

 **19th Annual HIV CONFERENCE**
May 14-15, 2010 • Orlando, FL

HIV/AIDS in Florida Legal Issues

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Disclosure of Financial Relationships

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This slide set has been peer-reviewed to ensure that there are no conflicts of interest represented in the presentation.

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Objectives

- Review major components of the law and changes since 1988
- Common questions
- Future changes



True or False

I am knowledgeable about Florida's laws on HIV/AIDS

- A. True**
- B. False**



Omnibus AIDS Act

- First passed in 1988
- Comprehensive legislation
 - Education
 - Testing
 - Confidentiality
- Has been amended numerous times
- Many of the changes have been significant



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Significant Changes

Based on:

Advances in testing technology



Increased knowledge



Advances in treatment



Persons living longer



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Legal Issues Evolve Over Time

- Counseling and Testing Requirements
- HIV Infection Reporting
- HIV Testing of Pregnant Women
- Release of Information in Significant Exposures
- HIV/AIDS Education Requirements



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True or False
HIV testing is the same in the public and private sectors.

- A. True**
- B. False**



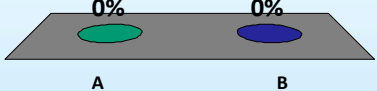
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True or False
Face-to-face post-test counseling is required in private healthcare settings.

A. True
B. False

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A B

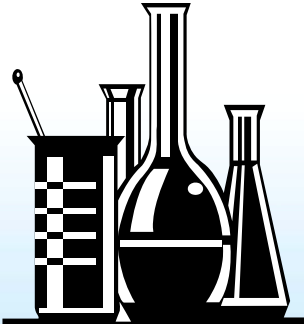



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**HIV Counseling and Testing
Streamlined in the Private Sector**

Still required:

- **Informed consent**
 - Anonymous testing available
 - Required to report
 - Confidentiality



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HIV Counseling and Testing in the Private Sector

Not required:

- ✘ Pretest Counseling
- ✘ Return visit to receive test results

*Important to ensure confidentiality



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Testing in CHDs & Registered Test Sites is Comprehensive

• **Services include:**

- Risk Assessment
- Pre-Test Counseling
- Informed Consent
- Post-Test Counseling
 - Opportunity for face-to-face post-test counseling



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Routine HIV Testing in Health Care Settings



Revised Recommendations for HIV Testing
of Adults, Adolescents, and Pregnant Women
in Health-Care Settings

INSIDE: Continuing Education Examination

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

•CDC published new guidelines on HIV testing in health care settings on September 22, 2006.

•These recommendations are intended to:

- ✧ Increase early detection of HIV infection by increasing HIV screening.
- ✧ Improve early access to care and prevention services.



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CDC Guidelines

- ✦ Screening is recommended in all healthcare settings for patients ages 13 - 64. Patients should be notified that testing will occur and of their right to refuse testing.
- ✦ Annual screening is recommended for high-risk persons.
- ✦ Prevention counseling is not recommended.



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CDC's Rationale for New Recommendations

- HIV remains a leading cause of illness and death.
- The annual number of cases among minorities and persons exposed through heterosexual contact has increased.
- Approximately 25% of persons living with HIV are unaware of their infection.
 - **No clinical care**
 - **Some unknowingly transmit HIV**



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Steps to Increase Testing

- In 2007, DOH discussed CDC recommendations with Senate staff and the possible need for legislative changes.
- The Florida Senate *Interim Project Report 2008-134, October 2007* by the Committee on Health Policy recommended no changes to our law.
- DOH is in process of revising rules and model protocols to streamline requirements.
- 2010 Legislation by Senator Wilson:
 - HIV testing as part of routine physical exam
 - Infectious disease testing of juveniles in DJJ
 - Testing of inmates in county detention facilities
 - HIV testing of inmates upon entry into state correctional system



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HIV Infection Name Reporting

- First law passed in 1996
- Very controversial and divisive issue in Florida
- When the law was first passed, there were many exceptions to name reporting

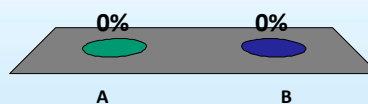


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Are exposed newborns reportable

- A. Yes
- B. No



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HIV Infection Reporting 2005 Changes (Rules went into effect 2006)

- New law follows CDC guidelines
- Better information on recent infections
 - Cases identified prior to July 1997 will be reported
 - Research protocols are not exempt
 - Labs report tests indicative of HIV/AIDS



HIV Infection Reporting continued

- Requires the reporting of infants up to 18 months of age who have been exposed to HIV perinatally or through breast feeding
 - Allows evaluation of potential long-term consequences of interventions to prevent perinatal transmission



HIV Testing of Pregnant Women

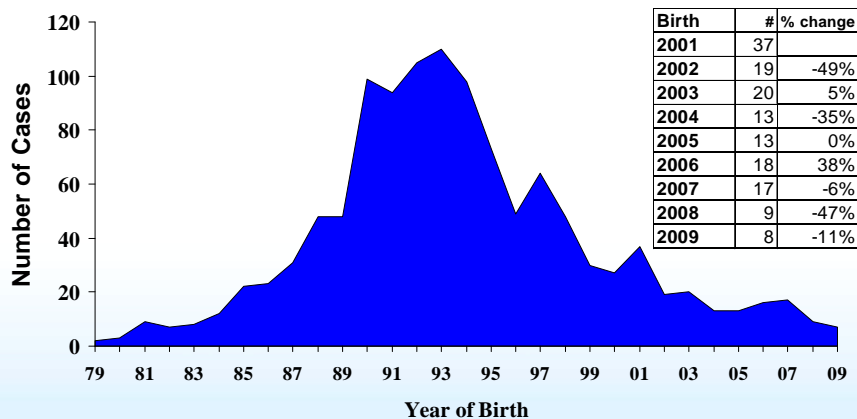
- Unlike other tests, testing for pregnant women is now “routine”
- Instead of “opting in,” women are tested unless they “opt out”
- Informed consent is not required. Women are notified that HIV testing will be conducted and of their right to refuse testing
- Initial visit and again at 28-32 weeks



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Perinatal HIV/AIDS Cases by Year of Birth BORN in Florida, 1979-2009 (N=1,161)



Note: These data represent a **94% decline** in HIV-perinatally infected births from 1993 (N=110) to 2009 (N=8). Includes ALL perinatal HIV/AIDS cases BORN in Florida. HIV Infection Reporting began July 2007. 2009 data are provisional. Data as of 02/2010



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Significant Exposure

(broadened over the years due to post-exposure prophylaxis)

- Medical and non-medical personnel exposed during the course of employment or during treatment for a medical emergency can:
 - Obtain available test results



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Significant Exposure

- **Test without consent when:**
 - Source will not consent or there is not time to locate the source and begin timely prophylactic treatment
 - Blood was previously obtained for other purposes or was obtained during treatment for a medical emergency
 - The source expires
 - Court order



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Significant Exposure

- When testing occurs without consent, the information cannot be documented in the patient's medical record.

Physician must:

- Document that an exposure occurred
- State that the test is medically necessary



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Significant Exposure

- Medical or nonmedical personnel must:
 - Take an HIV test
 - Provide the results of a test taken within 6 months of the exposure
- A person who receives results under this section of the statute must maintain the confidentiality of the information.



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When healthcare workers are tested under the significant exposure law, if they test positive, is their test result reportable?

A. Yes

B. No



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Education Requirements



- Physicians, osteopaths, nurses, and a number of other health care professionals are no longer required to take an AIDS course every two years. Only one course is required before the first renewal.
- Employees of licensed healthcare facilities only need one HIV/AIDS educational course. Employees who complete an HIV/AIDS educational course are not required to repeat the course upon changing employment. These facilities include developmental disabilities facilities, mental health facilities, substance abuse facilities, hospitals, ambulatory surgical centers, mobile surgical facilities, nursing homes, home health agencies, hospices, and assisted living facilities.

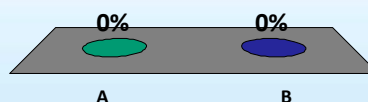


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Do minors need parental consent for HIV testing?

- A. Yes
- B. No



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Minors



- HIV Testing
 - Parental consent not required if child is able to make an informed decision
 - No age in the law or rule
- Disclosing HIV status to children who were perinatally infected and parents do not want to tell.



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Must healthcare workers notify third parties of their exposure to HIV?

- A. Yes
- B. No



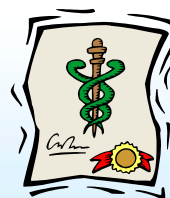
Notification of Third Parties

- The law protects health care practitioners regulated through the Division of Medical Quality Assurance
- “Privilege to Warn”



Confidentiality

- Special Handling Requirements
 - Legally Effective Releases
 - Court Orders
 - Warning Statement
 - Need-to-Know



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Confidentiality

- Legally Effective Releases
 - Specific release
 - Prior written authorization
 - Test subject authorizes the release of HIV test result with a general medical release



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Confidentiality

- Court Orders
 - Medical record cannot be released with a subpoena. If subpoena is received, contact patient to ask for instructions.



Confidentiality

- Warning Statements
 - Must accompany disclosure
 - N/A for authorized disclosure among employees within a health care facility



Confidentiality

- “Need-to-know”
- Employees of health care facilities who:
 - Provide care;
 - Administer business operations; or
 - Handle body fluids or tissues; **AND**
 - Have a need-to-know



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Confidentiality

- “Need-to-Know”_{continued}
- Defined circumstances
 - If the employee needs the information to perform normal tasks, the employee would have access to the patient’s medical background.



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DOH Standards for Confidentiality

- Do not leave information unattended where it will be visible to others.
- All information that is mailed is double-enveloped and sent via traceable mail.
- HIV/AIDS information is not faxed without permission.



Confidentiality

- Breaches
 - Disciplinary action by licensing chapter
 - Misdemeanor of the first degree
 - Third degree felony if done maliciously or for monetary gain



Where do we go from here?



2010 Proposed Legislation

- Deletes HIV/AIDS educational requirements for funeral directors and embalmers; must take communicable disease course
- Deletes HIV/AIDS educational requirements for EMTs, paramedics, and 911 dispatchers
- HIV/AIDS testing in jails, prisons, Department of Juvenile Justice (DJJ)

Resources

Florida Department of Health, Bureau of HIV/AIDS

- Phone: 850-245-4334
- Website: <http://www.floridaaids.org>



Online Sunshine, Official Internet Site of the Florida Legislature

- Website: <http://www.leg.state.fl.us/>

CDC, Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings

- Website:
<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>



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