

## HIGH DESERT HEALTH SYSTEM AMBULATORY SURGICAL CENTER

<b>SUBJECT:</b> XIII-112 HIV TESTING	<b>POLICY #:</b> 1113
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<b>DATE APPROVED:</b> 11/21/2017	

**PURPOSE:** To define the process within the Ambulatory Surgery Center (ASC) required to perform HIV testing and the release of HIV test results for patients and for employees with occupational exposures.

**POLICY:** Informed and verbal consent is required prior to HIV testing. Written consent by parent or guardian is required for patients <12 years of age or for incompetent adults. A court order is required for testing of wards of the state. Release of HIV test results will be performed per the following protocols.

### DEFINITION OF TERMS:

1. Attending Providers of the source patient

Any physician who provides health care services to the source patient and includes any of the following:

- a. The physician primarily responsible for the patient who is undergoing a surgical or invasive procedure in the-ASC;
- b. The Anesthesia staff providing anesthesia services to the patient who is undergoing surgical or invasive procedure in the ASC;
- c. A registered nurse who has been designated by the attending physician of the source patient

2. Available blood or patient sample

Blood, other tissue or material that was legally obtained in the course of providing health care service and is in the possession of the physician or other health care provider of the source patient **prior to** the exposure incident.

3. Certifying Physician

Any physician consulted by the exposed individual for the exposure incident. A certifying physician is to adhere to the applicable guidelines or standards of the California Division of Occupational Safety and Health (CAL-OSHA) and Centers for Disease Control & Prevention Guidelines (CDC).

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4. Exposed individual

A health care provider, first responder, or any other person (including any employee or contracted agent of the provider) who is exposed to the blood or other potentially infectious materials of a source patient.

5. Health Care Provider

Any of the following:

- a. Licensed and certified health personnel (physicians, nurses, other health personnel) who work in the health care facility
- b. Employees, or contracted agents of health care facility
- c. Professional students of any of the above

6. Other potentially infectious materials (OPIM)

Body fluids identified by CAL-OSHA as potentially capable of transmitting HIV:

- a. Semen, vaginal secretions, synovial fluid, peritoneal fluid, saliva;
- b. Any other bodily fluid that is visibly contaminated with blood such as saliva or vomitus;
- c. Any unfixed tissue or organ from a human.

7. Significant exposure

Direct contact with the blood or OPIM in a manner that, according to CAL-OSHA and CDC guidelines, is capable of transmitting HIV.

8. Source patient

Any person receiving health services whose blood or OPIM has been the source of a significant exposure to an exposed individual.

9. HIV test

Any clinical test, laboratory or otherwise, used to identify HIV, a component of HIV, or antibodies or antigens to HIV. This includes, but is not limited to, EIA (ELISA) antibody test, Western blot analysis, P-24 antigen tests, viral culture, and immune fluorescent assay.

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### I. CONSENT FOR HIV TESTING

- A. Informed and verbal consent of the patient is required in order to perform an HIV test. The physician is to inform the patient that an HIV test is to be ordered. If the patient declines the test, the declination is to be documented in the patient's medical record.
- B. Minors, 12 years or older: Such patients may consent to HIV Testing. When a minor twelve years or older initiates the test request, indicates his or her preference not to involve a parent or guardian, and shows sufficient knowledge, maturity and appreciation of the issues involved, the minor is entitled to consent to the test. Unless these considerations can be met, and, except in those instances in which the minor has indicated that privacy is a primary concern it is recommended that a parent or guardian be involved in the decision whether to consent to the HIV test. Conversely, should a minor 12 or older refuse the HIV test that refusal should be respected even if the parent or guardian wants the minor to be tested or is not informed of the request for testing.
- C. Minors, under 12 years of age and Incompetent Persons: Written consent is required for a minor <12 years of age or an incompetent adult from parent or guardian who. The fact of the patient's incompetence and necessity for testing is to be documented in the medical record.
- D. Occupational Exposures:
- Testing of source patient should occur per informed verbal/written consent as indicated. Testing may in some instances be performed without the patient's consent where there has been a significant exposure of health care personnel to potentially infectious materials, provided that the material tested was obtained prior to the exposure.
- E. Follow-Up Appointment
1. A follow-up appointment is to be made for the patient to return to the HDHS clinic for disclosure of the results.
  2. Documentation for the follow-up appointment and the patient's notification of the appointment is to be made in the medical record in the After Care Instructions, Discharge Instructions, or Progress Notes.
- F. Lab Testing & Recording of Results: The results of the HIV test shall be recorded in the patient's medical record and the lab report will be filed in the ASC Chart.

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### II. DISCLOSURE / RELEASE OF HIV RESULTS

By California law the results of HIV tests are confidential and the disclosure of test results in a manner which identifies the person tested is strictly limited. Disclosure includes all releases, transmissions, disseminations, or communications, whether made orally, in writing, or by electronic transmission will be made per the HDHS primary care protocols for disclosure of results.

- A. Entry in the medical record is not a disclosure; however, the medical record must not be disclosed without a special authorization by the patient unless it falls within one of the exceptions to the written authorization requirement listed below.
- B. Release of Medical Records to Other Providers: The release to other providers with a properly executed request can be completed per specific protocols of the HDHS Health Information Management.
- C. Release of HIV Test Results with Consent: A written consent from the subject or legal representative is required for each separate release or disclosure of the results of an HIV test and shall include to whom the disclosure is being made. The consent form must state specifically that HIV test results are being released; a generic consent form is not sufficient.
- D. Release of HIV Test Results without Consent:
  1. Disclosure by Physician to Third Parties: A physician who has the results of a confirmed positive HIV test for a patient under his/her care **may, but is not required to**, disclose the results to a person reasonably believed to be the patient's spouse, sexual partner, needle-sharing partner. **No identifying information about the individual who tested positive shall be disclosed.**

The physician shall not disclose the results until he/she has first discussed the test results with the patient, has offered the patient appropriate counseling, and has attempted to obtain the patient's voluntary consent for disclosure to notify the patient's contacts and has advised the patient of the physician's intention to notify the patient's contacts; or when all reasonable efforts to notify the patient of his/her positive results have been exhausted.

All such disclosures are made solely for the purpose of diagnosis and care of the person notified **not** for the purpose of interrupting the chain of transmission of the HIV virus. Also, when the physician discloses the information to a contact, the physician must refer that person for appropriate care.

The physician may notify the **LAC Partner Notification Unit** for assistance in disclosing HIV test results to a partner or needle-sharing contact, **or**, refer the patient to call this Unit (this Unit will not disclose identity of source patient to the contacts or partners notified).

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2. Notification to Significantly Exposed Health Care Worker: An attending provider may notify the health care provider who has received a significant exposure of source patient's HIV status in compliance with strict procedures for consent, testing, and confidentiality. (See section III. below)
  3. Access of Results by Health Care Workers: Agents or employees of a provider of health care who provide direct patient care and treatment to a patient are authorized by law to have access to the patient's HIV test results without written authorization. (Health Care Provider does not include Health Care Service Plan)
- E. Disclosure of Results to Individual Tested

**Disclosure of the HIV test results and Post-test Counseling are the responsibility of the physician/provider who receives the HIV test results.**

1. Patient may be referred to his primary care provider or attending physician for disclosure of the results, which must be made per the Primary Care protocols for disclosure of HIV Test results and applicable laws.
2. Notification of a Positive HIV test result to a patient not at the facility or did not keep follow up disclosure appointment:
  - a. If the patient is not at the facility at the time the positive HIV test results are received by the provider, and/or, if the patient does not return for the follow-up appointment for disclosure of results, efforts are to be made (*in strict confidentiality* without revealing the nature of the test or results) to notify the patient to **return** to the facility for information. Information is **not** to be disclosed by phone or mail.
  - b. The provider may delegate to nursing personnel, by written order, the function of notifying the patient to return to the facility to be seen in the primary care clinic for information.
  - c. Documentation is to be made in the patient's medical record of the notification or attempt to notify.

### III. HIV TESTING AS A RESULT OF SIGNIFICANT OCCUPATIONAL EXPOSURE

#### A. Health Care Provider's Reporting, Evaluation & Follow Up

Health care providers who have experienced a significant exposure to the blood or other potentially infectious materials of a patient:

1. Are to adhere to the Blood Exposure Reporting, Evaluation and Follow Up Protocols outlined in the HDHS ASC Employee Health Policies which indicate that exposures are to be **reported and evaluated immediately so that HIV**

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***Post exposure medications if indicated for the exposed person may be initiated within one-two hours of the exposure.***

2. Are to be aware that testing of the their blood and source patient and disclosure of source patient HIV test results is to be done per the HDHS Employee Health Services protocols..
- B. Notice to Source Patient and Consent for HIV Testing
1. If the source patient is known to be HIV positive, the attending provider of the source patient (or the certifying physician) will advise the exposed individual of the patient's HIV status as soon as possible after certification.
  2. Consent for release is not required where the exposed individual is the treating health care provider, an employee or an agent of the treating health care provider who provides direct care and treatment. If the source's patient's HIV status is not known and blood or other patient samples are available, then the source patient must be given the opportunity to consent to an HIV test. If the source patient consents to testing then a new blood specimen is to be drawn.
  3. If the Source Patient is under anesthesia, consent may be given to test for HIV 24 hours after anesthesia. Specimen may be drawn and held in the lab (90 days) until the consent can be obtained.
  4. If the source patient or authorized legal representative refuses consent for an HIV test, and if the exposed individual has tested negative on a baseline HIV test, the source patient will be informed that available blood materials will be tested, and that the exposed individual will be informed of the test results. The exposed individual does not have to be tested unless the source patient refuses.
  5. Available material/specimen must have been legally obtained during the course of medical treatment **prior to the exposure.**
  6. The source patient or authorized legal representative will be given the option as to whether or not he or she is advised of the HIV results.
  7. If the source patient refuses to consent to the HIV test and refuses to learn the results of the test, the patient shall sign a form documenting this refusal. Refusal to sign this form is deemed to be refusal to be informed of the HIV test results.
  8. HIV test results shall only be placed in the medical record when the source patient, or legal representative, has given verbal/written consent, as indicated, to be informed of the results. **If the source patient, or legal representative, declines to be informed of the HIV results, the identity of the source patient shall be encoded on the HIV test results record.** The HIV test results may be provided to the exposed individual only in accordance with CAL-OSHA regulation

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9. If the source patient is discharged before the significant exposure is reported, the following steps must be taken:
  - a. If the source patient or legal representative cannot be contacted, it may be treated as if the source patient has refused to be tested.
  - b. If the source patient or legal representative is contacted, the physician, or designee, must attempt to secure a voluntary informed verbal or written consent as indicated to perform the HIV test.
10. The exposed individual is prohibited from directly seeking consent to HIV testing from the source patient. The attending physician, certifying physician (Employee Health physician or designee), Employee Health Nurse or designee person designated by the Nurse Manager is to seek consent.
11. If the source patient is incapacitated or deceased and has no legal representative authorized to consent on his or her behalf, there can be consent granted to perform HIV testing of the source patient only on a blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure.
12. If an exposed individual is informed of the source's patient's HIV test results, the exposed individual must be counseled regarding confidentiality laws protecting the source patient's HIV test results.

#### IV. County Counsel Input

Because improper testing for HIV or disclosure of HIV test information can result in significant sanctions (fines, citations and/or imprisonment) a provider of health care must be confident that the testing and/or release of HIV test results is clearly permitted under the law. If a provider has any question about the propriety of testing or disclosure of test results in a particular circumstance, County Counsel should be contacted by HDHS-ASC Administration for advice in accordance with Department Policies 219 and 306.

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**REFERENCES:**

California Code of Regulations, Title 22

Health and Safety Code

California Association of Hospitals and Health Systems (CAAHS), Consent Manual, 2012

Los Angeles County Department of Health Services (DHS), Policy Numbers:

219, HIV Testing Handling of HIV Test Information and Related Procedures in Medical Settings, December 1, 2010.

306, County Counsel

314, Informed Consent

360, Confidentiality of Records

361, Confidentiality of Patient Medical Records and Information

365, Custodian of Records- Response to Subpoena Duces Tecum

390.1, Los Angeles County- DHS Documentation

<b>Original Date:</b> 07/01/2003
<b>Reviewed:</b> 11/21/2017
<b>Next Review Date:</b> 10/21/2020
<b>Previous Review Dates:</b> 11/08; 07/05/13
<b>Previous Revise Dates:</b> 07/09/13