

Re: HIV TESTING OF FOSTER AND
ADOPTED CHILDREN

(REVISES DCS 95-34)

To: Area Administrators/Assistant Area Administrators
Bureau Directors
County Departments of Community Programs
Directors County Departments of Developmental Disabilities
Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Program Office Directors/Section Chiefs
Tribal Chairpersons/Human Services Facilitators

From: Susan N. Dreyfus
Administrator

This memo offers guidance to county agencies and licensed child placing agencies regarding human immunodeficiency virus (HIV) testing of infants and children being placed in a foster or adoptive home. The guidelines and procedures which follow are **required** policy and procedure for regional Direct Services adoption staff and for contract services provided by licensed agencies with a purchase of service arrangement with the Department to place children for adoption.

Routine testing of children for immunodeficiency prior to placement into a foster or adoptive home is not recommended. To make an informed decision regarding whether or not HIV testing should be performed, a complete social, medical and sexual history should be obtained from the child and both parents. The reason(s) for testing should be based on concerns about the well-being of the child. Decisions regarding HIV testing will need to be made on a case-by-case basis.

Circumstances When Testing Should Be Considered

- Either parent is HIV positive.
Comment: All infants of parents who are HIV positive should be regularly evaluated by a physician with expertise in pediatric HIV disease and tested for immunodeficiency until 18 months of age. From 15-40% of infants born to HIV-infected mothers become infected in utero, during labor and delivery, or through breastfeeding. Current evidence suggests that most maternal-infant transmission occurs during late pregnancy or during labor and delivery. Recent studies have shown that this transmission can be reduced by two-thirds if the mother takes zidovudine ante partum and intra partum (i.e., before and during delivery).
- Either parent or child has used drugs intravenously for non-medical purposes one or more times since 1977.
- Either parent or child has engaged in prostitution at anytime since 1977.

DOCUMENT SUMMARY

This memo revises Memo Series DCS 95-34 regarding HIV testing of foster and adopted children based on changes to ss. 48.371 and 938.371, Stats.

- Either parent or child has had sexual contact at anytime with someone who is an IV drug user, with someone who has received blood or blood products between 1977 and March, 1985, with someone who has hemophilia who received clotting factor prior to 1985, or with someone who has HIV infection.
- Either parent or child has received blood or blood products between 1977 and March, 1985.
- Either parent or child is thought to have practiced a high risk behavior and the child's health suggests the possibility of immunodeficiency.
- Either parent or child has had a sexually transmitted disease at anytime since 1977.

Informed Consent for Testing

Informed consent for testing means consent in writing, on an informed consent testing form, by the subject of the test. The intent of s. 252.15, Stats. is to allow consent to rest with the subject of the test. For children under the age of 14, this means consent from the parent or legal guardian.

The legal guardian is the parent of the child, unless the court has appointed an alternate guardian as a result of a termination of parental rights or a Chapter 880 proceeding. A custodial agency is not a legal guardian (i.e., legal custody is not guardianship).

For children age 14 or older, consent must be obtained from the child.

Agencies should obtain written consent forms designed for HIV testing. Consent for HIV testing is not covered by a general release form.

Neither agencies nor out-of-home care providers may utilize "home" tests for HIV.

In the event that a child's legal guardian or the child (age 14 or older) is unable or unwilling to provide consent, or when the child is involved in a proceeding under s. 938.12 or s. 938.13(12), Stats., in which the child is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, agencies are urged to seek legal consultation under s. 48.296, Stats.

Obtaining and Releasing the Results of HIV Tests

HIV test results can be disclosed only to persons or organizations as specified in s. 252.15, Stats. The Department and county agencies may obtain HIV test results if the test was administered to a child:

- who has been placed in a foster home, treatment foster home, group home or child caring institution, including a placement under s. 48.205, 48.21, 938.205 or 938.21, Stats.;
- for whom a placement in a foster home, treatment foster home, group home or child caring institution is recommended under s. 48.33(4), 48.425(1)(g), 48.837(4)(c) or 938.33(3) or (4), Stats.

In addition, HIV test results may be disclosed to:

- an agency directed by a court to prepare a court report under s. 48.33(1), 48.424(4)(b), 48.425(3), 48.831(2), 48.837(4)(c) or 938.33(1), Stats.;
- an agency responsible for preparing a court report under s. 48.365(2g), 48.425(1), 48.831(2), 48.837(4)(c), or 938.365(2g), Stats.;
- an agency responsible for preparing a permanency plan under s. 48.355(2e), 48.38, 48.43(1)(c) or (5)(c), 48.63(4), 48.831(4)(e), 938.355(2e) or 938.38, Stats., regarding the child.

- an agency that placed the child or arranged for the placement of the child and, by any of these agencies, to any other of these agencies and, by the agency that placed the child or arranged for the placement to the child's foster parent or treatment foster parent or the operator of the group home or child caring institution in which the child is placed, as provided in s. 48.371 or 938.371, Stats.

If the parent, legal guardian or child (age 14 or older) has consented to testing, the agency that placed the child or arranged for the placement of the child shall provide the foster parent, treatment foster parent or operator of the group home or child caring institution with the test results at the time of placement. If the information is subsequently received, test results shall be provided as soon as possible, but not later than two (2) working days after the agency receives such information (Ref. ss. 48.371(1) and 938.371 (1), Stats.). Disclosure of HIV tests to the foster parent, treatment foster parent or operator of the group home or child caring institution is permissible without the consent of the child or the child's parent or guardian. The agency must notify the out-of-home care provider about the confidentiality requirements under s. 252.15(6), Stats.

Foster and Adoptive Home Resources

Infants and children with acquired immunodeficiency syndrome (AIDS) and HIV infection have special needs. Therefore, the Department and other agencies should recruit, develop and sustain foster and adoptive families who are willing to care for these children and who live in reasonable proximity to appropriate medical facilities. Each agency should develop an inventory of local resources useful in the care of children with AIDS and HIV infection. In addition to being provided with extensive training on caring for infants and children with AIDS and HIV infection, these families should receive a monthly uniform foster care rate or adoption assistance level which considers the seriousness of the child's condition.

Care of Infants and Young Children Who Are HIV Positive: A Guide for Families and Caregivers (<https://search.library.wisc.edu/catalog/999856171802121>) is useful as a resource.

Agency staff are also encouraged to contact the child's physician, the local public health agency, or local AIDS support group for additional and updated information.

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