

DCF Policy #89-003

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## **DECISION-MAKING FOR CHILDREN IN DCF CARE OR CUSTODY WHO HAVE AIDS, ARE HIV+ OR ARE AT RISK OF HIV INFECTION**

### **I. Introduction**

The Massachusetts Department of Children and Families shares with parents responsibility for the physical well-being of children who are in the Department's care or custody. When the available information indicates that the child may be at risk of HIV infection or AIDS, the Department is responsible for seeking to ascertain the child's HIV status and arranging for any needed medical services to be provided to the child. The following policy guides clinical staff in determining whether the child is at risk for HIV infection, in working with parents and youth to make decisions regarding the need for HIV testing and for following up with the child, the child's parent and the substitute care provider, if any, as appropriate to the child's health needs and circumstances. Since HIV information is highly confidential, guidance is provided regarding the circumstances under which it can be shared in accordance with applicable confidentiality statutes and regulations.

**To assess whether a child or youth is at risk for HIV infection, the Department relies upon recommendations from the Centers for Disease Control and Prevention (CDC). The CDC has identified the following risk factors for acquiring or transmitting HIV:**

1. Unprotected sexual contact with an infected person, particularly receptive sex with a male.
2. Sharing needles and or syringes for drug injection with someone who is infected.
3. Receiving transfusions of infected blood or blood products (now considered rare in the US and other countries where blood supplies are routinely screened).
4. Being born to a mother who is HIV positive or who becomes infected while pregnant or being breast fed by a mother who is HIV positive.

**If none of the above factors apply, to further assess whether a child or youth is at risk for HIV infection, the Department also considers the following:**

1. A child's parent, parent's partner or a sibling is HIV+.
2. The child, the child's parents or the parent's partner is known to have a substance abuse issue, particularly drugs that were injected (both the mechanism of use and unsafe behavior under the influence are risk factors).
3. The child had a positive drug screen at birth for methadone, heroin, cocaine or other drugs.
4. The child's parent or the parent's partner has had multiple sex partners, or has engaged in prostitution.
5. The child has engaged in unsafe sex practices such as unprotected sex with multiple partners (including unprotected heterosexual sex or males having sex with males) or is pregnant.
6. The child has been sexually assaulted or sexually abused.
7. The child, the child's parent or the parent's partner has been diagnosed with a sexually transmitted disease.
8. The child received a blood transfusion between January, 1978 and July, 1985.
9. The child or child's parent has lived in a country where the safety of blood or blood products is unknown, and she/he received a transfusion there.

10. The information regarding risk factors is unavailable; the Department is unable to locate the parent/caretaker.
11. The child has a history of self injury or cutting.
12. The child has received a human bite from someone who is HIV+, or a child whose HIV status is unknown has bitten another person and broken the skin or someone has been otherwise exposed to the child's blood such as through a needle stick.

*NOTE: A DCF employee who is exposed to a child's blood should contact her/his physician to determine what she/he should do. When an individual is exposed to the blood of a child who is in DCF care or custody and whose HIV status is unknown, the Department supports approval of HIV testing of the child, in accordance with the requirements of this policy and procedures and DCF regulations.*

## **II. Definitions**

**Human Immunodeficiency Virus (HIV) Infection:** HIV infection is a viral infection caused by the human immunodeficiency virus (HIV) that gradually destroys the immune system, resulting in infections that are hard for the body to fight.

**Acquired Immune Deficiency Syndrome (AIDS):** AIDS is the final and most serious stage of HIV disease, which causes severe damage to the immune system. According to the Centers for Disease Control and Prevention, AIDS begins when a person with HIV infection has a CD4 cell count below 200. (CD4 is also called "T-cell", a type of immune cell.) AIDS is also defined by numerous opportunistic infections and cancers that occur in the presence of HIV infection.

Human immunodeficiency virus (HIV) causes AIDS. The virus attacks the immune system and leaves the body vulnerable to a variety of life-threatening infections and cancers. Common bacteria, yeast, parasites, and viruses that ordinarily do not cause serious disease in people with fully functional immune systems can cause fatal illnesses in people with AIDS.

AIDS begins with HIV infection. People infected with HIV may have no symptoms for 10 years or longer, but they can still transmit the infection to others during this symptom-free period. Meanwhile, if the infection is not detected and treated, the immune system gradually weakens and AIDS develops.

The symptoms of AIDS are primarily the result of infections that do not normally develop in individuals with healthy immune systems. These are called opportunistic infections.

**Need to Know:** With regard to HIV status, need to know is defined as having the requirement for taking steps to prevent harm or promote well-being in the planning, coordination or delivery of service provision or care that could not be taken effectively without such knowledge. (See Appendix A, "Confidentiality Guidelines")

**HIV Monitor:** The Area or Regional Director or other clinical manager designated to approve HIV testing for children in DCF care or custody in each office. She/he serves as liaison to the Health and Medical Services Team and the Legal Division in order to support staff in making and carrying out HIV-related testing and treatment decisions.

## **III. Policy: HIV Testing for Children under Age 18**

All children under age 18 years who are in DCF care or custody and who are identified as being at risk for HIV infection must be referred for HIV testing. The CDC recommends that all children age 13 to 18 be tested for HIV. The Social Worker, in coordination with her/his Supervisor and the HIV Monitor, determines whether HIV testing is necessary and if recommended, arranges for the child to be referred for appropriate counseling and testing. If assistance is necessary to make the determination, the HIV monitor may consult with the Regional Nurse. The Department's role in arranging testing depends upon whether the child is in DCF care or custody.

- **Child is in DCF Care:** Parental consent is required if the child is in DCF care through a Voluntary Placement Agreement or a CHINS petition. The Social Worker provides information to the parent regarding the reason(s) for the Department's determination that HIV testing should be obtained and the services available to the family (e.g., pre and post-test counseling). If the parent is unwilling, unable or unavailable to give consent for testing and the testing is necessary to ensure proper

medical care for the child, the Social Worker and Supervisor consult with the HIV Monitor and legal staff to determine if custody should be pursued.

- **Child is in DCF Custody:** Parental consent is not required when the child is in DCF custody. The Social Worker seeks to involve the parents in obtaining the testing and any needed follow-up medical care unless she/he, in consultation with her/his Supervisor, determines that parental involvement is not in the child's best interests. She/he documents this determination and reasons for it in dictation.
- **Child Age 13 or Older Obtaining Testing and Treatment Without Consent:** Under the Department of Public Health statute MGL c. 112, § 12F, children age 13 or older may access HIV testing, diagnosis and treatment without consent of a parent or legal guardian. When DCF learns that a child age 13 or older who is in DCF care or custody has obtained HIV testing and/or treatment, the Social Worker, in consultation with her/his Supervisor, works with the child (and the child's parents if the child is in DCF care) to obtain sufficient information about the child's condition to ensure proper medical care for the child. For a child in DCF custody, DCF can determine whether and with whom the HIV test results are shared.

### **Procedures: HIV Testing and Follow-up for Children under Age 18**

1. **Referral for HIV Testing.** When the Social Worker, in consultation with her/his Supervisor, determines that the child is at risk of HIV and needs to be tested, she/he completes the referral section of the "HIV Testing Referral and Results Form" and submits the form to the HIV Monitor.
2. **HIV Monitor Review and Decision.** The HIV Monitor reviews the information submitted and determines whether HIV testing is appropriate. If the HIV Monitor needs assistance to make the decision, she/he may consult with the Health and Medical Services Team. The HIV Monitor indicates her/his decision by completing the "HIV Monitor Recommendations for HIV Testing" section of the Referral/Results Form and returning the Form to the Social Worker.
3. **Arranging HIV Testing.** The Social Worker works with the parent and/or substitute care provider to arrange for the HIV testing to be scheduled and completed. A copy of the Referral/Results Form is provided to the medical provider so that testing can be ordered.
4. **Medical Provider Completes Results Form.** When the test result is obtained, the medical provider indicates the result on the "HIV Testing Outcome" section of the Referral/Results Form and sends the Form to the HIV Monitor.
5. **Social Worker Notification.** The HIV Monitor notifies the Social Worker of the testing result.
6. **Documentation.** The Social Worker documents the test result in FamilyNet and files the Referral/Results Form and/or lab report in the child's physical case record.
7. **Referral for HIV+ Child.** If the child tests positive for HIV, the Social Worker refers the child to an infectious disease physician or clinic for care, involving the parent and the primary care provider, as appropriate, in the process.
8. **SSI Application for HIV+ Child.** If the child is confirmed to be HIV+ and is experiencing severe physical limitation as a result of their infection, the Social Worker arranges for an SSI application to be completed on her/his behalf. (See *Policy #84-007, SSI/Title II Benefits Policy*)

### **IV. Policy: HIV Testing for Youth Age 18 or Older**

Youth age 18 years or older who are competent to make medical decisions may consent to their own HIV testing. No Department or parental approval is necessary. Such a youth who obtains HIV testing on her/his own is not obligated to provide the results to the Department.

#### **For Competent Youth Age 18 or Older**

When the Social Worker determines that HIV testing of the youth is advisable, she/he, in consultation with her/his Supervisor, informs the youth of the Department's recommendation, the reason(s) for it and the youth's right to consent to her/his own testing. The Social Worker requests the youth sign a release of information form to share test results with DCF and explains to the youth that if she/he chooses to share the results with Department staff, the Department will share the information with other individuals on a "need to know" basis (see Appendix A, "Confidentiality Guidelines").

### **For Incompetent Youth Age 18 or Older**

When the youth has been determined incompetent to make informed decisions regarding her/his care, her/his guardian makes the decision regarding HIV testing and receives the results. The Social Worker requests that the guardian sign a release of information form in order to release the results to DCF. If DCF is the youth's guardian, the Social Worker follows the procedures above for children under age 18 in DCF custody.

### **Procedures: HIV Testing and Follow-up for Competent Youth Age 18 or Older**

1. **Referral Guidelines.** If the youth is at risk for HIV, the Social Worker explains that she/he can be tested or retested for HIV and:
  - The youth can be tested either anonymously or confidentially. Anonymous testing means that the person being tested doesn't have to identify themselves. Confidential testing means that the person is identified and the test results become part of her/his medical record.
  - The youth can decide to whom the test results can be disclosed; however, it is advisable for her/him to share the results with at least DCF to support sound planning and decision-making regarding her/his health care, services and placement. If she/he shares the testing results, DCF will share the information with individuals on a "need to know" basis.
2. **Plan for HIV Testing.** When the youth agrees to obtain HIV testing and desires DCF assistance, the Social Worker consults with the Supervisor, Area Program Manager, HIV Monitor, and the child's medical providers to develop a plan for completing the HIV testing and supporting the youth. A parent(s) may also participate, if the youth agrees. In consultation with the HIV Monitor, the Supervisor and Area Program Manager must review and approve the plan.
3. **Medical Provider Completes Results Form .** When the test result is obtained and the youth has affirmed her/his willingness to share the result with DCF, the medical provider sends the test result to the HIV Monitor.
4. **Social Worker Notification.** The HIV Monitor notifies the Social Worker of the test result.
5. **Post Test Support.** Once the Social Worker ascertains that the youth has been informed of the HIV test result by the person or site that performed the test, the Social Worker can support the youth in receiving follow-up care as needed.
6. **Documentation.** The Social Worker documents the testing, result and follow-up information in the FamilyNet medical record of the youth age 18 or older and files the lab report in her/his physical case record.
7. **Referral for HIV+ Youth.** For any youth age 18 or older who tests positive and requests assistance with arranging counseling and treatment, the Social Worker assists the youth with a referral for care to an infectious disease physician or clinic. She/he involves the parent and the primary care provider in the process, when this is determined, in consultation with the Supervisor, to be in the youth's best interests and the youth approves.
8. **SSI Application for HIV+ Youth.** If the youth is confirmed to be HIV infected, the Social Worker arranges for an SSI application to be completed on her/his behalf. (See *Policy #84-007, SSI/Title II Benefits Policy*)

### **V. Procedures for Out-of-State Children Placed in Massachusetts and Massachusetts Children Placed in Another State**

When the HIV Monitor recommends HIV testing for a *child under age 18 who is in the custody of another state but residing in a Massachusetts DCF-supervised placement*, the child's Social Worker coordinates with the Central Office Interstate Compact on the Placement of Children (ICPC) Unit to obtain the sending state's approval for testing and may assist in arranging for the testing to be completed.

When the Area Director/designee determines that a *child under age 18 in DCF custody who is residing out-of-state* needs HIV testing, the child's Social Worker coordinates with the ICPC to arrange for the testing to be completed and the results to be reported to DCF.

## **VI. Requests for Participation in Research Protocols**

See *Policy #91-005, Policy for Approval of Research Proposals and Survey Participation Requests.*

## **Appendix A**

### **Confidentiality Guidelines**

Information regarding an individual's HIV status is highly confidential and should be communicated only to those persons who "need to know" to support provision of appropriate, quality services. With regard to HIV status, "**need to know**" is defined as having the requirement for taking steps to prevent harm or promote well-being in the planning, coordination or delivery of service provision or care that could not be taken effectively without such knowledge. Maintaining confidentiality about the child's status also prevents violation of the parent's right to privacy about her/his own HIV status. Anyone who is directly responsible for the provision or facilitation of care for the child has a need to know the child's HIV status.

1. Those individuals with a "**need to know**" about the child's HIV status are:
  - the child's parents/parent substitutes;
  - foster parents, or other substitute care providers;
  - pre-adoptive parents or guardians;
  - the child's primary healthcare provider (e.g., pediatrician, nurse practitioner, physician assistant);
  - DCF staff (Social Worker, Supervisor, DCF Attorney, Area Director, Area Program Manager, Area AIDS Monitor, and Foster Care Reviewers) directly involved in the case;
  - in court-involved cases, the court and parties to the case [i.e., the child's attorney, the parents' attorney(s), the court-appointed investigator, the guardian ad litem (if any), the judge, the probation officer] (see 110 CMR 12.09); and
  - others determined on a child-specific basis to have a need to know in order to maintain the child's health.
2. **Service Plans.** The Service Plan is often viewed by individuals who do not have a "need to know" the child's HIV status. Therefore, the Service Plan should not specifically mention HIV infection but should include specific tasks/activities pertaining to the provision of medical care for the child.
3. **Foster Care Review.** Participation in a Foster Care Review may include individuals who do not have a "need to know". The Foster Care Reviewer, in consultation with the child's Social Worker, the child (if competent and over age 18), and the child's parents, determines if the child's HIV status should be specifically identified during the review.
4. **FCR Documentation.** In documenting the Foster Care Review, the Foster Care Reviewer does not specifically identify HIV infection or AIDS in the Foster Care Review Report. The Foster Care Reviewer refers to HIV or AIDS as a "chronic" or "life threatening illness," respectively.
5. **Information Received after Custody Transfer.** When the custody of a child has been transferred from DCF to an individual (including an adoptive parent or guardian) or to DYS, and DCF subsequently learns of information about activities which may have placed the child at increased risk of HIV infection, this new information is conveyed to the child's current custodian as soon as it becomes known to DCF. The Department also determines whether it is necessary to convey the information to previous custodians.