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## 2014 HIV Testing Law in Healthcare Settings

### Fact Sheet – June 2014 Assembly Bill 446 (Mitchell, Chapter 589)

#### 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.

On January 1, 2014, Assembly Bill (AB) 446 (Mitchell, Chapter 589, Statutes of 2013) became law. AB 446 changes HIV testing requirements in healthcare settings, including primary care clinics. For more information please see [Office of AIDS \(OA\)](#). Below is an outline for the provisions in AB 446.

#### Requirements for HIV Test Providers in Healthcare Settings

[AB 446](#) adds new requirements for medical care providers regarding HIV test results. For instance, medical care providers must ensure that patients receive timely information and counseling, as appropriate, to explain test results and the implications for patients' health. [California Health and Safety Code \(HSC\) 120990 \(h\)](#).

If the patient tests HIV-positive, the medical care provider must, [HSC 120990 \(h\)](#):

- Tell the patient that there are numerous treatment options available; and,
- Identify appropriate recommended follow-up testing and care, including contact information for medical and psychological services.

If the patient tests HIV-negative, and is known to be high-risk for HIV infection, the medical care provider may offer prevention counseling or a referral to prevention counseling and must, [HSC 120990 \(h\)](#):

- Advise the patient of the need for periodic re-testing; and,
- Explain the limitations of current testing technology and the current window period for verification of results.

Sample description of the window period:

*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 or antigens 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 or antigens 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.

### **New Requirements for Primary Care Clinics**

[AB 446](#) requires all patients who are having blood drawn at a primary care clinic to be offered a HIV test consistent with the recommendations of the [United States Preventative Services Task Force](#).

AB 446 defines primary care clinics as community and free clinics. For specific definitions, see [HSC 1204 subdivision \(a\)](#) and [HSC 1206 subdivisions \(g\), \(h\) and \(j\)](#).

Oral consent for a HIV test must be documented in the patients' medical record. [HSC 120991 \(a\)](#).

Primary care clinics are not required to offer a HIV test to patients who have been tested for HIV or offered and declined the HIV test within the previous 12 months. [HSC 120991 \(a\)](#).

Primary care clinics are required to attempt to give the results of the test to the patient before the patient leaves the facility. If results cannot be provided before the patient leaves the clinic, 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](#). [HSC 120991 \(d\)](#). Therefore, patients who test positive for HIV can be told by their health care providers either orally (including by telephone) or in written form. [HSC 123148 \(a\)](#).

## **Related information**

[Comprehensive HIV Care Plan](#)

[Office of AIDS HIV Prevention information](#)

[AB 446 – HIV Testing Requirements, Key Provisions for HIV Test Counselors](#)

For more information, contact Clark Marshall, Expanded HIV Testing Coordinator, Office of AIDS by phone at (916) 650-6752 or by e-mail at: [clark.marshall@cdph.ca.gov](mailto:clark.marshall@cdph.ca.gov).