

LCCS POLICY 155 AIDS & HIV Testing

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| See new Policy #: | |

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| Scope: | All LCCS Staff |
| Responsibility: | Supervisor of Health Services |
| Purpose: | <p>To promote a safe work environment for staff and foster/adoptive/kinship families while acting in the best interest of children served by the Agency who have been exposed to HIV or AIDS.</p> <p>And to</p> <p>To establish procedures for conducting HIV testing on children in LCCS custody, disclosing HIV results to the children's caregivers and protecting privacy rights of infected individuals.</p> |
| Legal Cite: | <p>Ohio Revised Code (ORC): 3701.24; 3701.242, 3701.243, 3701.245,</p> <p>Ohio Administrative Code (OAC): 3701-3-11</p> <p>United States Code (USC):</p> <p>Code of Federal Regulations (CFR): HIPPA, ADA</p> |

POLICY STATEMENT

LCCS is committed to providing appropriate services to every child and family with which it engages and to treating everyone with dignity and respect, including persons who are infected with the human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), or other AIDS-related illness. Any modification in services and care provided to such persons shall be based strictly on medical necessity consistent with best available medical information about these infections.

All children infected with HIV, AIDS, or AIDS related illness requiring placement shall be placed in the least restrictive available environment consistent with the child's medical and social needs. Due to the medical needs and attention of each child diagnosed with HIV, AIDS, or AIDS related illness, each child will be placed with a caregiver who has the interest, knowledge, and the time to devote to his or her care.

HIV testing on children in the custody of LCCS will be administered according to HIV Screening (Testing) of Children in Agency Custody procedures described later in this policy.

All employees, contractors, volunteers, and interns capable of carrying out their assigned responsibilities shall be supported in so doing, regardless of any medical problems, including HIV infection or AIDS. LCCS also recognizes its obligation to provide a safe office and work environment for the public and employee and shall take every medically indicated step to ensure such an environment.

LCCS will provide necessary education and training about these issues to appropriate employees and other constituents as determined by LCCS or required by law. Employees who are unaware of or unsure of Standard Precautions must contact the Health Services Supervisor for information.

LCCS will keep all information related to HIV test results, AIDS or AIDS-related illness confidential.

PROCEDURE - including required timeframes and documentation

1. Standard Precautions:

All employees and caregivers for LCCS who come into physical contact with service recipients and for that matter the general public shall employ "Standard Precautions." Standard Precautions is an approach to infection control in which all human blood and certain human body fluids are treated as if known to be infectious for HIV, hepatitis B virus (HBV) and other blood borne pathogens.

2. HIV Testing for Children in the temporary custody:

The possibility that a child living with HIV could infect another member of a household is miniscule. Therefore, the routine testing of children before placement, unless there are risk factors present, will be discouraged. Information about the extreme rarity of the casual transmission of HIV will be provided to minimize the instances of unnecessary testing.

Children in the temporary custody of LCCS may be tested for HIV if:

- (a) The child's parent or/legal guardian and the LCCS Executive Director (or designee) give informed consent to HIV testing, or
- (b) The child and the LCCS Executive Director (or designee) consent to HIV testing (a child may refuse to blood draw and testing. LCCS will not refuse to

provide services to any individual solely because he/she refuses to consent to a HIV test or to disclose HIV results), or

- (c) The test is performed in a medical emergency and the results of the test are medically necessary to avoid or minimize immediate danger to the health or safety of the child or another individual; or,
- (d) The child's doctor orders the test in the exercise of his/her professional judgment because it is necessary to diagnose and treat the child, *if* the child's parent or guardian and the LCCS Executive Director (or designee) has given consent to the doctor for medical treatment.

3. HIV Testing for Children in the permanent custody:

Children in the permanent custody of LCCS may be tested for HIV if:

- (a) the LCCS Executive Director (or designee) gives informed consent to HIV testing, or
- (b) the child and the LCCS Executive Director (or designee) consent to HIV testing, or
- (c) The test is performed in a medical emergency and the results of the test are medically necessary to avoid or minimize immediate danger to the health or safety of the child or another individual; or,
- (d) The child's doctor orders the test in the exercise of his/her professional judgment because it is necessary to diagnosis and treats the child, *if* the LCCS Executive Director (or designee) has given consent to the doctor for medical treatment.

Although minors in the custody of the LCCS can be tested for HIV without their consent, substantial efforts will first be made to acquire the child's verbal or written consent. These efforts will include giving information that assures the child that the information will be used for their health and well-being, and that their HIV status is carefully protected by law and will be shared only with those who have a need to know.

4. HIV Testing for Children being prepared for adoption:

LCCS will not routinely approve HIV testing for children in the permanent custody of LCCS who are being prepared for adoption. Criteria for testing and counseling are identical to those for children entering care (see above). If a prospective adoptive parent requests testing without the presence of any risk factors, the adoptive parents shall receive educational counseling with regards to this issue. If following this counseling the parents still indicate a desire for the child(ren) to be tested, the Executive Director (or designee) can authorized an exception.

5. Counseling:

Counseling will be provided prior to HIV testing, and after the testing, if the results are positive. "Counseling" may include group and/or individual counseling, emotional support groups, one-on-one emotional support, HIV and/or AIDS education, and general HIV and/or AIDS information services.

If developmentally appropriate, LCCS will ensure that tested children are linked to counseling at the time he/she is told the result of the testing or informed of diagnosis.

Caseworkers must assess the child's cognitive, developmental and maturity levels in regard to his/her ability to understand the implications of being HIV positive, having AIDS or an AIDS-related illness, and provide counseling to the child, the child's family, and caretakers. Caseworkers may also refer any or all of the above to relevant community counseling resources.

Youth require developmentally appropriate counseling regarding their sexual practices. When selecting a counseling resource for gay, lesbian, transgender, bisexual youth or those questioning their sexuality, care is to be taken to ensure that the resource can meet the informational needs of that child. Children with hemophilia may also need counseling geared to their special circumstances. A third group with specialized counseling needs are current and former intravenous drug users.

6. Testing Criteria:

Upon receiving a request to test a child for HIV who is in the custody of LCCS, the worker-of-record shall:

- Notify the Health Services Supervisor or RN; and
- Supply information requested by medical staff.

LCCS Health Services Supervisor or RN Will:

- Obtain all information related to the child's risk for HIV infection;
- Complete the HIV Risk Assessment form;
- Request approval for testing from the LCCS Health Services Supervisor, if applicable, and Executive Director.
- **If the testing is not approved**, the Health Services Supervisor or RN will notify the worker-of-record and, if appropriate, Placements caseworker
- **If the testing is approved**, the Health Services Supervisor or RN will provide the worker-of-record or, if appropriate, Placements caseworker with the LCCS "Informed Consent to Perform HIV Antibody Test" (form #8720, Rev. 9/13/96), signed by the Executive Director.

Worker-of-Record or Placements Caseworker Will:

- Make arrangements for the child to have a blood test at a laboratory or provide adolescents with the names and addresses of community HIV anonymous testing sites;
- Ensure the child receives developmentally appropriate pre and post-test counseling, as described above; (If counseling assistance is needed, the worker-of-record/Placements caseworker is to contact LCCS Health Services for the names of counseling resources that have had specific training in HIV/AIDS issues.)
- Inform the Health Services Supervisor or RN of the test results;

Testing for "At Risk Groups" Without Medical Request:

1. With the approval of the LCCS Executive Director, the LCCS Health Services Supervisor will direct that a child in LCCS custody to be tested for HIV under the following conditions:

(a). Infants

- (i) Intravenous (IV) drug use by mother or father or sexual partner of either parent;
- (ii) HIV infection or AIDS of mother or father or sexual partner of either parent;
- (iii) Exposure of child to blood or body fluids (semen or vaginal fluid of infected individual);
- (iv) Sexual activity, by either parent, with multiple partners or injection drug users.

(b) Children and Teens

- (i) Known sexual activity with HIV infected or individuals diagnosed with AIDS;
- (ii) Rape by an unknown assailant;
- (iii) Child has engaged in injection drug use;
- (iv) Child has been sexually abused and the abuser is known or suspected to be of high-risk status or where there have been multiple offenders and the HIV status of the offenders is unknown.
- (v) Child has had multiple sexual partners or with persons who have engaged in high risk behavior;
- (vi) Child's physician recommends testing for HIV for purposes of diagnosis and treatment;

(c) Medical determination that symptoms of possible HIV infection are present. (For example, an opportunistic infection without known factors suppresses the immune system.)

7. Confidentiality

The confidentiality of children and youth involved with LCCS and who are at-risk of HIV infection or found to be infected with HIV, AIDS, or an AIDS-related illness will be protected.

Confidential information is defined as information that a child/youth:

- Has submitted to a HIV test;
- Has had a Positive or Negative result from a HIV antibody test;
- Has sought and received counseling regarding HIV or AIDS;
- Has been determined to be infected with HIV;
- Has been diagnosed as having AIDS or an AIDS-related illness; or
- Has been or is being treated for AIDS.

8. Disclosure (Custody):

Disclosure should be made only by the Worker-of-Record or Supervisor or the Placement Supervisor or Manager. The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having HIV or AIDS may be disclosed only to:

- (a) the individual who was tested or the individual's legal guardian;
- (b) a person to whom disclosure is authorized by written release, signed by the individual tested or by the individual's legal guardian and specifying to whom disclosure of the test results or diagnosis is authorized and the time period during which the release is effective;
- (c) the individual's physician
- (d) a health care provider, if the health care provider has a medical need to know the information and is participating in the diagnosis, care or treatment of the individual.
- (e) The results of an HIV test or the identity of an individual on whom a HIV test is performed or who is diagnosed as having HIV or AIDS may be disclosed to LCCS for the purposes of medical assistance.
- (f) With written authorization of the LCCS Executive Director, if a child has been exposed to HIV, or tested positive for HIV, the caregiver will be notified of the potential exposure without disclosing who exposed the child.
- (g) There are people other than outlined above to whom this information **might** be appropriately disclosed. Such decisions must be made on a case-by-case basis after careful and conservative analysis of the person's need to know. **Because of the ways HIV is transmitted, most people who come into contact with the child do not need to know this information.** If in doubt,

staff should request guidance from the agency's Health Services Supervisor/Medical Consultant or RN.

- (h) **When selecting a foster care placement for a child with HIV infection, AIDS or an AIDS-related illness, LCCS will not disclose the child's name until the placement is definite.**
- (i) Caretakers are trained about the precautions for caring for children that are/or may be infected with HIV, have AIDS or an AIDS-related illness, to assure protection for everyone living in the home.
- (j) The birth/adoptive parents of non-infected children will not be informed that an HIV infected child or a child with AIDS or an AIDS-related illness is residing in the same home unless the non-infected and infected children engage directly (i.e., with each other) in high-risk behaviors. When such circumstances arise, the worker-of-record and/or placement caseworker should consult with his/her supervisor prior to sharing any information with the birth/adoptive parents.
- (k) If an HIV positive child or a child with AIDS or an AIDS-related illness is placed with a relative caregiver, the worker-of-record will advise the caregiver regarding the child's status, but not how the infection may have occurred. The worker-of-record will also refer the relative caretaker to relevant medical and counseling resources.
- (l) If the individual tested refuses permission to disclose the HIV test result:
 - (i) LCCS may bring an action in court requesting disclosure of or authority to disclose the results of the HIV test (who shall be identified in court documents as Jane or John Doe);
 - (ii) The court may issue an order granting LCCS access to or authority to disclose the test results (if the court finds by clear and convincing evidence that LCCS has demonstrated a compelling need for disclosure);

Disclosure (Non-Custody):

- 9. If LCCS does not hold custody, it is up to the parents/guardians to report HIV or AIDS status to a potential caregiver or another person with a potential need to know.
- 10. **Re-disclosure** - Any disclosure of HIV test results must be in writing and include a written statement that includes the following language:

“This information has been disclosed to you from confidential records protected from disclosure by state law.” You shall make no further disclosure of this information without the specific, written, and informed release of the individual 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 the purpose of the release of HIV test results or diagnoses.

