



# Oregon

Theodore R. Kulongoski, Governor

## Department of Human Services

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Dear Prenatal Provider:

This letter is to let you know about recent changes to state law and administrative rules regarding testing, including HIV testing that will apply to your patients.

Knowing a pregnant woman's HIV status provides the opportunity to offer treatment that can reduce the risk of perinatal HIV transmission from 25% to less than 2%. Accordingly, the Institute of Medicine (IOM), the American College of Obstetricians and Gynecologists (ACOG), and the American Academy of Pediatrics (AAP), the US Preventive Services Taskforce (USPSTF), and the Centers for Disease Control (CDC) have all published guidelines recommending **universal HIV screening of pregnant women**. However, in Oregon, only about 60% of pregnant women are tested for HIV. To increase prenatal HIV testing, the 2005 Oregon legislature passed HB 2706, which revised ORS 433.017 and 433.045 to facilitate universal testing and documentation of HIV test results. **These changes are collectively known as "opt-out" prenatal testing for HIV.**

### *Changes to Laws Affecting Prenatal Clinical Practice*

**The goal of revisions to state law (Oregon Revised Statutes 433.045 and 433.017) is to allow you to test for HIV in the same manner you already test for other infectious conditions of pregnancy**, which will make it possible you to include HIV in the routine "prenatal lab panel.

**Under the new law, which takes effect on Jan 1, 2006, special informed consent for HIV testing will no longer be required for pregnant women.** Instead, in order to standardize a **routine consent procedure for ALL prenatal tests** and ensure that women are notified of the conditions for which they are being tested, changes in the statutes and associated administrative rules (333-019-0036, 333-018-0030, and 333-012-0265) now require:

- 1) **Notifying a pregnant woman that she will be tested for infectious conditions including HIV, hepatitis B, and syphilis;**
- 2) **Informing the woman of her right to decline any or all tests;**
- 3) **Testing the pregnant woman for all conditions she does not decline; and**
- 4) **Documenting the woman's decision to decline tests in the medical record.**

### *Changes to Laws Regarding Laboratory Processing of Prenatal Specimens for HIV Testing*

To support these changes, clinical **laboratories will no longer be required to collect the DHS informed consent attestation form (DHS 49-03) for HIV tests on pregnant women.** HIV DHS Form 49-03 will, however, continue to be required in most other clinical testing situations as detailed in Oregon Administrative Rule 333-018-0030.

### *Review of Laws Regarding Documentation and Communication of HIV Test Results*

As you know, documentation of HIV test results is crucial to continuity of care for pregnant women. Oregon law does not prevent clinicians from writing HIV test results in the routine medical record, and **HIV test results CAN and SHOULD be entered in the laboratory section of the prenatal record.** To satisfy the new administrative rule's documentation requirements, you are required to document a

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patient's decision to decline HIV testing; we recommend that you write "declined" in this section of the prenatal record if the pregnant woman declines HIV testing. In addition, **HIV test results CAN and SHOULD be transmitted by a secure means to any maternity provider for continuity of care, or to any birthing facility in anticipation of the pregnant woman's delivery.**

Providers may not disclose HIV test results to third party payers without specific written authorization from the patient. If you adhere to this practice, you are not subject to an action for civil damages HIV should results fall into the hands of third party providers.

In summary, changes have been made to Oregon laws in order to improve the care of prenatal patients in Oregon. Thank you for your contribution to the goal of universal prenatal testing for HIV and documentation of the results. In order to assist you in updating prenatal consent and testing procedures, we have enclosed some recommendations you may wish to incorporate into your prenatal practice.

Should you have any questions, please contact Sean Schafer, MD, Medical Epidemiologist in the Oregon Department of Human Services, HIV/TB/STD Program at 971-673-0153.

Sincerely,  
(signed letter on file at DHS)

Mel Kohn, MD, MPH, State Epidemiologist

These sample procedures are designed assist you in updating your prenatal consent and testing process. You may wish to incorporate similar procedures into your prenatal practice.

### Recommendations for Prenatal Consent Procedures

The following consent procedures are acceptable under the new law. We recognize that other tests such as blood type and rubella antibody are also routinely offered to pregnant women. For completeness, you may wish to add these tests to your consent as well. Our examples include what is MINIMALLY required by law. Some practices may wish to provide more thorough information regarding the tests being offered.

#### The “10 second” verbal consent:

- I recommend, and by law am required to offer you, the following tests:
  - Hepatitis B, Syphilis, and HIV
- In addition, I recommend the following additional tests
  - *(Provider lists all other tests recommended, such as rubella antibody, Rh antibody, Chlamydia, etc.)*
- Treatments are available to prevent transmission to your baby.
- You may decline to have any or all of the tests. *(Note: A patient’s decision to decline one or more of the above tests must be documented in the medical record.)*

#### A written checklist:

Your maternity care provider recommends the following tests as a part of your prenatal care. The law requires that you be offered these tests, because we have treatments that can prevent transmission of these diseases from you to your baby. We will test you for all of these unless you specifically decline testing by signing the line next to the test you do NOT want:

I decline this test:

- Hepatitis B \_\_\_\_\_
- Syphilis \_\_\_\_\_
- HIV \_\_\_\_\_
- *(Provider may add other recommended tests to this list such as rubella antibody, Rh antibody, Chlamydia, etc.)*

### Recommendations for Laboratory Ordering Procedures

The law now requires that a pregnant woman be tested for HIV unless she declines. We encourage clinical laboratories, in collaboration with their prenatal care providers, to **revise the “prenatal lab panel” to include HIV as the default**. A procedure should be established that indicates when a pregnant woman does NOT wish to be tested for HIV (or any other infectious condition). You may want to consider the following options:

- 1) Two alternate prenatal lab panels, one with and the other without an HIV test
- 2) A requisition form that includes a place for the ordering clinician to indicate when a prenatal patient declines testing for HIV or other infectious conditions.

Remember, the informed consent form (DHS 49-03) is no longer required for these specimens.