DISCLOSURE OF HIV TEST RESULTS

California law mandates heightened protection for HIV test results. Physicians must obtain a patient's written consent **each and every time** they release a medical record containing HIV test results. A patient's general consent to release medical records is inadequate to authorize the release of HIV test results to anyone other than the patient.

The following are frequently-asked questions (FAQs) regarding the protection and release of HIV test results, and guidelines based on California law.

**Is a patient's written informed consent still necessary in order to administer a screening test for HIV infection?**

No. Effective January 1, 2008, no written, signed informed consent document is required prior to testing. However, the physician is required to do ALL of the following:

1. Inform the patient that the test is planned,
2. Provide information about the test,
3. Inform the patient regarding specified treatment options if the test is positive, and when further testing is needed, and
4. Advise the patient that he or she has the right to decline the test.

Note: If the patient declines the test, the physician must make a note of the patient's refusal in the permanent medical record.

**What must physicians do in order to release HIV test results?**

Physicians who order HIV tests or use HIV test results in the course of treatment are required to obtain the patient's written consent prior to releasing this specific information.

**What if the patient discloses his HIV status to the physician?**

The requirement of specific, written consent applies only to HIV test results. Voluntary disclosures made by the patient during the course of treatment are still confidential, and worthy of protection, but are not considered HIV test results. Similarly, the heightened requirements for release of HIV test results do not apply to release of information regarding an AIDS-related condition (e.g., immunosuppression) or an AIDS-related diagnosis.

**What information should be included on medical records consent to release form for HIV test results?**

The patient needs to sign a specific, written consent form. The form should include:

1. Permission to release the patient's HIV test results,
2. The person(s) to whom release will be made,
3. The purpose of release, and
4. The patient's signature, with
5. The date of signing.

**Should records containing HIV test results be released in response to a subpoena?**

No. A subpoena is insufficient for release of the records. HIV test results should be released only with patient's permission, or in response to a Court order signed by a judge.
Is a physician legally obligated to notify a sexual partner(s) or known/suspected contacts of an HIV positive patient?

No. Giving notice to partners is not required by law. However, the physician may choose to disclose positive HIV test results to persons believed to be at-risk (e.g., a patient’s spouse, sexual partner or needle-sharing partner). But, prior to making disclosure to these persons, the law requires that the physician do the following:

1. Discuss test results with the patient and provide proper counseling.
2. Attempt to obtain the patient’s consent to notify and third parties, or
3. Notify the patient prior to contacting at-risk third parties.

When notifying third parties, the physician may not reveal the patient’s identity. Although the physician is not required to notify at-risk contacts, the physician does have a duty to educate the patient regarding the nature of HIV and how it can be transmitted to others. The physician should counsel the patient to make voluntary disclosure of his HIV status.

Can HIV information be shared with health care workers?

Yes, but only on a need-to-know basis such as when other health care workers are directly involved in the patient’s care or serve as members of the patient’s health care team.

Must positive HIV test results be reported to the local health department?

Yes. Effective April 17, 2006, California law changed and now requires the physician to report positive HIV test results, by patient name, to the local health department (LHD). This eliminates the use of the Non-Name Code or Partial Non-Name Code previously used.

Is Name-Based reporting of HIV results required?

Yes. In CA, both health care providers and laboratories report HIV positive test results to the local health department. When a health care provider receives a patient’s positive HIV test result from a laboratory, the health care provider and the laboratory both submit an HIV case report form to the LHD.

How do I report a positive HIV test result?

The Confidential Case Report is at http://www.cdph.ca.gov/programs/aids/Pages/OAHIVReportingForms.aspx. If you have other questions, contact the LHD for more specific information.

What else can be done to ensure that HIV test results are released only to authorized person, when appropriate?

There are effective ways to prevent, or to minimize the risk of, improper release of HIV test results. Physicians may adopt a charting system to segregate sensitive information from other medical information. The use of color-coding, a separate envelope within the medical record, or a cover sheet marked: “Confidential: see office manager prior to copying,” are all ways of alerting those handling the medical records that HIV test results, or any other sensitive information, should not be copied or released without specific approval.

What if a patient requests that his HIV status not be released?

The physician may honor such a request however, if any portion of the medical record is withheld, the following statement should be added: This disclosure does not contain patient medical information, if any, that is protected by special state and/or federal confidentiality laws and which cannot be disclosed without specific written consent. Once the requesting party has notice that information may be withheld from the release, the burden of obtaining the patient’s consent shifts to the requesting party.

Should a physician honor a patient’s request that his HIV test results or diagnosis not be documented?

No. Honoring such a request could constitute a deliberate omission, and grounds for professional discipline, as well as a serious violation of law.

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1 Special handling of medical records containing HIV tests results, and any AIDS-related information, is recommended. If you have specific questions, contact CAP Hotline [1-800-252-0555] for assistance.

2 Health & Safety Code section 121022.

3 An Adobe® PDF version of the adult case report form is available on OA’s Web site at http://www.cdph.ca.gov/programs/aids/Pages/Default.aspx. This electronic form is designed for printing only. Case reports should never be sent electronically. Electronic reports will not be accepted by CDHS/OA.