



COUNTY OF SAN BERNARDINO
STANDARD PRACTICE

NO 14-1.11

Revised issue 10/99

PAGE 1 OF 4

BY Chris Ebbe, Ph.D.

Effective 10/95

DEPARTMENT

BEHAVIORAL HEALTH

SUBJECT

HIV AND AIDS CHARTING

APPROVED


Rudy Lopez, Director

I. INFORMATION OBTAINED BY HIV TESTING AND COUNSELING PROGRAMS

Since HIV testing is to remain as confidential as possible in order to encourage more people to consent to be tested, HIV/AIDS status which has been determined by testing in the OADP HIV/AIDS testing and counseling program is to be treated as confidential.

Testing program staff will not disclose or release this test status information to anyone without the individual's written permission on the release of information form or as otherwise permitted by law (e.g., to employees in DBH or OADP whose work involves contact with bodily fluids of clients). The law permits notation by HIV/AIDS testing and counseling program staff of HIV results in OADP and DBH client charts, but in order to promote early detection, DBH policy allows OADP HIV/AIDS testing and counseling program staff not to place this HIV/AIDS information in OADP or DBH charts. (Reference-Health and Safety Code 199.20 et seq.; 42 C.F.R., Para. 2)

II. DBH MEDICAL RECORDS

Charting by DBH or OADP clinicians or physicians of a client's HIV test results or AIDS diagnosis obtained appropriately from other medical records, from collateral persons, or from the client's disclosure, does not require client authorization (Calif. Hospital Assoc., Consent Manual, 1995 Edition, Chapter 20). Clinicians and physicians may decide whether to chart known HIV/AIDS information regarding a client, but if such information is not charted, the risks to the client, to the clinician, and to other health care workers of not charting this information should be carefully considered.

When a client's HIV-positive status or AIDS status is charted, the HIV-positive status or AIDS diagnosis can also be recorded on Axis III of the DSM-4 diagnosis if it is relevant to the appropriate management of the case.

III. DISCLOSURE OF HIV/AIDS INFORMATION BY STAFF

A. Disclosure of a client's HIV/AIDS status through oral communications, written communications, or disclosure of the medical record requires that the client specifically authorize the HIV/AIDS disclosure in writing, using the release of information form, except in the following circumstances (California Hospital Assoc., Consent Manual, 1995 Edition, Chapter 20):

1. to another health care practitioner or an agent or employee thereof who provides the client's direct care and treatment;
2. to the client's legal representative, conservator, or the person who gave consent to the client's HIV test;

3. to a provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act.
- B. Authorized disclosure under A-1 does not include certain health care services plans. Disclosures to insurance companies are governed by Insurance Code 799 et seq.
- C. Authorized disclosure under A-1 does not include non-treatment personnel of any kind (clerks, janitors, etc.).
- D. **RELEASE OF INFORMATION PROCEDURE**
 1. Any DBH employee involved in obtaining client consent to the release of DBH confidential information will ask the client "Is there any reason to think that HIV or AIDS information about you might be included in your medical record?" The client may indicate at that point, without answering the question, that he/she wishes to complete the release process with a specific other person, such as his/her clinician or physician.
 2. If the client answers "no" to the question, and the DBH staff persons involved know of no HIV/AIDS information in the record, the release process will proceed as usual.
 3. If the client answers "yes" to the question in 1 above (or if the client answers "no" but the DBH staff persons involved know that such information is included in the record), the client will be asked if he/she wishes to consent to release of both psychiatric and HIV/AIDS information in the record.
 - a. If the client consents to the release of both psychiatric and HIV/AIDS information, that fact will be noted on the release form (by writing in the "SPECIFIC TYPES OF INFORMATION" blank "Client consents to the release of any HIV/AIDS information in the record at this time").
 - b. If the client does not consent to the release of HIV/AIDS information, that fact will not be noted on the release form.
 - c. If the client consents to disclosure of psychiatric information but not HIV/AIDS information, disclosures must be so edited and HIV/AIDS information removed from the disclosure, unless otherwise permitted or required by law.
 - d. If editing of HIV/AIDS information is needed prior to a disclosure of client information, a clinician or physician will do this editing, using the directions of Medical Records regarding how to carry out the editing.

E. DISCLOSURE TO PERSONS IN DANGER OF HARM

1. The physician who ordered the antibody test may disclose confirmed positive test results of his or her patient to a person reasonably believed to be the spouse of the patient or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles or to the County Health Officer. A physician shall not be held civilly or criminally liable for doing so. Prior to disclosing the test results to a third party, a physician must first discuss the results with the patient, counsel the patient, and attempt to obtain the patient's voluntary consent to notify the patient's contacts. Also, when the physician discloses the information to a contact, the physician must refer that person for appropriate care. (Health and Safety Code 199.25)
2. A recent California Court of Appeals decision (*Reisner v. Regents of Univ. of Calif.* [1995] 31 Cal App. 4th 11-95] 37 Cal. Rptr. 2d, 518 et seq.) indicates that in certain situations physicians may have a duty to warn those who could be harmed by a client's HIV infection. If medical staff are unsure how to proceed in these circumstances, even after carrying out the permissive disclosure in E-1, see CONSULTATION below.
3. To date, there is no statutory authorization for permissive or discretionary disclosure of a client's AIDS/HIV status to those described in E-1 by a treating non-physician without a release of information by the client. (See CONSULTATION below.)

F. MANDATED REPORTING

1. The law imposes a duty on medical or other personnel providing services in adult correctional or juvenile detention facilities to communicate to the officer in charge information that indicates that an inmate or minor at the facility has been exposed to or infected by the HIV virus.
2. There are currently no mandatory reporting requirements regarding HIV test results or HIV status, but there are reporting requirements regarding a diagnosis of actual AIDS (California Hospital Assoc., Consent Manual, 1995 Edition, Chapter 20).
 - a. DBH physicians who make a diagnosis of AIDS should report it immediately to the County Public Health Officer (909-383-3060).
 - b. Physicians and hospitals must immediately report all transfusion-associated AIDS cases confirmed by the person's physician to the County Health Officer for investigation.

- c. Hospitals must report to the State Department of Health Services and the County Health Officer whenever a person is hospitalized whose physician confirms that the person has a diagnosis of AIDS.
- d. Reports must be made as soon as practicable after hospitalization. These reports must include the person's name, date of birth, address, and social security number, as well as the name of the hospital and the date of the person's hospitalization.
- e. There is no liability for hospitals and physicians making these required reports.
- f. There is no legal requirement that the client be notified regarding these reports.

G. CONSULTATION.

Disclosures of information regarding a person's HIV and/or AIDS status may present legal issues, including occasionally the issue of possible Tarasoff warnings. In the event that a question regarding disclosure is not covered in the material set forth herein above, the clinician's supervisors should be consulted concerning the propriety of releasing confidential information in that given situation. (County Counsel can only be contacted via Department administration, by first contacting one's Program Manager II).