

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 549**

[BOP-1017-I]

RIN 1120-AA23

Infectious Diseases**AGENCY:** Bureau of Prisons, Justice.**ACTION:** Interim rule.

SUMMARY: In this document, the Bureau of Prisons adopts as interim regulations provisions for the correctional management of chronic infectious diseases. These provisions, with minor adjustments, extend the scope of the existing provisions for Human Immunodeficiency Virus (HIV) programs to encompass the correctional management of other chronic infectious diseases such as hepatitis and tuberculosis. The intended effect of these regulations is to provide for the continued care of inmates in the Bureau's custody and for the continued secure and orderly operation of the institution.

DATES: Effective October 5, 1995; comments must be submitted by December 4, 1995.

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SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting as interim regulations the following procedures for the management of infectious diseases in a correctional setting. A final rule on the management of human immunodeficiency virus (HIV) programs (28 CFR part 549, subpart A) was published in the Federal Register December 21, 1990 (55 FR 52826). These interim regulations represent a broadening of the existing provisions for HIV programs to encompass the management (e.g., mandatory testing requirements) of other chronic infectious diseases such as hepatitis and tuberculosis.

The existing provisions have been reorganized in order to clearly separate requirements specific to the HIV and to the hepatitis B virus (HBV) from requirements common to the management of other chronic infectious diseases.

Section 549.10 has been revised to state the regulations' common purpose of providing instruction and guidance in

the management of infectious diseases in the confined environment of a correctional setting. The treatment and handling of routine infectious diseases continue to be covered by medical protocols and therefore are unaffected by the revised regulations.

The provisions in former § 549.11 relating to intake screening for HIV-infected inmates have been transferred to new § 549.18(a) and are discussed below. New § 549.11 is added detailing program administrative responsibilities.

The provisions in former § 549.12 on housing have been transferred to new § 549.16 and are discussed below. New § 549.12 is added to detail administrative requirements for state health department reporting requirements and to reference further provisions specific to chronic infectious diseases.

The provisions in former § 549.13 on precautionary measures for the use of communal implements have been removed. The Bureau believes such measures are more suitably addressed in implementing instructions to staff. This allows for greater flexibility in following updated guidance on this subject from the Centers for Disease Control.

A new § 549.13 is added containing provisions on medical testing. Paragraph (a) of new § 549.13 contains new provisions for testing of inmates following a bloodborne pathogen exposure incident. Such testing requires the written, informed consent of the inmate, except if the test is ordered by a court with proper jurisdiction. Under paragraph (a), an inmate may be subjected to disciplinary action for assaultive behavior related to an exposure incident. The Bureau's disciplinary procedures (see 28 CFR 541, subpart B) already specify assault as a prohibited act subject to disciplinary action. The provision in paragraph (a) is intended to clarify that an exposure incident could involve assaultive behavior; involvement in an exposure incident, however, does not, in and of itself, constitute grounds for disciplinary action.

Paragraph (b) of new § 549.13 summarizes the provisions previously stated in paragraphs (a), (b), and (c) of former § 549.16. Testing provisions for HIV are also restated in new § 549.18 along with provisions for HBV and are discussed below.

Paragraph (c) of new § 549.13 specifies new correctional procedures to be used in conjunction with the medical diagnosis and evaluation of infectious and communicable diseases. Under paragraph (c)(1), an inmate who refuses such diagnostic procedures and evaluations is subject to an incident

report for failure to follow an order. This requirement is intended to encourage the inmate's voluntary cooperation with medically indicated procedures. Paragraph (c)(2) restates medical protocols for isolation or quarantine. Paragraph (c)(3) specifies that when isolation is not practicable, an inmate who refuses to comply with or adhere to the diagnostic process or evaluation shall be involuntarily evaluated or tested. The Bureau believes that the secure and orderly operation of the institution necessitates interim implementation of these provisions.

The provisions of former § 549.14 on work assignments have been transferred to new § 549.16 and are discussed below. A new § 549.14 has been added containing training requirements for inmates pertinent to infectious diseases. This section largely restates the education provisions of former § 549.15 which were pertinent solely to HIV education. In addition to the broadening of subject matter covered (i.e., infectious diseases instead of merely HIV), this section reduces the requirements for supplementing the training given during Admission and Orientation.

As noted above, the provisions of former § 549.15 have been incorporated in new § 549.14. A new § 549.15 has been added on medical isolation and quarantining for infectious diseases which are transmitted through casual contact. This new section adapts standard medical protocols for use in a correctional setting.

The provisions of former § 549.16 have been transferred to new § 549.18 and are discussed below. A new § 549.16 is added containing provisions on duty and housing restrictions. Paragraph (a) of new § 549.16 specifies that the Clinical Director shall assess any inmate with an infectious disease for appropriateness for duties and housing, and that inmates demonstrating infectious diseases which are transmitted through casual contact shall be prohibited from employment in any area until fully evaluated by a health care provider. This new provision, therefore, is an administrative measure intended to ensure that duty and housing restrictions are imposed only after appropriate review by health care providers or as a precautionary measure pending review. Paragraph (b), which derives from the provisions of § 549.14, specifies that inmates may be limited in duty and housing assignments only if their disease could be transmitted despite the use of environmental/engineering controls or personal protective equipment, or when precautionary measures cannot be