| | STATE OFFICE for SERVICES to CHILDREN and FAMILIES<br>CLIENT SERVICES MANUAL I<br>ISSUED BY: Program Operations<br>EFFECTIVE DATE: September 7, 2000 | POLICY NUMBER: I-B.5.1<br>OAR: 413-040-0400 to 0450<br>SECTION: B. Case Management<br>SUBSECTION: 5. Placement Procedures for AIDS and HIV-Infected Clients |
|---|---|---|
| SUBJECT: 1. HIV Testing of Children in SOSCF Custody and HIV Confidentiality<br>Oregon Administrative Rules | | |

Prior Version

Responsible Manager: Manager, Foster Care and Family Based Services Unit

Approval: _____ Assistant Administrator, Program Operations

Interpretation: Manager, Foster Care and Family Based Services Unit

**REFERENCES:** SOSCF Policy I-B.5, Placement Procedures for AIDS and HIV-Infected Clients
CF 990, HIV Test Informed Consent
OAR 333-12-270, 1-9
ORS 433.045

## POLICY

**413-040-0400** HIV testing is an intrusive medical procedure which can have serious social consequences. SOSCF will subject children in its custody to this procedure only if it is medically indicated. When a child in SOSCF custody is tested for HIV, informed consent procedures shall be followed and the results of the test held in strictest confidence.

**Statutory Authority: ORS 418.005**
**Stats. Implemented: ORS 418.005**

## DEFINITIONS

**413-040-0410 (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.

Prior Version

**(2) "Counseling"** means group and individual counseling, emotional support groups, on-on-one emotional support, AIDS education, and/or information services.

**(3) "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.

**(4) "HIV"** is the acronym for human immunodeficiency virus. This is the current name for the virus which causes AIDS.

**(5) "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.

**(6) "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.

**Statutory Authority: ORS 418.005**
**Stats. Implemented: ORS 418.005**

**HIV ANTIBODY TESTING**

**413-040-0420 (1)** For children and youth in SOSCF 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,

Prior Version

nor to satisfy the curiosity of SOSCF 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)** SOSCF shall not license any private child-caring agency whose admission criteria include a mandatory HIV test.

**(5)** SOSCF shall not contract with any service provider whose admission criteria include a mandatory HIV test.

**Statutory Authority: ORS 418.005**
**Stats. Implemented: ORS 418.005**

**INFORMED CONSENT**

**413-040-0430 (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, SOSCF may grant medical consent and authorize medical treatment. Children 13 years of age or older should be included in this planning and also consent. SOSCF must have a medical statement that the HIV test is necessary for care and treatment before ordering or arranging for a test. If SOSCF 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.

Prior Version

**(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 SOSCF 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)** The regional manager may consent to the test for the child over the child's objection (413-040-0410 (4)(a)(C)); or

**(b)** The worker may petition the court to order the child to be tested.

**(4)** SOSCF staff are responsible to assure that informed consent is obtained when children in SOSCF custody are to be given an HIV test. If the medical provider does not obtain the informed consent, SOSCF 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. SOSCF 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.

Prior Version

**(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.
**Statutory Authority: ORS 418.005**
**Stats. Implemented: ORS 418.005**

## COUNSELING

**413-040-0440** A child being referred for HIV antibody testing must be referred for pre-and post-test counseling.
**Statutory Authority: ORS 418.005**
**Stats. Implemented: ORS 418.005**

## CONFIDENTIALITY

**413-040-0450 (1)** Many of SOSCF 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 Health Division Administrative Rule (333-12-270, 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 SOSCF's child welfare services, SOSCF 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 regional office representative, and should include input from the physician, county Health Department who ordered the test, or the HIV Program of the Health Division.

Prior Version

**(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 SOSCF learns from any source that a child is HIV positive, the above procedures must be followed.

**(6)** Pursuant to Health Division Rule 333-12-270, if SOSCF possesses information that an adult client or other person associated with a case if 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.

**Statutory Authority: ORS 418.005**
**Stats. Implemented: ORS 418.005**