



**Los Angeles County Department of Health Services**

<b>Policy &amp; Procedure Title:</b>		HIV Testing, Handling of HIV Test Information and Related Procedures in Medical Settings	
<b>Category:</b>	200-299 Program Policy	<b>Policy No.:</b>	219
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<b>DHS Division/Unit of Origin:</b>	Quality Improvement & Patient Safety Program		
<b>Policy Contact – Employee Name, Title and DHS Division:</b>			
Arun Patel, MD. - Director, Quality Improvement & Patient Safety/Risk Management			
<b>Contact Phone Number(s):</b>	(213) 240-8283		
<b>Distribution: DHS-wide</b> <input checked="" type="checkbox"/>	<b>If not DHS-wide, other distribution:</b>		

**PURPOSE:**

California law requires observance of certain testing procedures and special handling of medical information regarding Human Immunodeficiency Virus (HIV) infection. This policy and procedure incorporates the laws in effect as of January 1, 2014, including Assembly Bill (AB) 682 (Berg, Chapter 550, Statutes of 2007) that added California Health and Safety Code (HSC) Section 120990, which eliminated the requirement for written consent for an HIV test when ordered by a health care provider. AB 682 also amended HSC Section 125090, which eliminated the requirement that a health care provider obtain written consent for HIV testing on pregnant women. AB 506 (Mitchell, Chapter 153, Statutes of 2013) amended HSC Section 121020 to provide for the handling of consent and testing of infants who are in temporary custody or adjudged to be a dependent child of the court. AB 446 (Mitchell, Chapter 589, Statutes of 2013), created new HSC HIV testing requirements in healthcare and non-healthcare settings. This policy and procedure also provides for coordination of HIV testing services between the Department of Children and Family Services (DCFS) and the DHS Medical Hub clinics for such infants/children.

**DEFINITION(S):**

**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.

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*The mission of the Los Angeles County Department of Health Services is to ensure access to high-quality, patient-centered, cost-effective health care to Los Angeles County residents through direct services at DHS facilities and through collaboration with community and university partners.*

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**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.

**Medical Hub**

DHS-operated pediatric outpatient clinic serving children referred by the Department of Children and Family Services (DCFS).

**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.

**POLICY:**

All units within the Los Angeles County Department of Health Services (DHS) will ensure that their specific procedures for HIV testing, HIV test result confidentiality and related procedures within medical settings are in compliance with this policy statement.

**SUMMARY OF KEY POINTS**

Consistent with the 2006 guidelines released by the U.S. Centers for Disease Control and Prevention (CDC), it is the policy of DHS that all adults and adolescents age 15-64 be screened for HIV at least once by medical providers.<sup>1</sup> Persons at high risk for HIV infection should be screened for HIV at least annually.<sup>1</sup>

By law, written consent to perform HIV testing is not required when ordered by a health care provider (HSC Section 120990(a)). Therefore, it is the policy of DHS that no written consent will be required for a health care provider to order and perform HIV testing for anyone over age 12. Additionally, DHS' laboratories are not required to obtain either written or oral consent to process HIV tests ordered by health care providers.

For any patient that is considered incompetent to make their own medical decisions which includes all minors under age 12 and persons determined to be incapacitated and not able to consent to their own treatment, the patient's parent, guardian, conservator or other person specified under the law must provide informed oral or written consent for an HIV test.

Written consent is not required under HSC Section 120990(c) for HIV testing provided and/or processed in non-medical settings (such as Department of Public Health-funded community-based HIV testing programs).

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<sup>1</sup> 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>.

For all competent individuals over age 12, instead of requiring written consent, HSC Section 120990(a) requires health care providers 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. Document the patient's oral consent or declination of the test in the patient's medical record (HSC 120991 (d)).

### Primary Care Clinics

AB 446 requires all patients who are having blood drawn at a primary care clinic are to be offered a HIV test consistent with the recommendations of the United States Preventative Services Task Force.

Primary care clinics are not required to offer a HIV test to patients who have been tested for HIV or offered and declined the HIV test within the previous 12 months (HSC 120991 (a)).

Primary care clinics are required to attempt to give the results of the test to the patient before the patient leaves the facility. If the results cannot be provided before the patient leaves the clinic, the clinic may give negative results by mail or by telephone (HSC 120991 (d)).

### Providing HIV Test Results

After the results of a test have been received, the medical provider or the person administering the test must ensure that the patient receives timely information and counseling, as appropriate, to explain the results and the implications for the patient's health.

Patients who test positive must be informed in a manner consistent with state law (HSC 120991 (d)). Therefore, patients who test positive for HIV can be told by their health care providers either orally (including by telephone) or in written form (HSC 123148 (a)).

### Pregnant Women

By law, there is no requirement for written consent for HIV testing of pregnant women. It is the policy of the DHS that, consistent with CDC and U.S. Preventive Service Task Force recommendations, all pregnant women be routinely screened for HIV as a part of prenatal care.<sup>2</sup> If no documentation of an HIV test during the period of prenatal care or at the time of labor and delivery exists, the person responsible for prenatal care or attending the woman at the time of labor and delivery will ensure that the woman is informed about:

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<sup>2</sup> U.S. Preventive Services Task Force. Screening for HIV: Recommendation statement. *Annals of Internal Medicine*. July 2005. 143(1):32-37

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 “by a method that will ensure the earliest possible results.” As of April 2009, there are six HIV tests available that can provide preliminary results within 20 minutes. Therefore providers and hospitals shall make every effort to provide access to rapid HIV testing in labor and delivery. If a pregnant woman receives combination therapy antenatally and the infant receives post exposure prophylaxis (PEP), the rate of mother to child transmission is decreased to less than 2%.<sup>3,4,5</sup>

#### Infants Under 12 Months of Age Who Are in Temporary Custody or Adjudged a Dependent Child of the Court

By law, a child’s Department of Children and Family Services (DCFS) social worker can authorize HIV testing for an infant less than 12 months of age, if the following criteria are met:

- The infant has been taken into temporary custody, declared a dependent of the court, or a petition has been filed for such a declaration;
- The infant is being examined by medical personnel or receiving medical care;
- The attending physician determines HIV testing is necessary to render appropriate care to the infant and documents that determination in the medical record, after considering risk factors including but not limited to:
  - Whether the infant’s parent has a history of behavior that places the parent at an increased risk of exposure to HIV; or
  - Whether the infant is a victim of sexual abuse that places the infant at risk of exposure to HIV; or
  - Whether the parent’s personal history is unknown.
- The DCFS social worker provides known information concerning the infant’s possible risk factors for exposure to HIV to the attending physician.
- The DCFS social worker has made reasonable efforts to contact the parent or guardian to obtain authorization and was unsuccessful, and the social worker has documented his or her efforts.

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<sup>3</sup> Coper ER, Charurat M, Mofenson LM, et al. Combination antiretroviral strategies for the treatment of pregnant HIV-1 infected women and prevention of perinatal HIV-1 transmission. *J Acquir Immune Defic Syndr Hum Retrovirol*, 2002. 29(5): 484-94

<sup>4</sup> Mandelbrot L, Landreau-Mascano A, Rekaceqicz C, et al. Lamivudine-zidovudine combination for prevention of maternal-infant transmission of HIV-1. *JAMA*, 2001. 285(16):2083-93

<sup>5</sup> Dorenbaum A, Cunningham CK, Gelber RD, et al. Two-dose intrapartum/newborn nevirapine and standard antiretroviral therapy to reduce perinatal HIV-1 transmission: a randomized trial. *JAMA*, 2002. 288(2):189-98

If the infant tests positive for HIV and the physician determines that immediate HIV-related medical care is necessary, that care is considered emergency medical care and can be authorized by the DCFS social worker without a court order. The DCFS social worker must provide the physician with any contact information that is available for the biological mother in order to report the HIV infection to the local public health office. The attending physician and DCFS social worker must also comply with all applicable state and federal confidentiality and privacy laws to protect the confidentiality and privacy interests of both the infant and the biological mother.

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

As provided by HSC Sections 120990 and 125090, for a competent patient over age 12, a HIV test may be ordered by a health care provider if the subject has been provided with information about the test and informed of their right to decline, as enumerated in "Summary of Key Points" above. It is the policy of this Department that informed consent specifically for HIV testing is not required in the medical setting.

To release results of a HIV test to someone other than the subject, whether an antibody test or other specific test defined above performed on blood or any other body material, written consent is generally required. See the details in Procedure under the section titled 'Disclosure of HIV Test Results without Written Consent'.

### **HIV Counseling for Medical Providers and Testing Sites (C&T).**

When an individual independently requests a HIV test from a HIV C&T site written consent is not required. The individual's oral request for the HIV test must be documented by the HIV test counselors ([HSC Section 120990 \(d\)](#)). Although written consent is no longer required, it is not prohibited if a test site deems it to be an appropriate form of consent.

- This new law requires that HIV test counselors provide the same information to individuals that medical care providers must provide to patients. As such both medical providers and HIV test counselors are now required to provide information about the test, inform their clients that there are numerous treatment options available for a person who tests positive for HIV and that a person who tests negative for HIV should be routinely tested, and advise the patient that he or she has the right to decline to test ([HSC Section 120990 \(d\)](#)).

- After the results of an HIV test have been received, the medical providers and HIV test counselors must ensure that clients receive timely information and counseling to explain the results and the implications for the person's health ([HSC Section 120990 \(h\)](#)).
- If a client tests positive for HIV infection, the medical provider and HIV test counselor must inform the client that there are numerous treatment options available and identify follow-up testing and care that may be recommended, including contact information for medical and psychological services ([HSC Section 120990 \(h\)](#)).
- If a client tests negative for HIV infection and is known to be at high risk for HIV infection, the medical provider and HIV test counselor must advise the client of the need for periodic retesting, explain the limitations of current testing technology and the current window period for verification of results, and may offer prevention counseling or a referral to prevention counseling ([HSC Section 120990 \(h\)](#)).

#### ATTACHMENTS/FORMS:

Medical Hub/DCFS-Infant HIV Test Request/Authorization fax form  
Procedure Attachment for DHS Policy 219

#### REFERENCE(S)/AUTHORITY:

<sup>1</sup> 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>.

<sup>2</sup> U.S. Preventive Services Task Force. Screening for HIV: Recommendation statement. *Annals of Internal Medicine*. July 2005. 143(1):32-37.

<sup>3</sup> Coper ER, Charurat M, Mofenson LM, et al. Combination antiretroviral strategies for the treatment of pregnant HIV-1 infected women and prevention of perinatal HIV-1 transmission. *J Acquir Immune Defic Syndr Hum Retrovirol*, 2002. 29(5): 484-94

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<sup>5</sup> Dorenbaum A, Cunningham CK, Gelber RD, et al. Two-dose intrapartum/newborn nevirapine and standard antiretroviral therapy to reduce perinatal HIV-1 transmission: a randomized trial. *JAMA*, 2002. 288(2):189-98.

California Health & Safety Code Sections 120262, 120975, 120980, 120990, 121010, 121020, 121023

California Welfare & Institutions Code Sections 369, 827, 16001.9(a)(26)

California Family Code Section 6926

California Penal Code Section 7500 et seq.

California Code of Regulations, Title 17, Division 1, Chapter 4, Subpart 1, Sections 2505 and 2643.5

DHS Policy No. 306 Contacts with County Counsel

DHS Policy No. 925.200 EHS' Bloodborne Pathogens Exposure Control Program