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Committee on Health Policy

REVIEW OF THE FLORIDA STATUTES RELATING TO HIV TESTING

SUMMARY

Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection remain leading causes of illness and death in the United States and Florida. Almost one quarter of the persons living with HIV infection in the United States are unaware of their infection.¹ Without the knowledge of their infection, these persons are unable to benefit from clinical care to reduce morbidity and mortality, and some may have unknowingly infected others with the HIV. The Centers for Disease Control and Prevention (CDC) projects that the number of new cases of HIV infection each year may be decreased by 30 percent with routine, voluntary, opt-out HIV screening.

Since September 2006, the CDC has promoted the increased use of voluntary opt-out HIV screening for patients aged 13 to 64 in all health care settings where other diagnostic or screening tests are routinely performed. A similar recommendation was adopted by CDC in 2003 for pregnant women. Opt-out HIV screening involves notifying a patient that an HIV test will be performed, but that the patient may elect to decline or defer such testing. Under the CDC recommendations, health care practitioners would give their patients specified information on the HIV, the meanings of test results, and the opportunity to decline or defer testing. Medical providers could use a general informed consent for medical care to perform HIV testing, but would also have to give patients the CDC-required notification, including affording the patient the opportunity to decline or defer testing.

Florida has adopted comprehensive HIV/AIDS legislation to encourage informed, voluntary, and confidential HIV testing. The 1998 Legislature

streamlined Florida's HIV-testing law to reduce many of the pretest and posttest counseling requirements under the theory that the testing requirements would be less burdensome and would result in more medical providers offering HIV tests to their patients as a routine part of care. The 2005 Legislature required health care practitioners to test pregnant women for HIV infection, but gave the pregnant woman the right to refuse testing.

The CDC recommendations call on states to resolve any conflicts that might exist between their laws and the CDC HIV-testing recommendations. This project compares Florida's HIV testing laws to the CDC recommendations. Professional staff found that Florida's HIV-testing laws are already largely consistent with the CDC recommendations.

The professional staff recommends that no changes be made to Florida's HIV-testing law (s. 381.004, F.S.) because, in practical application, the law is already consistent with the spirit of the CDC recommendations. The professional staff also recommends that the Department of Health (DOH) should review and revise its technical assistance guidelines and rules to conform to the latest CDC recommendations and continue to work with medical providers to expand HIV screening in clinical settings.

BACKGROUND

HIV/AIDS

AIDS is a physical disorder that results in the loss of immunity in affected persons. It is caused by a retrovirus known as HIV. The HIV infection and AIDS remain leading causes of illness and death in the United States. From the beginning of the HIV/AIDS epidemic in the early 1980s to December 2004, an estimated 944,306 persons in the United States had been diagnosed with AIDS and of these, 529,113 had died.² According to the CDC, the annual number of AIDS

¹ CDC Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care Settings. *MMWR (Morbidity and Mortality Weekly Report)* September 22, 2006; 55(RR 14):1-17. Found at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm> (Last visited September 19, 2007).

² *Id.*

cases and deaths declined substantially after 1994, but stabilized during the period 1999-2004.³ The number of HIV/AIDS cases among racial/ethnic minority populations and persons exposed to HIV through heterosexual contact has increased since 1994.⁴

Since the beginning of the epidemic in the early 1980s, the level of public knowledge regarding HIV/AIDS has greatly increased. New and improved treatments and testing technologies for HIV/AIDS are now available, resulting in a decrease in the number of HIV-related deaths and an improved quality of life for persons infected with the HIV.

Florida is among the states that has been hardest hit by the HIV/AIDS epidemic. Florida ranks third among the states in the number of reported AIDS cases, with 108,097 cases reported through August 2007.⁵ A total of 4,309 HIV cases and 2,605 AIDS cases have been reported in Florida from January through August 2007.⁶

The HIV/AIDS epidemic affects all segments of society, however, poor and minority communities have been disproportionately affected. As of August 2007, a total of 86,002 persons with HIV/AIDS were living in Florida.⁷ A total of 84,881 of these cases are adults, of which 50 percent are black, 30 percent are white, and 19 percent are Hispanic. Florida implemented HIV-infection reporting on July 1, 1997.⁸ Since that time, 39,626 cases of HIV infection have been reported to the Florida Department of Health.⁹

Discrimination against Persons with HIV/AIDS

Since the HIV/AIDS epidemic began, there have been major concerns about discrimination against persons who are infected with the HIV or have been diagnosed with AIDS. Because of the high mortality rate of AIDS, the lack of a known cure, the possibility of acquiring HIV/AIDS through accidental exposure to bodily fluids of an infected person, and the types of behaviors that result in the transmission of the HIV, many people have practiced discrimination against persons who might be infected or are diagnosed with HIV infection or AIDS. State laws have been enacted to prohibit such discrimination and to establish heightened informed

consent and confidentiality requirements for HIV testing.

The Williams Institute at the University of California, Los Angeles, recently published the results of three studies that measured HIV-discrimination in the health care system in Los Angeles County.¹⁰ The studies conducted from 2003 to 2005 found that HIV-discrimination remains common in the health care sector despite legal prohibitions.¹¹ The studies found that 46 percent of skilled nursing facilities, 26 percent of plastic and cosmetic surgeons, and 55 percent of obstetricians in Los Angeles County would not take any patients who were HIV-positive for any type of service, even when the patients were asymptomatic.¹²

National HIV Testing Guidelines

Both the CDC and the Institute of Medicine (IOM) have recommended strategies for HIV testing that focus on increasing the number of persons who know their HIV infection status. Early in the HIV/AIDS epidemic, the focus of HIV screening was on the behaviors of the test subjects that put them at risk for HIV infection. The HIV screening included a risk assessment to determine whether the test subject should be offered HIV testing and counseling services, coupled with specialized informed consent procedures, and pretest and posttest counseling.¹³

In 1999, the IOM led a major departure from the then accepted requirements for HIV testing by promoting universal, routine testing with notification of pregnant women.¹⁴ The IOM approach focused on making HIV tests available for pregnant women to decrease HIV transmission from mother to child, so that it became a part of routine prenatal care. Under the IOM approach, pregnant women would be notified that they were

³ *Id.*

⁴ *Id.*

⁵ The Florida Department of Health AIDS program.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ "HIV Discrimination in Health Care Services in Los Angeles County: The Results of Three Testing Studies" December 2006. Brad Sears and Deborah Ho, The Williams Institute, University of California at Los Angeles. See the Williams Institute's website at: <http://www.law.ucla.edu/williamsinstitute/publications/Discrimination%20in%20Health%20Care%20LA%20County.pdf> (Last visited on September 19, 2007).

¹¹ *Id.*

¹² *Id.*

¹³ Phillips, Bayer, and Chen. New Centers for Disease Control and Prevention's Guidelines on HIV Counseling and testing for the General Population and Pregnant Women. *AIDS Journal of Acquired Immune Deficiency Syndromes* 32:182-191 2003 Lippincott Williams & Wilkins, Inc., Philadelphia.

¹⁴ *Id.*

going to be tested for HIV and would be tested unless they declined or deferred testing.¹⁵

This approach eliminated the need to screen the pregnant women for risk or to provide counseling prior to HIV testing. The prevailing strategies that promoted risk assessment and pretest counseling as a prerequisite to HIV testing were failing to effectively identify HIV infected persons. There has been significant debate over whether the earlier HIV testing strategies were capturing HIV infected persons early enough in the course of their illness to permit them to take advantage of HIV/AIDS treatment and promote behavior change to prevent HIV transmission. The risk-based testing strategies also failed to sufficiently identify HIV-infected persons because, in part, they imposed a burden on health care providers to perform counseling and risk assessment before offering HIV tests.

As early as 1995, the CDC issued guidelines for pregnant women to receive HIV testing as part of their routine prenatal care. In April 2003, the CDC strongly encouraged clinicians to screen all pregnant women for HIV using an opt-out testing approach.¹⁶

Opt-out HIV screening involves the performance of an HIV test after notifying the patient that the test will be performed and that the patient may elect to decline or defer testing. Opt-in HIV screening requires clinicians to offer an HIV test and requires the patient to actively give permission to be tested for HIV. With the exception of pregnant women, the CDC guidelines for HIV testing before September 2006, required test subjects to affirmatively assent to HIV testing after risk assessment and pretest counseling services were performed.

In September 2006, the CDC announced revised recommendations that represented a major shift in HIV testing guidelines. The revised recommendations promote routine HIV testing that would no longer require persons to be screened for and asked whether they accepted HIV testing, or be routinely counseled before HIV testing. Under the CDC revised recommendations, a person would simply be notified

that HIV testing would occur unless he or she declined or deferred testing (opt-out). Assent is inferred unless the patient declines testing.¹⁷

The CDC recommends that routine HIV testing be offered in all health care settings – both public and private – where diagnostic and screening tests are routinely performed. The settings include: hospital emergency departments, urgent care clinics, hospitals, substance abuse treatment clinics, public health clinics, community clinics, correctional health care facilities, and other primary care settings. The objectives of the 2006 CDC revised recommendations are to increase the number of persons who are aware of their HIV status and link them to clinical and prevention services.

The CDC believes that voluntary screening for HIV infection in health care settings will help more people find out if they are HIV infected and will help HIV-infected people know of their status earlier so that they may seek treatment and change their behavior to reduce HIV transmission. The CDC reports that at the end of 2003 almost one quarter of the persons who are living with HIV in the United States, between 252,000 and 312,000 persons, are unaware of their HIV infection status.¹⁸ Many individuals who are unaware that they are HIV-infected may unknowingly transmit the HIV. The CDC has found that the majority of individuals who are aware of their HIV infection substantially reduce sexual behaviors that may transmit the HIV to others.

The 2006 CDC revised recommendations follow the success of the voluntary opt-out HIV screening of pregnant women and recipients of sexually transmitted disease services.¹⁹ The CDC has concluded that areas that have opt-out testing policies for pregnant women and for recipients of STD services have higher HIV testing rates than those that use opt-in policies or those that require specific HIV counseling for testing. The CDC found that opt-out HIV testing of pregnant women has substantially increased the number of pregnant women tested. The CDC projects that the number of new HIV cases each year may be decreased by 30 percent with routine, voluntary, opt-out HIV screening.

¹⁵ *Id.*

¹⁶ CDC, “Questions and Answers for Professional Partners: Revised Recommendations for HIV Testing of Adults, Adolescents and Pregnant Women in Healthcare Settings” found at: http://www.cdc.gov/hiv/topics/testing/resources/qa/qa_professional.htm (Last visited on September 19, 2007).

¹⁷ CDC Revised Recommendations for HIV Testing, *supra* note 1. Also, see CDC, “Questions and Answers for Professional Partners *supra* note 16.

¹⁸ CDC Revised Recommendations for HIV Testing, *supra* note 1.

¹⁹ *Id.*

A 2007 study revealed the potential for increased HIV testing rates when certain barriers to testing are removed. The research examined the rate of HIV testing after the San Francisco Department of Public Health, in May 2006, replaced written consent with verbal consent for testing through its facilities.²⁰ The results show a major increase in the rate of HIV testing after this move.²¹

The new CDC recommendations also revise previous recommendations for HIV testing of pregnant women to promote the use of rapid HIV testing for testing women in labor or immediately post-partum whose HIV infection status is unknown. The revised recommendations also encourage greater use of repeat HIV testing of pregnant women in the third trimester of their pregnancy, even if they tested negative for HIV infection earlier in their pregnancy.

The CDC Grant Program Requirements for Counseling, Testing, and Referral

Previous CDC HIV-testing policies focused on counseling and testing with extensive pretesting counseling and consent procedures. Previous CDC HIV-prevention activities placed an emphasis on counseling, testing, and referral for the persons who were unaware of their HIV infection. This approach remains a condition of CDC funding for HIV-prevention activities by state health departments and their agents.²² The CDC grant program for HIV-prevention activities requires all jurisdictions to provide counseling, testing, and referral services.²³ The Florida Department of Health entered into a grant contract for HIV-prevention activities for a 4-year period ending December 31, 2008.

The purpose of the CDC grant program is to reduce the number of HIV infections through the use of four strategies:

- Making HIV screening a routine part of medical care;

- Creating new models for diagnosing HIV infection, including the use of rapid testing;
- Improving and expanding prevention services for persons living with the HIV; and
- Further decreasing perinatal HIV transmission.²⁴

History of the Florida HIV-Testing Laws

The Florida Legislature enacted comprehensive legislation addressing HIV/AIDS in 1988.²⁵ The provisions relating to testing for HIV were initially codified in s. 381.609, F.S., and later moved to s. 381.004, F.S. The 1988 Legislature found that the public health will be served by facilitating the informed, voluntary, and confidential use of HIV tests.

The 1988 law required informed consent to perform an HIV test, but did not require written consent as long as the test had been explained, verbal consent had been obtained, and these facts were documented in the medical record. An HIV test could not be ordered without making available to the person tested, prior to the test, information regarding measures for the prevention of, exposure to, and transmission of the HIV. The law prohibited test results from being revealed to the person who had been tested without affording that person the immediate opportunity for individual, face-to-face counseling that included specified information. The 1988 law established extraordinary confidentiality provisions for the identity of the test subject and the results of the test, with certain exceptions.

The 1988 law also established a public health unit network of voluntary HIV-testing programs and regulatory requirements for testing programs for HIV/AIDS. The law provided penalties for violations of the HIV-testing requirements and for violations of the confidentiality provisions. The law also required the Department of Health and Rehabilitative Services to develop a model protocol consistent with the law for counseling and testing persons for the HIV.

As public knowledge increased about HIV/AIDS, key aspects of Florida law relating to HIV testing have evolved. The 1998 Legislature substantially revised HIV testing requirements to streamline the requirements to make HIV testing less burdensome on health care providers.²⁶ The 1998 HIV-testing law modified the information that must be shared with test subjects as part of the pretest and posttest counseling

²⁰Zetola, Klausner, et. al., Research Letter “Association Between Rates of HIV Testing and Elimination of Written Consents in San Francisco,” JAMA March 14, 2007, Vol. 297, No. 10, pp. 1016 1062.

²¹ Id.

²² “HIV Prevention Projects: Notice of the Availability of Funds for Fiscal Year 2004, Department of Health and Human Services” published in the Federal Register, Vol. 68, No. 132, July 10, 2003, pp 41138 - 41147.

²³ Id.

²⁴ Id.

²⁵ Ch. 88-380, Laws of Florida.

²⁶ Section 2 of ch. 98-171, Laws of Florida.

and informed consent requirements. Such pretest and posttest counseling requirements were perceived as substantial burdens discouraging health care practitioners from offering HIV tests.

In 1996, the Florida Legislature amended s. 384.31, F.S., which required pregnant women to be tested for sexually transmissible diseases, to require the health care practitioner attending a pregnant woman to counsel the woman to be tested for HIV. If the pregnant woman objected to HIV testing, reasonable steps were to be taken to obtain a written statement of such objection, signed by the patient, and placed in the patient's medical record.²⁷

In 2005, s. 384.31, F.S., was amended to require a health care practitioner attending a pregnant woman to test the woman for HIV and other sexually transmissible diseases. The law requires the woman to be informed of the tests that will be conducted and of her right to refuse testing. If a woman objects to testing, a written statement of objection, signed by the woman, must be placed in the woman's medical record and no testing shall occur.²⁸

Florida Law Relating to Informed Consent

The Florida Medical Consent Law follows a model for informed consent that is used in the majority of states, which requires health care practitioners to disclose information according to the prevailing standard of practice used by similarly situated professionals.²⁹ To obtain informed consent the health care practitioner must disclose information to the patient, which allows a reasonable person to have a general understanding of any proposed medical procedure or treatment, including any risks or alternatives. Additionally, the information provided must be in accordance with the accepted standard of practice by other similarly situated practitioners.³⁰ A physician has a duty to inform the patient what a reasonably prudent physician would disclose to a patient of ordinary understanding of the material risks that may occur from a proposed procedure or treatment.³¹

With specified exceptions, the Florida HIV-testing law requires a health care practitioner who orders an HIV test to obtain informed consent of the test subject.³² HIV testing is unique under Florida law and the law of other states because it is a diagnostic test that requires specific consent rather than general consent. The consent for HIV testing under Florida law is not the same level of consent required for any other medical test with similar medical risk to the patient. General consent for an unspecified medical test is insufficient to comply with the Florida HIV-testing law.

Florida's HIV-testing law requires a health care practitioner to obtain specific informed consent to test for HIV from the test subject. Information must be shared with the test subject so that the test subject may make an intelligent decision regarding an HIV test that is based upon the information provided. Whether sufficient information is given is a factual question as to whether a reasonable person would have understood the test as it was explained. Informed consent for purposes of an HIV test does not require documentation in writing unless it involves a blood or tissue donation, or is a requirement for obtaining life or health insurance. Florida law does not allow HIV testing on a routine basis in any health care setting without *specific informed consent* from the test subject.

Confidentiality of HIV Test Results

The level of confidentiality afforded to HIV test results, over and above other medical records, represents, in part, an inducement for patients to voluntarily and affirmatively assent to HIV testing. The HIV test results may be released only after specialized releases have been executed by the test subject. The identity of the test subject and the test results must be kept confidential. The confidentiality only protects the identity of the test subject and the HIV test results and does not extend to other medical information. However, under s. 456.057, F.S., patient records are confidential. Clinical manifestations or conditions associated with HIV infection and patient disclosures of an HIV test or HIV infection are not protected by the confidentiality requirements of the HIV-testing law.

METHODOLOGY

Senate professional staff reviewed relevant federal and state law, including case law, and the 2006 CDC revised recommendations for HIV testing. The professional staff also communicated with the DOH

²⁷ Section 3 of ch. 96-179, Laws of Florida.

²⁸ Section 3 of ch. 2005-169, Laws of Florida.

²⁹ See s. 766.103, F.S., and Rajkumar, R., "A Human Rights Approach to Routine Provider-Initiated HIV Testing," 7 Yale J. Health Pol'y L. & Ethics 319 (Summer 2007) at 370.

³⁰ See s. 766.103, F.S.

³¹ See *State v. Presidential Women's Center*, 937 So.2d 114 (Fla.2006).

³² See s. 381.004, F.S.

staff, HIV/AIDS advocacy groups, health care providers, and other interested stakeholders.

FINDINGS

The 2006 CDC revised recommendations for HIV testing are designed to make HIV testing a routine part of clinical care for all patients between the ages of 13 and 64, and to improve diagnosis of HIV infection among pregnant women. The revised recommendations address HIV testing in health care settings only and do not alter current CDC recommendations on HIV counseling and testing in non-clinical settings, such as community centers or outreach programs.

The CDC's previous recommendations for health care settings called for routine testing for people at high risk, and for everyone (regardless of risk) in settings with HIV infection prevalence above 1 percent. A number of barriers hindered the implementation of those recommendations in health care settings, including:

- Information about HIV-infection prevalence in facilities is often not available to health care practitioners;
- Practitioners do not have sufficient time to conduct risk assessments; and
- The processes related to separate, written consent and pre-test counseling are too time-consuming, and practitioners are not certified to provide counseling.

The 2006 CDC revised recommendations are designed to help remove these barriers. Florida's HIV-testing law has already been amended to remove such barriers. The major new CDC recommendations are compared with Florida's laws below.

HIV Testing of Patients between the Ages of 13 and 64

Universal Screening, Not Screening Tied to Risk Behaviors

The revised CDC recommendations move to screening that is universal, and not tied to risk behaviors. Florida's HIV-testing law does not limit testing to high risk individuals or require risk assessments prior to ordering an HIV test. Florida's law would not be an impediment to moving away from screening based on risk factors.

Pretest Prevention Counseling

The CDC recommends that prevention counseling should not be required with HIV diagnostic testing or

as part of HIV screening programs in health care settings. Florida's HIV-testing law does not require pretest counseling and therefore is consistent with the CDC's recommendation.

Signed Consent

The 2006 CDC revised recommendations state that specific *signed* consent for HIV testing should not be required and that general informed consent for medical care should be considered sufficient to encompass informed consent for HIV testing. Florida's HIV-testing law does not require signed consent, but it does not prohibit the use of signed consent forms either. Under Florida's law, consent need not be in writing provided there is documentation in the medical record that the test has been explained and verbal consent has been obtained. Florida's HIV-testing law is consistent with the CDC's recommendation.

Information Required for Informed Consent

The CDC recommends that screening be undertaken only with the patient's knowledge and understanding that HIV testing will be performed unless the patient declines. Patients should be given oral or written information explaining HIV infection and the meanings of positive and negative test results, and given an opportunity to ask questions.

Under Florida law, the test must be explained to the patient. Informed consent must be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test. The patient must be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject. The patient must also be provided information on the availability and location of sites at which anonymous testing is performed.

Florida's HIV-testing law requires a health care practitioner to provide a patient with more information specific to the HIV and HIV testing than is required under the CDC recommendations. It is possible that requiring health care practitioners to provide this additional information to patients could be a deterrent to practitioners implementing routine, universal HIV testing in health care settings. However, if Florida revised its HIV-testing law to conform to the 2006 CDC's revised recommendations, some patients may fail to receive information regarding the confidentiality of the test, and other specified information currently suggested under the Florida Department of Health's HIV-testing protocols.

Opt-Out or Opt-In Screening

The CDC recommends HIV screening for patients in all health-care settings after the patient is notified that testing will be performed *unless the patient declines* (opt-out screening). If the patient declines an HIV test, this decision should be documented in the medical record.

Florida's HIV-testing law requires informed consent before an HIV test is ordered for a patient (opt-in screening). Consent does not have to be in writing, as long as there is documentation in the medical record that consent has been obtained.

Under the Florida Medical Consent Law and the required disclosures of the HIV-testing law, a practitioner could offer an HIV test to his or her patient, along with any other information a reasonable practitioner under similar circumstances would provide to obtain informed consent for HIV testing. If the patient does not decline, then an HIV test may be given.

Under any of these approaches, the burden is on the health care practitioner to get informed consent (general or specific) to order the test, although the procedure for obtaining consent is different. It is not clear what the practical effect of moving to opt-out screening would be. It is also unclear that moving to opt-out screening will provide additional incentives to Florida's medical providers to offer an HIV test to their patients as a routine part of their care. Conversely, it does not appear that moving to opt-out screening would add any barriers to making HIV testing part of routine medical care.

Occupational Exposure for Health Care Providers

The CDC recommends that, unless recent HIV test results are immediately available, any person whose blood or body fluid is the source of an occupational exposure should be informed of the incident and tested for HIV infection at the time the exposure occurs. The CDC recommendations do not waive the informed consent or confidentiality requirements for such testing and the recommendations do not specify how such testing should occur. Florida's HIV-testing law has extensive provisions relating to HIV testing when a "significant exposure" (occupational exposure) has occurred. Florida's law is not inconsistent with the CDC recommendations.

HIV Screening of Pregnant Women

HIV Screening Part of Routine Panel of Screening Tests for Pregnant Women

The 2006 CDC revised recommendations for HIV testing of pregnant women state that HIV screening should be included in the routine panel of prenatal screening tests for all pregnant women. Under s. 384.31, F.S., pregnant women are offered HIV testing in a battery of other serological tests for sexually transmissible diseases (STDs). Florida's law is consistent with the CDC recommendations.

Opt-Out Screening

The CDC recommends that pregnant patients should be informed that HIV screening is recommended for all pregnant women and that it will be performed unless they decline (opt-out screening). Florida has already adopted an opt-out screening approach for the *mandatory* HIV testing of pregnant women.³³ A pregnant woman must be notified that she will be tested unless she declines. The HIV testing of pregnant women is currently an exception to the specific informed consent requirements for HIV testing in Florida's HIV-testing law. Florida law required the mandatory testing of pregnant women for HIV after it had already become a standard of care among health care providers.

Informed Consent

Although the offering of the STD tests are mandatory under Florida law, the pregnant woman is informed of the test and specific informed consent is obtained for HIV testing. The opt-out screening method makes the procedure routine and allows the patient to be treated just like every other pregnant woman, since she is not singled out for testing because she is perceived to be at risk for HIV infection. The opt-out procedure allows the patient to passively consent to the STD tests, including HIV. A general consent for unspecified medical tests or procedures is insufficient. The woman must be notified with specific informed consent because the practitioner is directed to comply with the statutory requirement to inform the pregnant woman of the tests and her right to refuse testing.

Rapid Testing

The CDC recommends that rapid HIV testing be performed for all women in labor who do not have documentation of results from an HIV test during pregnancy. Immediate initiation of appropriate antiretroviral prophylaxis should be recommended based on a reactive rapid HIV test result, without

³³ See s. 384.31, F.S.

awaiting the result of confirmatory testing. Under s. 384.31, F.S., health care practitioners would not be prevented from performing rapid HIV testing of women in labor. The DOH could conform its rules to be consistent with the CDC revised recommendation.

Florida HIV Testing/Screening Program

Florida has the largest publicly-funded HIV-testing program in the United States. The DOH HIV-testing program conducts about 300,000 tests annually. Under the DOH program, HIV testing is performed in a wide variety of settings, including: STD, tuberculosis, family planning and prenatal clinics; colleges; jails; outreach locations; bars; and other venues to target those individuals most at risk for HIV. The DOH directs and manages HIV counseling, testing, and linkage activities in statewide collaboration with county health departments throughout Florida.

The DOH recently was awarded a \$4.8 million CDC grant for an expansion of its HIV-testing program. The DOH will seek to expand HIV testing in a variety of clinical settings to ensure that testing, counseling and linkage to prevention services occurs in areas of the state with a high rate of HIV infection. Although the expansion of the program will serve all persons, the DOH will focus its efforts in 10 of 67 counties (Miami-Dade, Broward, Palm Beach, St. Lucie, Orange, Manatee, Hillsborough, Pinellas, Collier, and Duval) where African American communities have been disproportionately hit by the HIV/AIDS epidemic.

The DOH has partnered with providers -- nine major hospitals, four community health centers, 10 STD clinics, 11 correctional facilities, and three substance abuse treatment centers -- most likely to serve populations disproportionately affected by the HIV and who are unaware of their HIV status. The expansion of the program will provide HIV testing and will ensure that HIV-infected persons are linked with care and support services.

Options for Legislative Consideration

Professional staff identified three options for the Legislature to consider regarding conforming Florida's laws to the 2006 CDC revised recommendations for HIV testing.

- Make no changes to Florida's HIV testing law since, in practical application, current state law is very similar to the 2006 CDC revised recommendations.

- Amend the Florida HIV-testing law (s. 381.004, F.S.) to provide for opt-out screening in health care settings with the provision of HIV-specific information prior to testing.
- Amend the Florida HIV testing law to reduce the amount of required information provided to patients prior to testing and allow health care practitioners to obtain informed consent through the use of general consent.

RECOMMENDATIONS

Based upon the findings in this report, the professional staff recommends that:

- No changes be made to Florida's HIV-testing law since, in practical application, current state law is already consistent with the spirit of the 2006 CDC revised recommendations.
- The DOH should review and revise its technical assistance guidelines and rules to conform to the 2006 CDC revised recommendations, consistent with Florida law, and continue to work with providers to expand HIV screening in clinical settings.