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California Department of Public Health



EDMUND G. BROWN JR.
Governor

June 18, 2014

TO: CALIFORNIA CONFERENCE OF LOCAL HEALTH OFFICERS
CALIFORNIA CONFERENCE OF LOCAL AIDS DIRECTORS
CALIFORNIA MEDICAL ASSOCIATION
AMERICAN ASSOCIATION OF HIV MEDICINE
MATERNAL CHILD ADOLESCENT HEALTH DIRECTORS
CALIFORNIA FAMILY HEALTH COUNCIL
CALIFORNIA PRIMARY CARE ASSOCIATION
CALIFORNIA APIC COORDINATING COUNCIL
CALIFORNIA AMERICAN COLLEGE OF EMERGENCY
PHYSICIANS
CALIFORNIA ASSOCIATION OF HEALTH PLANS
INFECTIOUS DISEASES ASSOCIATION OF CALIFORNIA

SUBJECT: ASSEMBLY BILL 446 – 2014 HIV TESTING LAW

On October 5, 2013, [Assembly Bill \(AB\) 446](#) (Mitchell, Chapter 589, Statutes of 2013) was signed by Governor Edmund G. Brown and went into effect January 1, 2014. AB 446 creates new California Health and Safety Code (HSC) HIV testing requirements in healthcare and non-healthcare settings.

This letter outlines the key changes for HIV testing in healthcare settings resulting from AB 446 and provides additional implementation resources (AB 446 Fact Sheet). OA has also issued separate guidance about how AB 446 affects HIV testing in community based organizations and other non-healthcare settings.

BACKGROUND

On September 24, 2008, OA released a letter announcing the elimination of written consent requirements for medical care providers who order and HIV test.

On March 3, 2009, OA released a letter of support for routine HIV screening in medical settings. This letter also outlined information regarding relevant changes to California law and provided a list of resources to support increased HIV testing in medical settings.

Consent for HIV Testing in Healthcare Settings: Section 120990 (a)

In accordance with the Centers for Disease Control and Prevention (CDC) recommendations, AB 682 (Berg, Chapter 550, Statutes of 2007), added language to HSC Section 120990(a) eliminating the requirement for written consent for an HIV test when ordered by a medical care provider, thus allowing consent for an HIV test to be given orally in healthcare settings.

California law requires medical care providers, when testing patients for HIV in healthcare settings, to:

- 1) Inform patients that an HIV test is planned;
- 2) Provide information about the test;
- 3) Inform the patient that there are numerous treatment options available for a patient who tests positive for HIV; and
- 4) Advise patients who test HIV negative, but are known to be high risk, that they should be routinely tested.

California law also requires medical care providers to advise patients that they have the right to decline the test. If the patient declines the test, the medical care provider must note that fact in the patient's medical record.

NEW IN 2014

HIV Testing in Primary Care Clinics: Section 120991 (a)

Starting January 1, 2014, each patient who has blood drawn at a primary care clinic must be offered an HIV test consistent with the recommendations of the [United States Preventative Services Task Force](#). OA supports routine testing of all patients at primary care clinics. AB 446 requires primary care clinics to make an effort to provide test results to the patient before he or she leaves the facility. If results cannot be provided before the patient leaves the facility, the clinic may give negative results by mail or by telephone. Patients who test positive must be informed in a manner consistent with state law.

Primary care clinics are exempt from making an offer to a patient who is getting blood drawn if the patient has been offered and declined the test within the previous 12 months.

Providing HIV Test Results: Section 120990 (h)

AB 446 amends California law to require that after the results of a test have been received, the medical care provider or the person administering the test must ensure

that the patient receives timely information and counseling, as appropriate, to explain the results and the implications for the patient's health.

Providing Negative HIV Results: Section 120990 (h)

When a patient receives an HIV-negative test result and is known to be at high risk for HIV infection, the medical care provider or the person administering the test must advise the patient of the need for periodic re-testing, explain the limitations of current testing technology and the current window period for verification of results, and may offer prevention counseling or a referral to prevention counseling.

An example of a description of the window period associated with HIV test results is:

If your test is negative, and your possible exposure to HIV was recent, you may need another HIV test. When a person becomes infected with HIV, the body takes time to develop enough HIV or its antibodies to show up on a test, and HIV does not become detectable right away. The time it takes between infection and the detectable presence of HIV or its antibodies is referred to as the window period.

The length of the window period is different for each HIV test methodology and can be from 10 to 90 days. Please consult with the laboratory processing the test or refer to the test manufacturer for specific window period information.

Providing Positive HIV Test Results: Section 120990 (h)

If the patient has an HIV-positive test result, the medical care provider or the person administering the test must:

1. Inform the patient that there are numerous treatment options available for people who test HIV positive; and,
2. Identify follow-up testing and care that may be recommended, including contact information for medical and psychological services.

Consent for HIV Testing of Those Not Competent to Give Consent: Section 120990(c)

California law requires that for patients not competent to give consent, including children under the age of twelve, the patient's parent, guardian, conservator, or other person specified under law must provide informed consent for an HIV test. AB 446 changes California law to allow the consent to be oral or written. Documentation of oral or written consent must be documented in the client's medical record. Prior law required written consent.

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Resources

OA is committed to providing training and technical assistance to healthcare facilities for the implementation of these new 2014 HIV testing laws. For more information about OA and California HIV services, see [Office of AIDS](#).

If you have any questions about the information in this letter, the new 2014 HIV testing law or implementation best practices, please contact Clark Marshall at the Office of AIDS at (916) 650-6752 or by email at clark.marshall@cdph.ca.gov.

Sincerely,



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