



# High Desert Health System POLICY AND PROCEDURE

POLICY NUMBER: 966  
VERSION: 1

## **SUBJECT: HIV TESTING AND DISCLOSURE**

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**PURPOSE:** To define the process required to perform HIV testing and the release of HIV test results for patients and to be consistent with California state law regarding HIV testing and disclosure of results.

**POLICY:** All High Desert Health System (HDHS) Ambulatory Care Clinics and Departments will ensure that their specific procedures for HIV testing, HIV test result confidentiality and disclosure, and related procedures are in compliance with this policy.

### **DEFINITIONS**

**Alternative Testing Site** – An anonymous HIV testing site funded by California Department of Public Health, administered by a county health department and operated pursuant to HSC Sections 120890-120895.

**Disclose** – means to disclose, release, transfer, disseminate or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

**HIV** – Human Immunodeficiency Virus, the causative agent of the acquired immune deficiency syndrome (AIDS) and other less serious immunologic and hematologic disorders.

**HIV test** – Any clinical test, laboratory or otherwise, used to identify HIV, a component of HIV, or antibodies or antigens to HIV. This includes antibody based testing (enzyme-linked immunosorbent assay (ELISA/EIA), Western Blot, immunofluorescence assay (IFA)), as well as RNA testing/NAAT, p24 antigen tests, and viral culture.

**Provider of health care** – means any staff member of any DHS facility who is involved in the provision of direct patient care and treatment to the test subject.

### **Summary of Key Points:**

By law, written informed consent to perform HIV testing is not required when ordered by a health care provider. Therefore, no written informed consent will be required for a health care provider to order and perform HIV testing, except as noted in protocol below for minors under that age of 12 and for incompetent persons. Additionally, the HDHS

laboratory is not required to obtain either written or oral consent to process HIV tests ordered by health care providers.

Written consent is required under HSC Section 120990© for HIV testing provided and/or processed in non –medical settings (such as Department of Public Health-funded community based HIV testing programs).

Instead of requiring written consent, the health care providers are required to do the following ***before they order*** an HIV test:

1. Inform the patient that the test is planned;
2. Provide information about the test;
3. Inform the patient of available treatment options for a patient who tests positive for HIV and that a person that tests negative for HIV should continue to be routinely tested;
4. Inform the patient that he or she has the right to decline the test; and
5. If a patient declines the test, document this fact in the patient’s medical file (“Patient declines HIV test” is sufficient notation).

### **Pregnant Women**

By law, there is no requirement for written informed consent for HIV testing of pregnant women. It is the policy of HDHS that, consistent with CDC recommendations and the US Preventive Service Task Force recommendations, all pregnant women be routinely screened for HIV as a part of prenatal care. If no documentation of an HIV test during the period of prenatal care exists, the health care Provider responsible for prenatal care will ensure that the pregnant woman is informed about:

1. The intent to perform an HIV test;
2. The routine nature of the test;
3. The purpose of the test;
4. The risks and benefits of the test;
5. The risk of perinatal transmission of HIV and that approved treatments can decrease that risk; and
6. The right to decline the HIV test.

If the pregnant woman verbally accepts HIV testing, she shall then receive an HIV test.

### **Other Tests for HIV**

By law, no special consent is required to perform an antibody test on any other bodily materials that are not blood, (e.g., cerebral spinal fluid, oral fluid, urine, etc.). Therefore, informed consent is not required to perform an HIV antibody test on any bodily material.

By law, special consent is not required to perform other non-antibody-based HIV specific tests (e.g., RNA/nucleic acid amplification testing (NAAT), including viral load, genotypic, phenotypic resistance testing, p24 antigen, viral culture, etc.), whether on

blood or any other bodily material. Therefore, it is the policy of HDHS that informed consent is not required in order to perform non-antibody-based HIV specific tests on any bodily material.

**Disclosure of HIV Test Results**

To release results of any HIV test to someone other than the subject, whether an antibody test or other specific tests defined above, whether performed on blood or any other body material, written consent is generally required. See the details beginning on page 6 ‘Disclosure of HIV Test Results without Written Consent’.

**Guide:**

As provided by HSC Section 120990 and HSC 125090, an HIV test may be ordered by a health care provider if the subject has been provided with information on the test and been told of their right to decline, as enumerated in “Summary of Key Points,” above. It is the policy of HDHS that informed consent specifically for HIV testing is not required in the medical setting.

**When Written Informed Consent is not required for HIV Testing:**

Written informed consent is not required in any of the following circumstances:

1. When the HIV test is ordered by a health care provider.
2. When the test is performed at an alternative testing site in a health care setting.
3. When the test is performed on a prisoner or inmate of a correctional or juvenile institution in accordance with the conditions prescribed in Penal Code (PC) Sections 7500, et. seq.
4. When the test is performed on a criminal defendant pursuant to a court order issued under HSC Sections 121055.

**When Written Informed Consent is Required for HIV Testing:**

The California law continues to require Written Informed Consent to perform HIV testing in non-medical settings (such as Department of Public Health-funded community-based HIV testing programs). Generally, in order to give informed consent, a patient must be advised of (1) the nature of the treatment, (2) the risks of the treatment, (3) the expected benefits of the treatment, and (4) any alternatives and their risks and benefits. With respect to the HIV testing procedure, a patient should normally be advised, among other things, that:

- a positive result does not necessarily mean that he/she will have AIDS or other related illnesses;
- the test results are not 100% reliable, (e.g., false positives and false negatives);
- California law limits disclosure of the test results, although physicians may inform a spouse, sexual partner, or needle-sharing partners, or the Local Health Officer,

without revealing the identity of the test subject, if a physician thinks that is necessary;

- the test results will help the patient make better decisions about the his or her health care and personal life and will help the physician make appropriate decisions concerning the patient's medical treatment;
- potential risks of the test include psychological stress while awaiting the results and distress if the results are positive; and
- some persons have had trouble with jobs, housing, education, or insurance when their test results have been made known.

### **Who May Give Consent to HIV Testing:**

In California, minors 12 and older are considered competent to provide written consent for an HIV test in a non-medical setting. Minors 12 and older may also consent (verbally) to the diagnosis and treatment of HIV/AIDS. There is no requirement for parental consent or disclosure of HIV test results for minors seeking HIV testing or HIV/AIDS care services.

#### Incompetent Persons and Minors:

In the case of an incompetent person, a parent, guardian, conservator, or other person legally authorized to make health care decisions to give written consent for an HIV test. Minors under the age of 12 are considered not competent to give consent. Minors who are wards of the Court may receive written consent from the Court. The fact of the patient's incompetence/minor status and necessity for testing to render appropriate care or to practice preventative measures is to be documented in the medical record.

#### Minors, 12 years or older

A minor 12 years of age or older may consent to HIV Testing. When a minor twelve years or older initiates the test request, indicates his or her reference 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.

#### Deceased Persons:

Consent to testing of a cadaver is directly authorized by law only in the context of an autopsy, organ donation, or scientific investigation. If the need for an HIV test outside of these circumstances arises, HDHS should consult its legal counsel.

#### Occupational Exposures:

Testing may in some instances be performed even 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. See DHS Policy 925.200, EHS' Bloodborne Pathogen Exposure Control Program.

### **Delivering HIV Test Results**

#### **Negative Test Results:**

No further testing is necessary unless patient may have been exposed during the last 3 months ("window period."). If possible exposure during window period, patient should be re-tested in 3 months. Provide counseling on risk reduction and resources for patients concerned about risk.

#### **Positive Test Results**

Healthcare Provider is to:

- Provide test results in person and
- Provide counseling, with a focus on HIV as a manageable disease, risk reduction, psychosocial issues, and partner notification/ disclosure.
- Initiate appropriate screening and treatment and/or referrals for care and other services.
- Report test results to the Public Health Department.

#### **Intermediate Test Results:**

Healthcare Provider is to:

- Explain that results are unclear and the test needs to be repeated in a few weeks.
- Explore possibilities of exposure during window period.

### **Disclosure of HIV Test Results without Written Consent:**

#### **General rule:**

HIV test results may not be released without written consent, except to:

1. The test subject or the subject's legal representative.
2. The test subject's provider(s) of health care.
3. A provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act.
4. When the test results are of prisoners or inmates and are obtained pursuant to PC Sections 7500, et. seq., to those individuals who are permitted to receive the information under these code sections.

5. When the test results are obtained under a court order issued under HSC Section 121055, to those individuals specifically designated in the court order.
6. Pursuant to HSC Section 121055, to the officer in charge of an adult correctional or juvenile detention facility, when the test results are for an inmate or minor of that facility and are obtained by medical personnel providing services to that facility.
7. To pre-hospital emergency medical care personnel when all of the conditions prescribed under HSC Section 121010 are satisfied.
8. Employee/person exposed per occupational exposure to blood/body fluids/substances of a source person.

**Special Exception for Permissive Disclosure of HIV Test Results by Physician to Certain Third Parties:**

Notwithstanding the general rule of confidentiality with respect to HIV test results, under HSC Section 121015 a physician who has the results of a confirmed positive HIV test for a patient under his/her care may disclose to a person reasonably believed to be the patient's spouse, or to a person reasonably believed to be a sexual partner of the patient, or to a person with whom the patient has shared the use of hypodermic needles, or to the Local Health Officer, that the patient has tested positive. However, no identifying information about the individual believed to be infected shall be disclosed. No physician shall disclose information to any of the persons named unless he/she has first discussed the test results with the patient and has offered the patient appropriate counseling, has attempted to obtain the patient's voluntary consent for notification of his/her contacts, and has advised the patient of the physician's intention to notify the patient's contacts. When the information is disclosed to a person reasonably believed to be a spouse, or sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician shall refer that person for appropriate care, counseling and follow-up.

**NOTE:** All such disclosures are to be made solely for the purpose of diagnosis, care, and treatment of the person notified or for the purpose of interrupting the chain of transmission.

The Local Health Officer may alert any persons reasonably believed to be the spouse, sexual partner, or partner of shared needles of any individual who has tested positive for HIV about their exposure, without disclosing any identifying information about the individual believed to be infected or about the physician making the report. The Local Health Officer shall refer any person so notified for appropriate care, and follow-up.

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**Release of HIV Test Results with Written Consent:**

HIV test results may only be released to other parties not listed above with the written consent of the test subject or his/her legal representative for release of personal medical information.

Written consent is required for each separate release of medical information, and shall include to whom the disclosure would be made.

**Handling of Subpoenas:**

Subpoenas requesting medical records with HIV test result information are to be handled by the facility custodian of records, HDHS Health Information Management Department.

**Medical Record Documentation:**

The results of an HIV test shall be recorded by a clinician in the test subject's medical record. Lab results shall be maintained electronically or, if printed, filed in the lab section.

Consistent with proper health care, the patient's HIV infection status shall be documented on the Problem List and in the Progress Notes. Code words should not be used in the Progress Notes or Problem List, as they may fail to communicate to all providers the patient's serious underlying HIV disease.

Inclusion of the order for an HIV test or the results of HIV tests in the medical record is not a disclosure subject to criminal or civil sanctions.

The signed consent for testing or disclosure of results (when obtained) shall be placed in the same location in the medical record as all other consents for treatment or release of medical information.

**HIV/AIDS Reporting Requirements:**

HIV infection and AIDS are reportable conditions in California. All laboratories, health care providers, and counseling and testing providers are required to report all cases of HIV infection and AIDS diagnoses, using patient name, to the Los Angeles County (LAC) Department of Public Health (DPH) within seven (7) days, pursuant to California Code of Regulations, Title 17 Section 2643.5.

As of September 2008, all CD4+ T-Cell test results are reportable. As prescribed in HSC Section 121023, clinical laboratories shall report all CD4+ T-Cell test results to the LAC DPH, within seven (7) days of the completion of the test.

**County Counsel Input:**

Because an improper disclosure of HIV test information can result in significant sanctions, a health care provider and other designated HDHS departments/staffs should be confident when the release of an HIV test result is clearly permitted under the law. If a provider/department or staff has any question about the propriety of a disclosure of test results in a particular circumstance, County Counsel should be contacted for advice in accordance with DHS Policy No. 306.

**Cross References to Other HIV Testing Policies:**

Employee Health Services Policies for Bloodborne Pathogens Occupational Exposure Protocols  
 HDHS Policy for Communicable Disease Reporting to Public Health

**REFERENCES:**

AIDS Education & Training Centers, HIV Testing Information and Resources for California Clinicians. Available on the State Office of AIDS web site at: <http://www.cdph.ca.gov/programs/aids/Pages/Default.aspx>

CDC. Revised recommendations for HIV testing of adults, adolescents, and pregnant women in health-care settings. MMWR 2006;55(RR-14):1-17. Available at <http://www.cdc.gov/mmwr/pdf/rr/rr5514.pdf>.

California Assembly Bill (AB) 682

California Hospital Association Consent Manual, HIV and Other Bloodborne Pathogens, Chapter 23, 2010 Edition.

Los Angeles County DHS Policy 219, HIV Testing, Handling of HIV Test Information and Related Procedures in Medical Settings, Effective Date: December 1, 2010.

State of California—Health and Human Services Agency CDPH, AFL March 5, 2009, CDPH Support of Routine HIV Screening in Medical Settings; Information Regarding Recent Relevant Changes to California Law; Available Resources to Support Increased HIV Testing in Medical Settings.

U.S. Preventive Services Task Force. Screening for HIV: Recommendation statement, Annals of Internal Medicine, July 2005. 143(1):32-37.

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