursuant to Section 20(4), Chapter 600, Oregon Laws 1987, informed consent for an HIV test need not be obtained from an individual convicted of sex crimes or drug-related crimes who is tested for HIV infection by the Oregon Department of Corrections after being screened for and found to have evidence for possible exposure to HIV;~~

~~(c) Nothing herein is intended to exclude any other exceptions that may arise under Oregon law.~~

~~(4) Informed consent for HIV tests ordered by licensed physicians. In obtaining informed consent for an HIV test, a licensed physician shall follow the procedure in ORS 677.097.~~

~~(5) Informed consent for HIV tests ordered by other licensed health care providers or persons acting on behalf of licensed health care facilities. In obtaining informed consent for an HIV test, an other licensed health care provider or persons acting on behalf of a licensed health care facility shall use a procedure that is substantially similar to that specified in ORS 677.097.~~

~~(6) Informed consent for HIV tests ordered or arranged for by insurers, insurance agents, or insurance support organizations. In obtaining informed consent for an HIV test, an insurer, insurance agent, or insurance support organization as defined in ORS 746.600, or persons acting in behalf thereof, shall comply with the rules of the Insurance Division, OAR 836-050-0200 through 836-050-0255, which contain substantially the same procedures as specified in subsection (7)(a) of this rule.~~

~~(7) Informed consent for HIV tests ordered or arranged for by any persons other than those covered in sections (4), (5), and (6) of this rule. Informed consent for HIV tests ordered or arranged for by any persons other than: licensed physicians; other licensed health care providers; persons acting on behalf of licensed health care facilities; or insurers, insurance agents, and insurance support organizations, as defined in ORS 746.600, shall be obtained as specified in this section:~~

~~(a) Procedure for informed consent. Except as provided in subsection (7)(b) of this rule, in order to obtain informed consent for an HIV test of an individual, any person subject to section (7) of this rule shall carry out the following procedure:~~

~~(A) Provide the individual for his/her retention a copy of the form as specified in Appendix 1;~~

~~(B) Orally summarize for the individual the substance of the statement in **Appendix 1** and specify alternatives to the HIV test in the particular instance, and if the test information will be disclosed to others, who those others will be;~~

~~(C) Explain the risks from having the HIV test. This shall include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement that there may be circumstances under which disclosure might be permitted or required without consent; and a statement of the potential consequences in regards to insurability, employment, and social discrimination if the HIV test results become known to others;~~

~~(D) Inform the individual that he or she has the right to request additional information from a knowledgeable person before giving consent;~~

~~(E) Ask the individual to be tested whether he/she has any further questions, and if so, provide the individual a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests and the consequences of being tested or not tested;~~

~~(F) Have the individual sign a consent form as specified in Appendix 1, after having had an opportunity to read it;~~

~~(G) Maintain the signed form as specified in **Appendix 1** for at least seven years.~~

~~(b) Exemptions from use of the form as specified in **Appendix 1**:~~

~~(A) Blood banks, plasma centers, and sperm banks may apply to the State Public Health Director for exemption from mandatory use of a form as specified in Appendix 1. In order to be eligible for such exemption, the blood bank, plasma center, or sperm bank must use a form or forms having a content substantially similar to that specified in **Appendix 1**. Approval of exemption by the State Public Health Director shall be in writing and shall be effective as to the form or forms approved for use under the application. The application must be in writing, dated and signed by~~

the executive officer of the blood bank, plasma center, or sperm bank, and include a copy of the form or forms for which exemption is requested;

~~(B) If exemption is granted, all procedures specified in paragraphs (7)(a)(B)-(G) of this rule shall be applied in using the approved form adopted by the blood bank, plasma center, or sperm bank.~~

~~[ED. NOTE: Appendices referenced are available from the agency.]~~

~~Stat. Auth.: ORS 433.045—433.080~~

~~Stats. Implemented: ORS 433.045, 433.055(3), 433.065 & 433.075~~

### **333-012-0266**

#### **Procedures for Soliciting HIV Testing Following Occupational Exposures to Body Fluids**

~~Pursuant to ORS 433.065, concerning who may request that testing be done and the procedures to be followed in obtaining test results:~~

~~(1) Procedures described under Section 333-012-0264 should be followed. If it is judged that the exposure was substantial, the source person's health care provider or local health department shall approach the source person or the source person's health care representative and solicit consent to testing. This rule applies both to exposed workers who are employed by the facility and to exposed workers whose substantial exposure occurs during preadmission care of source persons transported to that facility;~~

~~(2) When the source person is deceased, a request for consent to testing under this section shall be made to the person having the right to control the remains of the decedent, as specified in ORS 97.130. When a source person is unable to give consent as determined by the health care provider, anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give consent for HIV testing of that individual. If, within reasonable effort, such a person cannot be found, consent may be given by two physicians licensed to practice medicine in the state of Oregon.~~

~~(3) The fact that a request for consent to a test was made, the date of the request, and whether or not the source person or the source person's health care representative consented to be tested shall be recorded in writing and signed by the health care provider or local public health administrator or designee requesting consent. This record shall immediately be made available to the exposed worker.~~

~~(4) If consent for testing is given, the HIV test results may be released to the exposed worker provided that :~~

~~(a) The individual whose HIV test results are released is notified in writing of this disclosure; and~~

~~(b) The identity of the person tested for HIV is not explicitly disclosed during the notification process. Any individual who has HIV information about another individual pursuant to this subsection shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as otherwise required or permitted by Oregon law.~~

~~(5) If consent for HIV testing is refused, see section 333-012-0269 for procedures for mandatory HIV testing.~~

Stat. Auth.: ORS 433.045—433.080

Stats. Implemented: ORS 433.006 & 433.065

### **333-012-0267**

#### **Procedures Following Substantial Exposure of a Patient by a Health Care Worker**

~~(1) Any worker who has been the source of a substantial exposure to a patient while administering health care to that patient shall cause that exposure to be reported in writing to the exposed patient and to the worker's employer or health care facility where the exposure occurred within two days of the incident. Upon request by the health care worker or health care facility, the local health department shall provide assistance in making this notification to the exposed patient. The report shall advise the exposed patient if the worker will consent to an HIV test if it is requested. If the worker does not consent, the report will indicate that the exposed patient may request, with the assistance of the local public health department, the worker to consent to an HIV test. If two days have passed after a substantial exposure and a witness to the incident has reason to believe the patient has not been notified of the substantial exposure, the witness shall, if a worker, and may, if not a worker, notify either the health care worker's employer or the local health department and provide details of the incident.~~

~~(2) An exposed patient who has received a report of an exposure under section (1) of this rule may make a written request for intervention to the local public health administrator. Upon receipt of the report, the local health department administrator or designee shall, within two working days, request the health care worker to consent to testing. The fact that a request for consent to a test or tests was made, the date of the request and whether or not the source person consented to be tested shall be recorded in writing and signed by the local public health administrator or designee requesting the consent. The record shall immediately be made available to the exposed patient.~~

~~(3) Pursuant to ORS 433.065, a patient who has experienced a substantial exposure by a person providing them health care shall be offered information about HIV infection, methods of preventing HIV infection, and HIV tests. This information will be provided by the patient's primary care provider. Upon request by the patient's health care provider, the local health department administrator or designee shall provide assistance in providing this information to the exposed patient.~~



~~Stat. Auth.: ORS 433.045 – 433.080  
Stats. Implemented: ORS 433.006 & 433.065~~

### ~~333-012-0268~~

#### ~~Other Procedures to be Followed~~

~~(1) When an HIV test is performed pursuant to OAR 333-012-0269, the blood specimen must be drawn by a licensed physician or another licensed health care provider under the supervision of a licensed physician or licensed nurse practitioner. The test(s) must be performed in a licensed clinical laboratory, which will report the results only to an authorized person pursuant to ORS 438.430. Once received from the laboratory, test results shall be reported confidentially both to the source person and to the person who suffered the substantial exposure giving rise to the test.~~

~~(2) Except as provided in ORS 433.080, the informed consent provisions of OAR 333-012-0265 and the confidentiality provisions of OAR 333-012-0270 shall apply to HIV testing pursuant to OAR 333-012-0267 and 333-012-0269.~~

~~(3) Pursuant to ORS 433.075(4), where an employer provides a program of prevention, education and testing for HIV exposures for its employees, the program will be considered to be approved by the Oregon Public Health Division if the employee to be tested receives counseling regarding infection control, uniform body fluids precautions, sexual/needle sharing abstinence and safer sex practices including advice about precautionary measures to be taken with partners at risk of exposure to HIV while test results are pending. The Oregon Public Health Division will make the educational materials needed for such a program available at cost to any employer who requests such materials in writing. Laboratories used for testing services must comply with College of American Pathologists or U.S. Centers for Disease Control proficiency standards on a regular basis. If an employer does not have a testing program in place, the employer shall notify the exposed worker of a health care provider who will perform testing, or an exposed worker may seek medical treatment from a health care provider of his or her choice.~~

~~Stat. Auth.: ORS 433.045 – 433.080  
Stats. Implemented: ORS 433.006 & 433.065~~

### ~~333-012-0269~~

#### ~~Procedures for Mandatory HIV Testing Following Occupational Exposure to Body Fluids~~

~~(1) The provisions of ORS 433.080, which describe the legal petition process for mandatory testing of a source person, may be invoked only if the petitioner:~~

~~(a) Has received a substantial exposure, and at the time of exposure either was an exposed worker or was a patient exposed to a health care worker during the provision of health care services;~~

~~(b) Has followed the procedures for soliciting voluntary HIV testing following occupational exposures to body fluids as outlined in OAR 333-012-0266;~~

~~(3) Provides written documentation from a licensed health care provider that the petitioner meets the above criteria (subsections (a) and (b)). Once this documentation is received, mandatory testing must be done within three weeks following the petition, if, on adjudication, it is found that the petitioner's claim has merit.~~

~~(2) The exposed worker/patient must agree to undergo HIV testing in order to activate the mandatory provisions of ORS 433.080. Written certification from a health care provider that such a test specimen has been submitted must be provided at the time the petition is filed to request a court order for mandatory testing of the source person.~~

~~(3) The mandatory provisions of ORS 433.080 shall only be activated if decisions regarding a specific medical intervention, such as post-exposure prophylaxis, will be significantly influenced based on the results of the test.~~

~~Stat. Auth.: ORS 433.045 – 433.080~~

~~Stats. Implemented: ORS 433.006 & 433.065~~

### **333-012-0270**

#### **Confidentiality**

~~(1) General. Pursuant to ORS 433.045(3), no person shall disclose or be compelled to disclose the identity of any individual who has an HIV positive test result or HIV diagnosis, in a manner which permits identification of the subject of the test, except as required or permitted by the law of this state or any rule, or as authorized by the individual whose blood is tested. For purposes of this rule HIV test result means a positive HIV test result.~~

~~(2) Disclosure to or for tested individual. Positive and Negative HIV test results may be disclosed to the tested individual. HIV test results may be disclosed to the person ordering the test and to any other individual authorized by the laws of Oregon to give consent to medical procedures for the individual.~~

~~(3) Medical Information. When a licensed physician, other licensed health care provider, or licensed health care facility obtains an HIV test or HIV diagnosis of an individual, the test result, documentation of informed consent, and HIV diagnosis may be entered into the routine medical record of that individual maintained by that licensed physician, other licensed health care provider, or licensed health care facility. The information in the record may be disclosed in a manner consistent with ORS 192.518 to 192.526 to persons who must review the record for the purpose of treatment, payment or health care operations as those terms are defined in ORS 192.519.~~

~~(4) A physician may notify an individual who has had a substantial exposure to another individual whether that individual has been HIV tested, and, if so, what the test results were, provided that:~~

~~(a) The individual whose HIV test result is released is notified in writing of this disclosure; and~~

~~(b) The identity of the HIV tested person is not explicitly disclosed during the notification process. Any individual who receives an HIV test result about another individual pursuant to this rule shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as required or permitted by Oregon law.~~

~~(5) Reporting HIV test results to public health authorities. Reporting the identity and test result of an individual with a HIV positive test result to the Local Public Health Authority or Division on a death certificate, or as required or permitted by OAR 333-018-0000 through 333-018-0030 is not a breach of confidentiality.~~

~~(6) In the anatomical gift setting, the identity of a HIV tested deceased individual and that individual's HIV test results may be released to licensed physicians, other licensed health care providers, or licensed health care facilities to the minimum extent necessary to prevent contaminated anatomical parts from being transplanted into other individuals.~~

~~(7) Disclosure with authorization. Possession of HIV test results or HIV diagnosis does not confer the right to disclose this information to others, except as permitted by this rule and otherwise by Oregon law. HIV test results or HIV diagnosis and the identity of the tested individual may be released to any other party only with the specific written authorization of the tested individual. General consent for release of medical records is not sufficient. If, in the judgment of the attending licensed physician the patient is incapable of making health care decisions, then anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give authorization for release of HIV test results of that individual. The authorization for release of HIV test results and HIV diagnosis must specifically include:~~

~~(a) The statement that the HIV test result and HIV diagnosis may be released;~~

~~(b) The specific purpose for which the HIV result and HIV diagnosis may be released;~~

~~(c) Those to whom the HIV result and HIV diagnosis may be released;~~

~~(d) The specific time period during which the release may occur; and~~

~~(e) The date of the authorization, and the signature of the individual giving authorization.~~

Stat. Auth.: ORS 433.045

Stats. Implemented: ORS 433.045—433.080

## Infected Health Care Providers

~~333-012-0280~~ 333-022-0400

### Definitions

For the purpose of OAR 333-0~~2212-04000280~~ through 333-0~~2212-046000~~, the following definitions apply. Other definitions pertaining to these rules are listed in OAR 333-0~~2212-020060~~:

- (1) "Health Care Provider" as defined in OAR 333-017-0000(25) means a person who has direct or supervisory responsibility for the delivery of health care or medical services. This shall include, but not be limited to: Licensed physicians, nurse practitioners, physician assistants, nurses, dentists, medical examiners, and administrators, superintendents and managers of clinics, health care facilities as defined in ORS 442.015(13) and licensed laboratories.
- (2) "Reviewable Health Care Provider" means a health care provider who routinely performs or participates in the performance of surgical, obstetric, or dental procedures that:
  - (a) Pose a significant risk of a bleeding injury to the arm or hand of the health care provider; and
  - (b) Are of a nature that reasonably could result in the patient having an exposure to the health care provider's blood in a manner capable of effectively transmitting HIV or hepatitis B virus (HBV), for example, due to the inability of the health care provider to withdraw the injured limb. Examples of procedures that do *not* carry this significant risk include, but are not limited to: oral, rectal, or vaginal examinations; phlebotomy; administering intramuscular, intradermal, or subcutaneous injections; needle biopsies, need aspirations, and lumbar punctures; cutdown and angiographic procedures; excision of epidermal or dermal lesions; suturing of superficial lacerations; endoscopy; placing and maintaining peripheral and central intravascular lines, nasogastric tubes, rectal tubes, and urinary catheters; or acupuncture.
- (3) "HBsAg" means the surface antigen of the hepatitis B virus.
- (4) "HBeAg" means the "e" antigen of the hepatitis B virus.
- (5) "OR-OSHA" means the Oregon Occupational Safety and Health Division of the Oregon Department of Consumer and Business Services.

Stat. Auth.: ORS 431.110(1), 433.001 & 433.004

Stats. Implemented: ORS 431.110(1), 433.001 & 433.004

~~333-012-0290~~ 333-022-0405

### Preamble

(1) The purpose of OAR 333-0~~2212~~-0~~400280~~ through 333-0~~2212~~-04~~6000~~ is to prevent the transmission of hepatitis B virus and human immunodeficiency virus to patients from infected health care providers. The Division declares that strict adherence to proper infection control procedures by all health care providers is the primary way to prevent such transmission. The Division recognizes that when proper infection control procedures are used, the risk of transmission of HIV or hepatitis B virus from reviewable health care providers to their patients is negligible.

(2) In the event that an HIV-infected health care provider demonstrates symptoms of cognitive, emotional, behavioral or neurologic impairment, he or she should be treated like any other distressed and/or impaired health care provider, following the standards of the appropriate professional licensing board.

Stat. Auth.: ORS 431.110(1) & 433.004

Stats. Implemented: ORS 431.110(1) & 433.004

~~333-012-0300-333-022-0410~~

### **Infection Control**

(1) All health care providers and health care facilities shall strictly adhere to the infection control requirements of OAR 333- 017-0005(1) and applicable sections of the OSHA rules, "Occupational Exposure to Bloodborne Pathogens" (OAR 437-002 - **1910.1030**). This includes the proper use of hand washing, protective barriers, and care in the use and sterilization or disposal of needles and other sharp instruments as described in the U.S. Public Health Service's Centers for Disease Control and Prevention recommendations found in "**Recommendations for Prevention of HIV Transmission in Health Care Settings**", **Morbidity and Mortality Weekly Report 1987; 36 (supplement number 2S); 1-18S** and "**Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health Care Settings**", **Morbidity and Mortality Weekly Report 1988; 37:377-82, 387-88**.

(2) Any health care provider who observes that another health care provider or health care facility is not practicing current infection control standards shall seek correction of that problem through procedures appropriate to the setting. Such procedures may include, for example, discussing the needed corrective actions directly with the health care provider, reporting the breaches of infection control practice to the health care facility's infection control committee, or other actions/reporting as recommended by the infection control committee or required by other regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 431.110(1) & 433.004(1)(d)

Stats. Implemented: ORS 431.110(1) & 433.004(1)(d)

~~333-012-0310~~ 333-022-0415

### **Infection Control Training**

(1) All health care providers and health care facilities shall adhere to the infection control training requirements of the OSHA rules, "Occupational Exposure to Bloodborne Pathogens" (OAR 437-002 – **1910.1030**). These include employers ensuring that all employees with potential occupational exposures to bloodborne pathogens participate in a training program at the time of initial assignment to the tasks where occupational exposure may take place and at least annually thereafter.

(2) Any institution in Oregon providing professional training leading to a degree or certificate as a health care provider shall provide formal training in infection control procedures as a prerequisite for graduation.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 431.110(1) & 433.004(1)

Stats. Implemented: ORS 431.110(1) & 433.004(1)

~~333-012-0320~~ 333-022-0420

### **HIV and Hepatitis B Testing of Health Care Providers**

(1) HIV testing and hepatitis B testing of health care providers is not required by the Division.

(2) All reviewable health care providers are encouraged to voluntarily undergo testing for HIV infection. Any reviewable health care provider is encouraged to either:

(a) Demonstrate serologic evidence of immunity to the hepatitis B virus from vaccination; or

(b) To know his or her HBsAg status and, if that status is positive, is encouraged to know his or her HBeAg status.

(3) The provisions of section (2) of this rule shall not be deemed to authorize any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance agent, insurance-support organization as defined in ORS 746.600, government agency, employer, research organization or agent of any of them to require HIV testing of any health care provider as a condition of practice. Nor shall such provisions be deemed to create a legal standard of care for reviewable health care providers.

Stat. Auth.: ORS 431.110(1) & 433.004(1)(d)

Stats. Implemented: ORS 431.110(1) & 433.004(1)(d)

~~333-012-0330~~ 333-022-0425

### **Hepatitis B Immunization**

Every reviewable health care provider, whether or not directly subject to regulation by OR-OSHA, is encouraged to determine whether he or she has serologic evidence of immunity to hepatitis B or to obtain complete hepatitis B immunization.

Stat. Auth.: ORS 431.110(1) & 433.004(1)(d)

Stats. Implemented: ORS 431.110(1) & 433.004(1)

~~333-012-0340~~ 333-022-0430

### **Process for Initiating Review of the Professional Practice of a Reviewable Health Care Provider with a HIV-Positive Test or a Positive Test for HBsAg and HBeAg**

(1) Any reviewable health care provider who learns that he or she has a HIV-positive test or a positive test for both HBsAg and HBeAg is encouraged to refrain from participating in the performance of procedures outlined in OAR 333-0~~2212~~-0~~400280~~(2) until he or she ensures that his or her HIV and/or HBsAg/HBeAg infection status is reported to either:

(a) The Division for the purpose of undergoing a review of his or her professional practice as described in OAR 333-0~~2212~~-0~~435350~~; or

(b) His or her own institution of employment for the purpose of undergoing a review of his or her professional practice, if such a process exists.

(2) Reports to the Division should be made directly to the State Epidemiologist, the Deputy State Epidemiologist, or the State Health Officer.

(3) Health care providers who are uncertain as to whether or not they are reviewable may seek anonymous guidance from the Division.

Stat. Auth.: ORS 431.110 & 433.004

Stats. Implemented: ORS 431.110 & 433.004

~~333-012-0350~~ 333-022-0435

### **Division Response to the Report of a Reviewable Health Care Provider with a HIV-Positive Test or Positive Tests for HBsAg and HBeAg**

The following procedures shall be undertaken by the Division at the request of a reviewable health care provider with a positive test for HIV or positive tests for HBsAg and HBeAg:

(1) The Division shall interview the reviewable health care provider and his or her personal licensed physician or primary health care provider within two weeks of receipt of the report to determine:

(a) The date of the initial positive test result;

(b) An estimated date of initial infection, if available from clinical and exposure history information;

(c) The reviewable health care provider's current medical status with special emphasis on presence or absence of exudative lesions or weeping dermatitis, pulmonary tuberculosis, and cognitive, emotional, behavioral or neurologic impairment; and

(d) Whether the reviewable health care provider complies with standard infection control procedures and whether he or she has a history of incidents in which there was a substantial likelihood that a patient received a substantial exposure to the reviewable health care provider's blood;

(e) Pursuant to ORS 433.008 and 433.045, confidentiality of the reviewable health care provider's HIV or HBsAg/HBeAg status shall be maintained during this investigation.

(2) The Division shall convene an expert panel within two weeks of completion of the investigation to make recommendations regarding the reviewable health care provider's continued practice.

(3) The identity of the reviewable health care provider will not be revealed to the expert panel, unless the reviewable health care provider consents to this disclosure.

Stat. Auth.: ORS 431.110(1) & 433.004(1)

Stats. Implemented: ORS 431.110(1) & 433.004(1)

~~333-012-0360~~ 333-022-0440

### **Composition of the Expert Panel and Its Responsibilities**

(1) The expert panel shall include: An infectious disease specialist, with expertise in the epidemiology of HIV and hepatitis B infections, who is not involved in the care of the reviewable health care provider; a health professional with expertise in the procedures performed by the reviewable health care provider; a representative of the Division; and others at the discretion of the Division. With the consent of the reviewable health care provider, the reviewable health care provider's personal licensed physician or primary health care provider shall also be offered a position on the panel. The reviewable health care provider shall have the right to review the composition of the panel.



(2) The expert panel shall consider all information obtained by the Division's investigation and may request further information of the Division or the reviewable health care provider as needed.

(3) The expert panel shall make recommendations to the Division regarding the reviewable health care provider's further practice. The panel will focus on the reviewable health care provider's ability to comply with infection control procedures and his or her ability to provide competent care. Restrictions in future practice will be recommended only if there are medical impairments, infection control breaches, or scientific evidence to indicate that, in the Division's judgment, the reviewable health care provider's current practice activities pose a significant risk of transmission to the patient. Job modifications, limitations, or other restrictions are warranted only if there is clear evidence that the reviewable health care provider's current practice activities pose a significant risk of transmitting infection to patients. If restrictions are recommended, the panel will recommend the least restrictive alternative. If warranted, the panel may recommend one or more of the following:

(a) Additional infection control procedures;

(b) Restrictions on specific procedures;

(c) Monitoring of the reviewable health care provider's practice for compliance with the recommendations of the expert panel;

(d) Medical monitoring (both content and frequency) of the reviewable health care provider; and

(e) Frequency with which the panel should reconvene to reconsider its recommendations in light of the changing medical condition of the reviewable health care provider.

(4) The expert panel shall furnish the reviewable health care provider with a draft of its recommendations and an opportunity for comment. Before finalizing its recommendations to the Division, the expert panel shall take into account any comments received from the reviewable health care provider or the provider's representative.

Stat. Auth.: ORS 431.110(1) & 433.004(1)

Stats. Implemented: ORS 431.110(1) & 433.004(1)

**~~333-012-0370-333-022-0445~~**

### **Division Recommendations to Reviewable Health Care Provider**

The Division shall consider the specific recommendations of the expert panel and comments, if any, of the reviewable health care provider or the provider's representative, and shall prepare written recommendations to the reviewable health care provider. These written recommendations shall be presented to the reviewable health care provider within one week after completion of the panel's recommendations.

Stat. Auth.: ORS 431.110 & 433.004  
Stats. Implemented: ORS 431.110 & 433.004

~~333-012-0380~~ 333-022-0450

### **Notification of the Appropriate Licensing Board**

If the Division has reason to believe that the reviewable health care provider poses a significant risk of transmission of HIV or hepatitis B virus to the patient, whether or not an HIV-infected or HBsAg/HBeAg-positive reviewable health care provider has been reported to the Division and has consented to voluntary review as outlined above, the Division may notify the appropriate licensing board, and shall inform the reviewable health care provider, in writing, of this notification.

Stat. Auth.: ORS 431.110 & 433.004  
Stats. Implemented: ORS 431.110 & 433.004

~~333-012-0390~~ 333-022-0455

### **Notification and Counseling of Some or All Past or Present Patients of the Reviewable Health Care Provider**

Notification of patients as to their possible exposure to HIV or hepatitis B shall *not* occur except in any of the following circumstances:

- (1) HIV or hepatitis B transmission from reviewable health care provider to at least one of his or her patients has occurred;
- (2) The patient to be notified has had a substantial exposure to the reviewable health care provider's blood or body fluids; or
- (3) The reviewable health care provider has had significant violations of infection control practices that were standard at the time of the patient contact and which resulted in a significant risk of a substantial exposure to the patient being notified;
- (4) The identity of the HIV-infected health care provider shall not be explicitly disclosed during the notification process.

Stat. Auth.: ORS 431.110(1) & 433.004(1)(d)  
Stats. Implemented: ORS 431.110(1) & 433.004(1)(d)

~~333-012-0400~~ 333-022-0460

## **Confidentiality**

The report of a reviewable health care provider, the Division's investigation, the deliberations and recommendations of the expert panel, and the Division's recommendations pursuant to these rules shall be held in the strictest confidence under ORS 433.008 and 433.045, except as outlined in OAR 333-0~~2212-0450380~~ and 333-0~~2212-0455390~~.

Stat. Auth.: ORS 431.110(1) & 433.004(1)

Stats. Implemented: ORS 431.110(1) & 433.004(1)

### **DIVISION 22**

#### **HUMAN IMMUNODEFICIENCY VIRUS**

##### **HIV Testing and Confidentiality**

### **333-022-0200**

#### **Definitions**

For purposes of OAR 333-022-0205 through 333-022-0210, unless otherwise specified the following definitions shall apply:

- (1) "Division" means the Public Health Division within the Oregon Health Authority.
- (2) "Health care provider" has the meaning given that term in ORS 433.045.
- (3) "HIV test" has the meaning given that term in ORS 433.045.
- (4) "HIV-positive test" means a positive result on the most definitive HIV test procedure used to test a particular individual. In the absence of any recommended confirming tests, this means the positive result of the initial test done.
- (5) "Insurance producer" has the meaning given that term in ORS 746.600.
- (6) "Insurance-support organization" has the meaning given that term in ORS 746.600.
- (7) "Insurer" has the meaning given that term in ORS 731.106.
- (8) "Licensed health care facility" means a health care facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapters 426 or 430.
- (9) "Local public health administrator" has the meaning given that term in ORS 433.060.

(10) “Local public health authority” has the meaning given that term in ORS 431.260.

(11) “Next of kin” means an individual within the first applicable class of the following listed classes:

(a) The spouse of the decedent;

(b) A son or daughter of the decedent 18 years of age or older;

(c) Either parent of the decedent;

(d) A brother or sister of the decedent 18 years of age or older;

(e) A guardian of the decedent at the time of death;

(f) A person in the next degree of kindred to the decedent;

(g) The personal representative of the estate of the decedent; or

(h) The person nominated as the personal representative of the decedent in the decedent’s last will.

(12) "Personal representative" means a person who has authority to act on behalf of an individual in making decisions related to health care.

Stat. Auth.: ORS 433.045 - 433.080

Stats. Implemented: ORS 433.006 & 433.065

### **333-022-0205**

#### **HIV Testing, Notification, Right to Decline**

(1) Pursuant to ORS 433.045, a health care provider or the provider’s designee shall, before subjecting an individual to an HIV test:

(a) Notify the individual being tested; and

(b) Allow the individual being tested the opportunity to decline the test.

(2) A health care provider or the provider’s designee may provide an individual notice and the opportunity to decline testing verbally or in writing, including providing the notice and the opportunity to decline in a general medical consent form.

(3) Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the insurer, insurance producer or insurance-support organization must reveal the use of the test to the applicant and obtain the written consent of the applicant. The consent form must disclose the purpose of the test and to whom the results may be disclosed.

(4) Anyone other than those listed in sections (1) through (3) of this rule who wishes to subject an individual to an HIV test must reveal the use of the test to the individual and obtain written consent of the individual for the HIV test.

(5) If an individual is deceased, next of kin may consent to an HIV test pursuant to ORS 433.075.

(6) If an individual is incapable of consenting to an HIV test, the individual's personal representative may consent on the individual's behalf.

Stat. Auth.: ORS 433.045 – 433.080

Stats. Implemented: ORS 433.045, 433.055(3), 433.065 & 433.075

### **333-022-0210**

#### **Confidentiality**

(1) General. Pursuant to ORS 433.045, a person may not disclose or be compelled to disclose the identity of any individual upon whom an HIV test is performed or the results of such a test in a manner that permits identification of the subject of the test, except as required or permitted by federal law, the law of this state, or these rules, or as authorized by the individual who is tested. The prohibitions on disclosure do not apply to an individual acting in a private capacity and not in an employment, occupational or professional capacity.

(2) Disclosure to or for a tested individual. The results of an HIV test may be disclosed to:

(a) The tested individual;

(b) The health care provider or licensed health care facility or person ordering the test; and

(c) The tested individual's health care representative.

(3) Medical records. When a health care provider or licensed health care facility obtains HIV test results of an individual, the test results may be entered into the routine medical record of that individual maintained by that health care provider or licensed health care facility. The information in the record may be disclosed in a manner consistent with ORS 192.553 to 192.581

and the Health Information Portability and Accountability Act (HIPAA) regulations, 45 CFR 160 to 164.

(4) Public health purposes.

(a) Anyone may report the identity and HIV-related test result of an individual to the local public health authority or Division for public health purposes.

(b) The Division or local public health authority may inform an individual who has had a substantial exposure to HIV of that exposure if the Division or local public health authority determines that there is clear and convincing evidence that disclosure is necessary to avoid an immediate danger to the individual or to the public.

(c) The Division or local public health authority may disclose the identity of an individual with an HIV-positive test to a health care provider for the purpose of referring or facilitating treatment for HIV infection.

(d) The Division or local public health authority may only disclose the minimum amount of information necessary to carry out the purposes of the disclosure.

(5) Anatomical donations. The identity of a HIV tested individual and that individual's HIV test results may be released to a health care provider or licensed health care facility to the minimum extent necessary to prevent contaminated anatomical parts from being transplanted into other individuals.

(6) Nothing in this rule is intended to limit the extent to which a licensed health care facility or health care provider can use or disclose HIV related health information in accordance with other state and federal laws.

Stat. Auth.: ORS 433.008, 433.045

Stats. Implemented: ORS 433.045 – 433.080

### **Occupational and Health Care Setting Exposures**

#### **333-022-0300**

#### **Procedures for Requesting a Source Person Consent to an HIV Test Following an Occupational Exposure**

(1) For purposes of this rule the following definitions apply:

- (a) "Exposure" means contact with a source person's body fluids.
- (b) "Licensed health care provider" has the meaning given that term in ORS 433.060.
- (c) "Local public health administrator (LPHA)" means the public health administrator of the county or district health department for the jurisdiction in which the reported substantial exposure occurred.
- (d) "Next of kin" means an individual within the first applicable class of the following listed classes:
- (A) The spouse of the decedent;
  - (B) A son or daughter of the decedent 18 years of age or older;
  - (C) Either parent of the decedent;
  - (D) A brother or sister of the decedent 18 years of age or older;
  - (E) A guardian of the decedent at the time of death;
  - (F) A person in the next degree of kindred to the decedent;
  - (G) The personal representative of the estate of the decedent; or
  - (H) The person nominated as the personal representative of the decedent in the decedent's last will.
- (e) "Occupational exposure" means a substantial exposure of a worker in the course of the worker's occupation.
- (f) "Qualified person" means an individual, such as a licensed health care provider, who has the necessary training and knowledge about infectious disease to make a determination about whether an exposure was substantial.
- (g) "Source person" means a person whose body fluids may be the source of a substantial exposure.
- (h) "Substantial exposure" means an exposure to blood or certain body fluids that have a potential for transmitting the human immunodeficiency virus based upon current scientific information and may include but is not limited to contact with blood or blood components, semen, or vaginal/cervical secretions through percutaneous inoculation or contact with an open wound, non-intact skin, or mucous membrane of the exposed person.
- (i) "Worker" means a person who is licensed or certified to provide health care under ORS chapters 677, 678, 679, 680, 684 or 685, or ORS 682.216, an employee of a health care facility,

of a licensed health care provider or of a clinical laboratory, as defined in ORS 438.010, a firefighter, a law enforcement officer, as defined in ORS 414.805, a corrections officer or a parole and probation officer.

(2) The Division has determined that a worker who experiences an occupational exposure may benefit from requesting the mandatory testing of a source person because such testing may assist a worker in obtaining necessary prophylaxis or treatment for HIV.

(3) Pursuant to ORS 433.065, a worker who experiences an exposure may request that a determination be made as to whether the exposure was a substantial exposure.

(a) A worker may make a request for a determination to:

(A) If the source person is being treated at a licensed health care facility:

(i) The facility's infection control officer or other designated qualified person; or

(ii) The source person's treating health care provider;

(B) The worker's health care provider; or

(C) The LPHA.

(b) A request for a determination must include but is not limited to:

(A) The worker's name and contact information;

(B) Whether the worker has been tested for HIV and if so, when;

(C) The details of the exposure;

(D) The name, contact information, and current location of the source, if known;

(E) Information about the source person's HIV status, if known; and

(F) A citation to ORS 433.065 and these rules as authority for the request for a determination.

(4) The health care provider, infection control practitioner, designated qualified person or local public health administrator to whom the request is made must determine whether an exposure was a substantial exposure and an occupational exposure and provide that determination in writing to the worker within 24 hours of receiving the request. The individual making the determination may rely on the most recent guidance on this topic issued by the federal Centers for Disease Control and Prevention. The individual to whom the request is made may contact the worker to request additional information and may require the release of records related to the exposure from the worker, a licensed health care facility or a licensed health care provider in order to make his or her determination.



(5) If the health care provider, infection control officer, designated qualified person or LPHA to whom the request was made determines the worker experienced a substantial exposure and an occupational exposure the worker may request that the source person be tested for HIV.

(a) If the worker knows that the source person is under the care of a licensed health care facility or a licensed health care provider the worker may request that the health care facility or licensed health care provider ask the source person to consent to an HIV test. A health care facility or licensed health care provider who receives a request from a worker as described in section (5) of this rule is required to ask the source person to consent to an HIV test within 24 hours of receiving the request and to report to the worker immediately whether the source person has consented to an HIV test.

(b) If the worker does not know whether the source person is under the care of a licensed health care facility or a licensed health care provider the worker may contact the LPHA and ask for assistance in locating the source person. If the source person is located with assistance from the LPHA, the LPHA must request that the source person consent to an HIV test.

(c) In accordance with ORS 433.075(5) if the source person consents to the HIV test, the results of an HIV test shall be reported to the worker by the health care provider or licensed health care facility that ordered the test but the results may not identify the source person and the worker is prohibited from redisclosing any information about the test if the source person is known to the worker.

(d) A worker, or the exposed person's employer in the case of an occupational exposure, is responsible for the costs of the source person's HIV test in accordance with ORS 433.075.

(6) If the worker disagrees with a determination that an alleged occupational exposure was not substantial exposure, the worker may request a second determination from the LPHA. If the LPHA determines that the exposure was substantial, the worker may request that the source person be tested for HIV according to the procedures detailed in subsections (5)(a) through (d).

(7) If the source person refuses to consent, the health care provider or licensed health care facility that requested that the source person be tested must document, in writing, the source person's refusal to consent to an HIV test and provide that documentation to the worker. The LPHA must also be notified by the health care provider, licensed health care facility, or the worker of the documentation of the refusal along with the determination that the exposure was substantial.

(8) If a source person refuses to consent to an HIV test or fails to obtain a test within 24 hours of his or her consent to the HIV test the worker may petition the circuit court in the county in which the occupational exposure occurred in accordance with ORS 433.080 and OAR 333-022-0305 to request mandatory testing of the source person. Before a worker may petition the court for mandatory testing the worker must agree to an HIV test and submit a specimen to a laboratory certified to perform testing on human specimens under the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578,42 U.S.C. 201 and 263(a))(CLIA) and must notify the

LPHA of the failure to obtain a test along with along with the determination that the exposure was substantial.

(9) If a source person is deceased or is unable to consent to an HIV test, consent shall be sought from the source person's next of kin.

(10) If a worker has an employer, the worker's employer shall be required to provide the worker with information about HIV infection, methods of preventing HIV infection, HIV tests and treatment and assistance in following the procedures outlined above. A worker who is self-employed may obtain this information and assistance from the LPHA.

Stat. Auth.: ORS 433.065

Stats. Implemented: ORS 433.065

### **333-022-0305**

#### **Petition for Mandatory Testing of Source Persons**

(1) If a worker has complied with the process established in OAR 333-022-0300 and a source person has refused to consent to an HIV test or has failed to obtain a test within the time period established in that rule, the worker may petition the circuit court for the county in which the exposure occurred and seek a court order for mandatory testing in accordance with ORS 433.080.

(2) The form for the petition shall be as prescribed by the Division and shall be obtained from the LPHA.

(3) The petition shall name the source person as the respondent and shall include a short and plain statement of facts alleging:

(a) The petitioner is a worker subjected to an occupational exposure and the respondent is the source person;

(b) The petitioner meets the definition of worker in ORS 433.060;

(c) All procedures for obtaining the respondent's consent to an HIV test as described in OAR 333-022-0300 have been exhausted by the petitioner and the respondent has refused to consent to the test, or within the time period prescribed in OAR 333-022-0300 has failed to submit to the test;

(d) The petitioner has no knowledge that he or she has a history of a positive HIV test and has since the occupational exposure submitted a specimen for an HIV test to a laboratory certified to perform testing on human specimens under the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578,42 U.S.C. 201 and 263(a))(CLIA).; and

(e) The injury that petitioner is suffering or will suffer if the source person is not ordered to submit to an HIV test.

(4) The petition shall be accompanied by the certificate of the LPHA declaring that, based upon information in the possession of the administrator, the facts stated in the allegations under subsections (3)(a), (b) and (c) of this rule are true.

(5) A LPHA must provide the petitioner a certificate as described in section (4) of this rule and must appear at any court hearing on the petition in accordance with ORS 433.080(7).

(6) The court is required to hold a hearing on the petition in accordance with ORS 433.080.

Stat. Auth.: ORS 433.080

Stats. Implemented: ORS 433.080

### **333-022-0310**

#### **Substantial Exposure While Being Administered Health Care**

(1) For purposes of this rule the following definitions apply:

(a) "Exposure" means contact with a worker's body fluids.

(b) "Local public health administrator (LPHA)" means the public health administrator of the county or district health department for the jurisdiction in which the reported substantial exposure occurred.

(c) "Health care" has the meaning given that term in ORS 192.556.

(d) "Licensed health care provider" has the meaning given that term in ORS 433.060.

(e) "Patient" means an individual who has experienced an exposure or substantial exposure while being administered health care.

(f) "Qualified person" means an individual, such as a licensed health care provider, who has the necessary training and knowledge about infectious disease to make a determination about whether an exposure was substantial.

(g) "Substantial exposure" means an exposure to blood or certain body fluids that have a potential for transmitting the human immunodeficiency virus based upon current scientific information and may include but is not limited to contact with blood or blood components, semen, or vaginal/cervical secretions through percutaneous inoculation or contact with an open wound, non-intact skin, or mucous membrane of the exposed person.

(h) "Worker" means a person who is licensed or certified to provide health care under ORS chapters 677, 678, 679, 680, 684 or 685, or ORS 682.216, an employee of a health care facility,

of a licensed health care provider or of a clinical laboratory, as defined in ORS 438.010, a firefighter, a law enforcement officer, as defined in ORS 414.805, a corrections officer or a parole and probation officer

(2) If a patient has experienced an exposure by a worker the worker shall report that exposure immediately to one of the following:

(a) The worker's supervisor or employer, if applicable;

(b) The licensed health care facility's infection control officer or other designated qualified person if the exposure occurred in a licensed health care facility as that term is defined in ORS 442.015; or

(c) The LPHA if the worker does not have a supervisor or employer and the exposure did not occur in a licensed health care facility.

(3) If a witness to the incident has reason to believe the incident was not reported, the witness shall notify one of the individuals or entities listed in section (2) of this rule and provide details of the incident.

(4) The individual to whom a report was made under section (2) or (3) of this rule shall immediately make a determination whether the exposure was substantial and shall provide that determination to the worker in writing. The individual making the determination may rely on the most recent guidance on this topic issued by the federal Centers for Disease Control and Prevention. If the individual to whom the report was made is not qualified to make such a determination the individual must consult with a designated qualified person and that qualified person must then make the determination. The individual making a determination may require the release of records related to the exposure from the worker, a health care facility or a licensed health care provider in order to make his or her determination.

(5) If a determination is made that the exposure was substantial the worker who was the source of the substantial exposure to a patient shall notify the patient in writing within 24 hours of the determination. The worker may request that his or employer, the health care facility if the exposure occurred in a health care facility, or the LPHA provide assistance in making the notification. The notice must include but is not limited to:

(a) Details of the exposure;

(b) Why it was determined to be substantial;

(c) Whether the worker is willing to consent to an HIV test;

(d) The worker's HIV status if the worker consents to that information being included in the notice;

(e) Information about how the patient may request the worker be tested for HIV and to whom the patient should make such a request; and

(f) A statement that the patient, or the exposed person's employer in the case of an occupational exposure, will be responsible for the costs of the worker's HIV test in accordance with ORS 433.075.

(6) If the worker disagrees with a determination that an alleged occupational exposure was not substantial exposure, the worker may request a second determination from the LPHA. If the LPHA determines that the exposure was substantial, the worker may request that the source person be tested for HIV according to the procedures detailed in subsections (5)(a) through (f).

(7) A patient who has received notification in accordance with section (5) of this rule may make a written request for the worker to be tested for HIV to the individual or entity listed in the notice.

(8) The individual or entity to whom a request has been made under section (6) of this rule must:

(a) Immediately ask the worker to consent to an HIV test; and

(b) Inform the patient immediately whether the worker consented to the testing.

(9) If the worker consents to an HIV test the worker must submit to a test within 24 hours of being asked to consent.

(10) In accordance with ORS 433.075(5) if the worker consents to the HIV test the results of a HIV test shall be reported to the patient by the individual who ordered the test but the results may not identify the worker and the patient is prohibited from redisclosing any information about the results of the test if the worker is known to the patient.

(11) Pursuant to ORS 433.065, a patient who has experienced a substantial exposure by a worker shall be offered information about HIV infection, methods of preventing HIV infection, and HIV tests. This information must be provided by the patient's primary care provider. Upon request by the patient's health care provider, the LPHA must provide assistance in providing this information to the patient.

Stat. Auth.: ORS 433.065

Stats. Implemented: ORS 433.065

### **333-022-0315**

#### **Employer Program for Prevention, Education and Testing**

(1) Pursuant to ORS 433.075(4), where an employer provides a program of prevention, education and testing for HIV exposures for its employees, the program will be considered to be approved by the Division if employees receive counseling regarding HIV infection control, uniform body

fluids precautions, sexual/needle-sharing abstinence and safer sex practices including advice about precautionary measures to be taken with partners at risk of exposure to HIV while test results are pending.

(2) The Division may make the educational materials needed for such a program available to an employer who requests such materials in writing.

(3) An employer that provides HIV testing to employees must use a laboratory certified to perform testing on human specimens under the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578,42 U.S.C. 201 and 263(a))(CLIA).

(4) If an employer does not have a testing program in place, the employer shall notify the exposed worker of a health care provider who will perform testing, or an exposed worker may seek medical treatment from a health care provider of his or her choice.

Stat. Auth.: ORS 433.075

Stats. Implemented: ORS 433.075