

AIDS/HIV/STD

Is AIDS education mandatory for a physician?

Yes¹. In order to be licensed, or to renew a license, a physician must have received at least four hours of continuing medical education on the prevention, transmission and treatment of AIDS. See **CONTINUING MEDICAL EDUCATION**.

Is patient consent required for HIV testing?

Yes. As a general rule, an HIV test cannot be performed without first obtaining the patient's specific informed consent, separate from other consents.²

The statutory exceptions to this consent requirement include:³

- Incompetent persons. The consent of the person's authorized to give consent must be obtained.⁴ See **INFORMED CONSENT**; and **NEWBORNS: TESTING AND REPORTING**.
- Seroprevalence studies where test subjects do not know the test results and test conductors do not know who is undergoing testing.
- When the Department of Labor and Industries (DLI) determines the test is relevant, the DLI may condition workers' compensation payments on the taking of an HIV test.
- As otherwise expressly authorized in the statute. Testing performed under this exception generally is done or ordered by local health departments, or jail administrators with approval of local health departments and Department of Corrections administrators.

Can a minor age 14 or older consent to testing for HIV or other sexually transmitted diseases (STDs)?

Yes.⁵ An otherwise competent minor age 14 or older may give consent to testing for or treatment of STDs including HIV.

Consent of the parent or legal guardian is not necessary. The parents or legal guardian of the minor, however, are not liable for payment for STD treatment or testing of the minor to which they did not consent.⁶

¹ RCW 70.24.270; WAC 246-919-380.

² RCW 70.24.330; WAC 246-100-207.

³ RCW 70.24.330.

⁴ RCW 7.70.065.

⁵ RCW 70.24.110.

⁶ *Id.*

What is HIV pretest counseling?

Pretest counseling mean counseling aimed at helping the patient understand ways to reduce the risk of HIV infection, the nature and purpose of the tests, the significance of the results, and the potential dangers of the disease, and to assess the patient's ability to cope with the results.⁷

What should be included in HIV counseling?

Physicians providing pretest or post-test HIV counseling shall assess the patient's risk of acquiring and transmitting HIV by evaluating information about the patient's possible risk behaviors and unique circumstances, and when appropriate, should:⁸

- Base counseling on the recommendation of the Centers for Disease Control and Prevention as published in the *Revised Guidelines for HIV Counseling, Testing, and Referral*, November 2001 (Updated 2006).⁹
- Assist the patient to set realistic behavior-change goals and establish strategies for reducing their risk of acquiring or transmitting HIV.
- Provide appropriate risk reduction skills-building opportunities to support behavior-change goals.
- Provide or refer for other appropriate prevention, support, or medical services, including those services for other bloodborne pathogens.

What must a physician do when ordering or prescribing an HIV test for a patient?

Except for individuals who are conducting seroprevalent tests, a physician who orders or prescribes an HIV test must obtain the informed consent of the patient, separately or as part of the consent for a battery of tests (so long as the patient is specifically informed verbally or in writing that an HIV test is included), and offer the patient an opportunity to ask questions and decline testing.¹⁰

What must a physician do if an HIV test is positive for, or suggestive of, HIV infection?

If an HIV test is positive for, or suggestive of, HIV infection the physician must provide the name of the individual and locating information to the local health officer for follow-up to provide post-test counseling.¹¹

⁷ RCW 70.24.320(1).

⁸ WAC 246-100-209(1) – (4).

⁹ Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5019a1.htm>.

¹⁰ WAC 246-100-207(1)(a), (b).

¹¹ WAC 246-100-207(1)(c).

What is HIV post-test counseling?

Post-test HIV counseling means further counseling following testing usually directed toward increasing the patient's understanding of the human immunodeficiency virus infection, changing the patient's behavior, and, if necessary, encouraging the patient to notify persons with whom there has been contact capable of spreading HIV.¹²

What must a physician do when providing post-HIV test counseling to a patient?

If an HIV test is positive for HIV infection, a physician must assess the patient's risk of acquiring and transmitting human immunodeficiency virus (HIV) by evaluating information about the patient's possible risk-behaviors and unique circumstances, and as appropriate:¹³

- Provide or arrange for at least one individual in-person counseling session based on the content recommended for HIV pretest counseling (see above).
- Inform the patient that the patient's identity will be confidentially reported to the state or local health officer, unless the HIV testing was anonymous.
- Ensure compliance with the partner notification regulations (see below) and inform the patient of those requirements.
- Develop or adopt a system to avoid documenting the names of referred partners of the patient who tested positive for HIV.
- Offer referral for alcohol and drug and mental health counseling, including suicide prevention, if appropriate.
- Provide or refer for medical evaluation including services for other bloodborne pathogens, antiretroviral treatment, HIV prevention, and other support services.
- Provide or refer for tuberculosis screening.

Is it permissible for information regarding positive testing for HIV or other sexually transmitted diseases to be disclosed to other persons who have been in contact with an infected patient?

Information regarding the HIV positive status of a patient may be disclosed to any person who, because of their behavioral interactions with the infected patient, have been placed at risk for acquiring HIV or another sexually transmitted disease if a health officer, or authorized representative, believes that the exposed person was unaware that a risk of disease exposure existed, and that the disclosure of the identity of the infected patient is necessary.¹⁴

¹² RCW 70.24.320(2).

¹³ WAC 246-100-209(5).

¹⁴ RCW 70.24.105(g).

What are the requirements for notification of a partner of a patient who tests positive for HIV or other sexually transmitted disease?

A local or state health officer, or authorized representative, must:

- Attempt to contact the principal health care provider of a patient who has tested positive for a previously unreported case of HIV infection within 3 working days of receiving the report of the test to seek input on the best means of conducting the case investigation required by law, and if appropriate, request that the health care provider contact the HIV positive patient.¹⁵
- Contact the HIV-positive patient to discuss the need to notify sex or injection equipment-sharing partners, including spouses, that they may have been exposed to and infected with HIV, and that they should seek HIV testing,¹⁶ and offer assistance with partner notification as appropriate.¹⁷

Unless the health officer, or designated representative, determines that partner notification is not needed, or if the HIV-infected patient refuses assistance with partner notification, the health officer, or designated representative, shall assist with notifying partners in accordance with the *Recommendations for Partner Services Programs for HIV, Syphilis, Gonorrhea, and Chlamydial Infection* as published by the Centers for Disease Control and Prevention.¹⁸

If the local health officer, or designated representative, informs the HIV-positive patient's principal health care provider that he/she intends to conduct a partner notification case investigation, the health care provider must attempt to inform the patient that the health officer will contact the patient for the purpose of providing assistance with the notification of partners.¹⁹

When must HIV post-test counseling be provided?

Post test counseling must be provided by a local health officer or authorized representative to a patient whose test results are positive for, or suggestive of, HIV.²⁰

May information related to HIV testing, HIV test results, or confirmed HIV or STD diagnosis be exchanged among health care providers?

Generally, yes.²¹ Health care providers may exchange confidential medical information related to HIV testing, HIV test results, and confirmed HIV or STD diagnosis and treatment

¹⁵ WAC 246-100-072(1)(a).

¹⁶ WAC 246-100-072(b)(ii).

¹⁷ WAC 246-100-072(b)(iii).

¹⁸ WAC 246-100-072(c); *Recommendations for Partner Services Programs for HIV, Syphilis, Gonorrhea, and Chlamydial Infection* (2008) is available at: <http://www.cdc.gov/nchhstp/partners/Recommendations.html>.

¹⁹ WAC 246-100-072(2).

²⁰ WAC 246-100-072(1)(b)(i).

²¹ RCW 24.105 allows for HIV/STD information to be shared among providers under certain conditions.

using customary methods to exchange medical information between health care providers in order to provide health care services to the patient, i.e., when the information shared impacts treatment decisions for the patient and the health care provider needs the information for the patient's benefit.

Health care providers responsible for office management also may permit access to a patient's medical information and medical record by office staff to carry out duties required for care and treatment of a patient and management of medical information and the patient's medical record.

Can the results of HIV or STD testing or treatment otherwise be disclosed?

Generally, no.²² Strict confidentiality must be maintained. Disclosure of the identity, test results, diagnosis or treatment of a patient undergoing or investigating HIV or STD testing or treatment may only be disclosed to:²³

- The patient or the patient's legal representative for health care decisions (except that, with a minor age 14 or older who is otherwise competent, disclosure is to be made to the minor, not to the minor's legal representative).
- Any person who secures a specific written release of test results or of information related to HIV or diagnosis or treatment of any other STD executed by the patient or the patient's legal representative (except that, with a minor age 14 or older who is otherwise competent²⁴, such a specific release must be signed by the minor).
- Public health officers in accordance with STD reporting requirements. See NOTIFIABLE CONDITIONS.
- A health facility or health care provider that processes, procures, distributes or uses human body parts, tissue, or blood from a deceased person, semen for the purposes of artificial insemination, or blood specimens.
- Any state or local public health officer conducting an authorized investigation, provided that such record was obtained by means of court ordered HIV testing.
- A person allowed access to the record by court order granted after application showing good cause.
- Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of an STD, if the health officer or authorized

²² RCW 70.24.105(1), (2). Wash. Admin. Code § 246-101-520 and §246-100-072 provide for disclosure in some circumstances. RCW § 70.24.105 details the exceptions to disclosure.

²³ RCW § 70.24.105(2).

²⁴ RCW § 70.24.105 allows for persons 14 years of age or older to secure an AID test without the consent of his or her parents or legal representative.

representative believes that the exposed person was unaware that a risk of disease exposure existed and that disclosure of the identity of the infected person is necessary.

- A law enforcement officer, firefighter, health care provider, health care facility staff person or other person who has requested a test of a person because of a substantial exposure to the person's bodily fluids, if a public health officer performs the test.
- Claims management personnel employed by or associated with an insurer, health care service contractor, HMO, self funded health plan, and the like, where such disclosure is to be used solely for prompt and accurate evaluation and payment of medical or related claims.
- A DSHS worker, child placing agency worker, or guardian ad litem responsible for making or reviewing placement or case planning decisions or recommendations to the court regarding a child who is less than 14 years old, has an STD, and is in the custody of DSHS or a licensed child placing agency. When DSHS or a licensed child placing agency determines that disclosure is necessary for the provision of child care services, disclosure may be made to a person responsible for providing residential care for such a child.

In addition to the allowable disclosures listed above, local health department personnel are authorized to use HIV identifying information obtained through the mandatory notification provisions of state law for the following purposes:²⁵

- Notification of persons with substantial exposure, including sexual or syringe-sharing partners.
- Referral of the infected patient to DSHS.
- Linkage to other public health data bases, provided that the identity or identifying information of the HIV-positive patient is not disclosed outside of the health department.
- For investigations related to examinations ordered by law.²⁶

Is a general authorization for release of medical records sufficient to release information concerning HIV or STD testing?

No.²⁷ A general authorization for release of medical records is not sufficient to release information concerning the identity of the patient tested or the results of any HIV or STD testing. Either a court order or a specific written consent should be obtained. See **DISCLOSURE AND PROTECTION OF HEALTH CARE INFORMATION**.

What steps must be taken to maintain confidentiality?

²⁵ WAC 246-101-520(2).

²⁶ See: RCW 70.24.022, .024.

²⁷ RCW 70.24.105.

A physician must establish and implement policies and procedures to maintain confidentiality of a patient's medical information. See **DISCLOSURE AND PROTECTION OF HEALTH CARE INFORMATION**.

When disclosure of the identity of a person tested for HIV or STD, or of the results of HIV or STD tests, or of treatment provided for HIV or STD is made to someone other than the patient, the patient's legal representative, or another health care provider, the disclosure must be accompanied by a written statement which includes the following or substantially similar language:

"This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose."²⁸

An oral disclosure must be accompanied or followed by such a notice within 10 days.²⁹

When must physicians report AIDS, HIV or STDs to state or local health departments?

AIDS, HIV infection, chancroid, chlamydia trachomatis infection, gonorrhea, granuloma inguinale, genital and neonatal herpes simplex (initial infection only), lymphogranuloma venereum, and syphilis are notifiable conditions which must be reported to the local health department within three working days of diagnosis.³⁰ See **NOTIFIABLE CONDITIONS**.

Are there penalties for unauthorized AIDS, HIV or STD disclosure?

Yes. Unauthorized disclosure is a gross misdemeanor.³¹ Washington law also provides a civil cause of action to any person aggrieved by a violation of the confidentiality provisions of the law.³²

What is AIDS counseling?

AIDS counseling means counseling directed toward:³³

- Increasing the patient's understanding of acquired immunodeficiency syndrome (AIDS).
- Assessing the patient's risk of HIV acquisition and transmission.

²⁸ RCW 70.24.105(5).

²⁹ *Id.*

³⁰ WAC 246-101-101.

³¹ RCW 70.24.080.

³² RCW 70.24.084.

³³ WAC 246-100-011(2).

- Affecting the patient's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

Under what circumstances must a physician provide AIDS counseling to a patient?

A physician who is a patient's principal health care provider must counsel or ensure AIDS counseling for:

- Each pregnant woman.³⁴
- Each patient seeking treatment of an STD.³⁵
- Drug treatment programs also must provide or ensure AIDS counseling for each person in a drug treatment program³⁶.

Must AIDS counseling be provided to pregnant women?

Yes.³⁷ Every physician attending a pregnant woman must provide or ensure AIDS counseling of the patient. The information regarding AIDS that must be discussed with a pregnant woman is available through the Department of Health (DOH) HIV Prevention Program at P.O. Box 47840, Olympia, WA 98504-7840.³⁸ Additional information may be found in publications from the Centers for Disease Control and Prevention, including "Revised Guidelines for HIV Counseling, Testing and Referral," and "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Setting," published on September 22, 2006. See the CDC website at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm> to access this publication.

Must a physician test a pregnant woman for STD?

Yes,³⁹ for syphilis. See PREGNANCY CARE.

Must AIDS counseling be provided to a patient seeking treatment for STD?

Yes.⁴⁰ A physician attending a patient seeking treatment for an STD must provide or ensure AIDS counseling.

May a physician refuse to treat a patient who is HIV positive or who has AIDS?

³⁴ WAC 246-100-208(1).

³⁵ WAC 246-100-208(3).

³⁶ WAC 246-100-208(4).

³⁷ WAC 246-100-208(1).

³⁸ WAC 246-100-208(2).

³⁹ RCW 70.24.090 requires testing of pregnant women for syphilis.

⁴⁰ WAC 246-100-208(3) addresses AIDS counseling for those seeking STD treatment.

Generally, no. For purposes of equal access to medical treatment, a patient who has AIDS, is HIV seropositive, or is perceived to have AIDS or be HIV seropositive, is protected from discrimination under both federal and state law. See AMERICANS WITH DISABILITIES ACT; and **DISCRIMINATION**. Therefore, a physician otherwise qualified to treat the patient's condition may not refuse to do so solely because that patient is HIV seropositive or has AIDS.

Can the actions of a person with an STD be restricted, or can that person be involuntarily required to submit to medical testing, treatment, or counseling?

Yes,⁴¹ but only as a last resort when attempts to obtain the voluntary cooperation of the person that may be subject to such an order have failed. When a state or local health official is informed through medical testimony, or testimony from those with direct knowledge, that a person has a STD and is engaging in specific conduct that endangers the public health, that official shall conduct an investigation to evaluate the facts, and the credibility of the witnesses. If the official is satisfied that the allegations are true, the person may be ordered to submit to medical testing, treatment or counseling. The person may also be ordered to cease and desist from the endangering activities. Exhaustion of these civil measures is not required before a person may be charged with criminal offenses related to the endangering behaviors. State and local health officers may examine and counsel a person reasonably believed to be infected or exposed to a STD.

⁴¹ RCW § 70.24.024 addresses the circumstances when restrictive measures can be implemented regarding involuntary medical testing, treatment and counseling.