

HIV Testing of Children in Department Custody and HIV Confidentiality

I-B.5.1

Permanent Effective 01/07/03 to 01/14/13

413-040-0400

Policy

(Amended 01/07/03)

HIV testing is an intrusive medical procedure which can have serious social consequences. The Department will subject children in its custody to this procedure only if it is medically indicated. When a child in Department custody is tested for HIV, informed consent procedures shall be followed and the results of the test held in strictest confidence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-040-0410

Definitions

(Amended 01/07/03)

- (1) "Acquired Immune Deficiency Syndrome (AIDS)" is a disorder in which a person's immune system is severely suppressed. It is caused by the human immunodeficiency virus (HIV). In order for a person to be diagnosed as having AIDS the virus, immune system suppression, and an opportunistic infection or other condition stipulated by the U.S. Centers for Disease Control must all be present. A laboratory diagnosis of a CD4 less than 200 also is an AIDS defined illness.
- (2) "CAF" means Children, Adults and Families (CAF).
- (3) "Department" means the Department of Human Services (DHS).
- (4) "Counseling" means group and individual counseling, emotional support groups, on-on-one emotional support, AIDS education, and/or information services.
- (5) "High Risk Group" means the following:
 - (a) Having shared a needle with an intravenous drug abuser since 1977;

- (b) For a man, having had sex with another man or men since 1977;
 - (c) Having been sexually active in an area where heterosexual transmission is believed to be high;
 - (d) Persons with hemophilia;
 - (e) Having been the sexual partner of a person in one of the previous categories;
 - (f) Being born to a woman whose history has put her in one of these other categories.
- (6) "HIV" is the acronym for human immunodeficiency virus. This is the current name for the virus which causes AIDS.
- (7) "HIV Infection". People who have been tested and found to have the antibody are referred to as having HIV infection. These people are capable of transmitting the virus through risk behaviors, as described below.
- (8) "HIV Positive" means that a blood test has indicated the presence of antibodies to HIV. This means that the person has been infected by the virus and the immune system has responded by producing antibodies. An exception is infants of HIV-infected mothers. They have been exposed to the mother's antibodies and carry these antibodies in their blood for a number of months after birth. A series of tests is necessary to determine if these infants are themselves infected with HIV.
- (9) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

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413-040-0420

HIV Antibody Testing

(Amended 01/07/03)

- (1) For children and youth in Department custody, the HIV antibody test is to be done only to facilitate the medical care of the child if clinically indicated after a thorough medical evaluation by a doctor knowledgeable about HIV infections. The test is not to be used to screen individuals with high risk behaviors or any other groups, nor to satisfy the curiosity of Department staff or contracted providers.
- (2) Under the direction of a physician, infants born to mothers known to have engaged in high risk behaviors may be tested for HIV. The presence of HIV infection in an infant can be determined only after the mother's antibodies are gone from the child's

bloodstream. Because maternal antibody crosses the placenta, the presence of HIV infection can only be determined after a series of tests.

- (3) Victims of sexual abuse who have been exposed to blood or semen may be tested for HIV. If the child can understand, informed consent procedures shall be used (I-B.5.1, 413-040-0430). A physician knowledgeable in HIV care should be consulted immediately for consideration of HIV post-exposure prophylaxis.
- (4) The Department shall not license any private child-caring agency whose admission criteria include a mandatory HIV test.
- (5) The Department shall not contract with any service provider whose admission criteria include a mandatory HIV test.

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Stats. Implemented: ORS 418.005

413-040-0430

Informed Consent

(Amended 01/07/03)

- (1) 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, consistent with subsection (7) of this rule.
- (2) As legal custodian and guardian of the child, the Department may grant medical consent and authorize medical treatment. Children 13 years of age or older should be included in this planning and also consent. The Department must have a medical statement that the HIV test is necessary for care and treatment before ordering or arranging for a test. If the Department orders or arranges for an HIV test, informed consent procedures must be followed. A minor of any age may consent to a HIV test; and when the minor's consent is given, the consent of the minor's parents or guardians is not necessary for diagnosis, care or treatment. However, such consent must be informed consent.
- (3) In all cases involving a child old enough to give informed consent, the worker shall try to obtain the consent of the child. However, if the physician and Department staff believe an HIV test is necessary to provide information necessary for the care of the child, and that child objects to the test and will not consent, the following options are available:
 - (a) SDA Manager or designee after consultation with the child's physician, may consent to the test for the child over the child's objection (413-020-0150(c)(A)(iii)); or

- (b) The worker may petition the court to order the child to be tested.
- (4) Department staff are responsible to assure that informed consent is obtained when children in Department custody are to be given an HIV test. If the medical provider does not obtain the informed consent, Department staff shall do so or arrange for it to be done prior to the test.
- (5) If a child is placed pursuant to a Voluntary Custody Agreement or a Voluntary Placement Agreement, the parent and the child retain the authority to consent to the test. The Department does not have the authority to consent to the test on behalf of the parent unless such authority is included in the express terms of the Agreement.
- (6) Providers are not authorized to consent to a child's HIV test.
- (7) Informed consent shall be obtained in the following manner, giving consideration to the child's age and ability to understand:
 - (a) Provide the person for his/her retention a copy of the CF 990, HIV Test Informed Consent.
 - (b) Orally summarize for the person the substance of the statements in the CF 990 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 person that he or she has the right to request additional information from a knowledgeable person before giving consent.
 - (e) Ask the person to be tested whether he/she has any further questions, and if so, provide 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 person sign the CF 990, HIV Test Informed Consent, after having had an opportunity to read it.
 - (g) Maintain the signed CF 990 for at least seven years in a locked file separate from the case file.

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413-040-0440

Counseling

A child being referred for HIV antibody testing must be referred for pre-and post-test counseling.

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413-040-0450

Confidentiality

(Amended 01/07/03)

- (1) Many Department records are exempt from disclosure and are strictly confidential under the public records exemptions or confidentiality status. All medical records are privileged information. AIDS and/or HIV test results are specifically designated highly confidential by statute (ORS 433.045) and Department Health Administrative Rule (333-012-0270(1)-(9)) and must be held in the most strictly observed confidence possible to avoid consequences of casual or inappropriate disclosure of information. Information regarding a client's HIV status is to be maintained in a locked file separate from the case.
- (2) In order to provide services to the child and to administer Department's child welfare services, Department staff may inform only those directly involved in case planning and who have a need to know, that a child or an adult who has a significant role in the child's plan, has AIDS or is HIV positive. The identification of who has a need to know in order to adequately meet the needs of the child shall be determined through a staffing which includes the worker, supervisor and Department central office (Personal Care Coordinator) representative, and should include input from the physician, county Health Department who ordered the test, or the HIV Program of the Department's Health Policy cluster.
- (3) For children receiving services under a Voluntary Custody Agreement (CF 1005) or a Voluntary Placement Agreement (CF 499), the responsible parent(s) shall always be involved in making medical decisions for the child, and have access to medical information.

- (4) Each person who subsequently gains access to this information must keep it in strictest confidence (ORS 433.045(3)). The worker shall advise all persons who have access to the medical information of their duty to safeguard the confidential nature of the information.
- (5) If the Department learns from any source that a child is HIV positive, the above procedures must be followed.
- (6) Pursuant to Health cluster Rule 333-012-0270, if the Department possesses information that an adult client or other person associated with a case is HIV positive, this does not confer the right to disclose the information, except as permitted by Oregon law.
- (7) If disclosure of HIV information is deemed necessary for planning in the context of a court hearing, the worker shall not disclose the status in open court without either the written consent of the infected persons or a court order.

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Prior Versions