



HIV Testing and Pregnancy

HIV testing of pregnant women makes it possible, for women who test positive, to initiate preventive measures that can substantially reduce the risk of transmitting the infection to their newborns. As a result, there has been pressure to test pregnant women without their informed consent. This info sheet discusses such proposals. It concludes that all women considering pregnancy or already pregnant be routinely offered voluntary HIV testing, with quality pre- and post-test counseling, but that they should not be tested without their specific, informed consent.

This is one of a series of 19 info sheets on HIV testing.
For the titles of all info sheets, see info sheet 1.

Background

Before 1994, knowledge about HIV and pregnancy was scarce. Evidence suggested that about one-third of babies born to HIV-positive women would be HIV-positive themselves. There was fear that pregnancy might accelerate the development of AIDS in women who were HIV-positive but had no symptoms. Most often, HIV testing was offered only to pregnant women considered to be at risk for HIV, or provided at the request of the patient herself.

In 1994, research in the US showed that giving AZT to HIV-positive pregnant women and to their infants after birth could reduce the rate of HIV transmission from mother to child from 25.5 to 8.3 percent. Since then, studies have shown that the risk of transmission can be reduced even further if other preventive measures (such as caesarean delivery) are taken. This has caused debate about how best to offer HIV testing to pregnant women, so that women testing HIV-positive can be offered anti-HIV therapy and/or other measures to reduce the risk of transmission to their children.

Who Should Be Offered Testing?

All pregnant women should be offered HIV counseling and testing as early in pregnancy as possible. Several studies have shown that offering HIV testing only to women considered to be at risk of infection fails to identify many HIV-positive women.

Voluntary versus Compulsory Testing

Only a policy of compulsory testing could ensure that *all* pregnant women seeking prenatal care are tested for HIV. However, there are many reasons why such a policy should not be adopted. First, a law mandating HIV testing for pregnant women would probably be unconstitutional, because it violates women's equality and their "security of the person." Second, compulsory testing is not necessary – where voluntary testing programs have been well designed and implemented, they have been effective. Third, voluntary testing maintains a woman's relationship of confidence in her physician, a relationship that is necessary for open discussion of the risks and benefits of antiretroviral treatment and/or other preventive measures. Fourth, compulsory HIV testing could heighten the existing mistrust of the public health system in communities disproportionately affected by HIV, driving some women away from care. Finally, in contrast to a policy of compulsory testing, a policy of voluntary testing is respectful of the autonomy of the woman, treating her as a person in her own right, rather than as a means to an end (imposing testing on her to potentially benefit her child).

Is Informed Consent Required?

The current standard of professional care in Canada requires that HIV testing be carried out only after the person to be tested has given informed consent

following pre-test counseling (info sheet 5). Should this requirement be abrogated for pregnant women?

No. Canadian courts do not consider informed consent a luxury, to be abandoned because it is perceived as too burdensome by physicians. There is no valid reason to eliminate the requirement for pregnant women. Indeed, obtaining a pregnant woman's consent and counseling her is particularly important. The sooner she is informed about the advantages and disadvantages of testing and available treatments, the more likely she is to make decisions that will ultimately benefit herself and her child. In addition, requiring that testing be done only with her specific and informed consent will enhance the trust necessary for establishing a collaborative relationship with the physician.

Should Testing Be Characterized As “Routine”?

Characterizing HIV testing as “routine” does not relieve physicians of their obligation to make sure that women give voluntary, specific and informed consent. However, it appears that many physicians mistakenly believe that they need not secure the informed consent of pregnant women to the tests listed on the standard laboratory requisition form used in prenatal care, because they are so-called “routine” tests. A problem with characterizing the test as “routine” is therefore the increased chance that women will be tested for HIV without their informed consent. Such a policy or practice would be open to legal challenge. The term “routine” to describe the HIV testing of pregnant women in Canada should be avoided.

Rapid HIV Screening

What of those women who, by the time of labour, have not accessed prenatal care, or have accessed such care but not been tested for HIV? Some have suggested they could undergo rapid HIV screening during labour, and be offered treatment to prevent transmission of the virus. But there is controversy over whether it is ethically appropriate or legally sound to use rapid HIV testing for women in labour.

Recommendations

1. Provincial and territorial governments, in conjunction with health-care professionals' associations and regulatory bodies, should improve efforts to ensure that all women have access to HIV testing services, and that all pregnant women be routinely offered voluntary HIV testing, with quality pre- and post-test counseling. Doing an HIV test should not be characterized as “routine” for pregnant women in policies, forms, or the education of health care professionals; rather, *offering* counseling and testing should be routine. Pregnant women should only receive HIV testing with their specific, informed consent.
2. Provinces and territories should phase in the use of rapid HIV screening tests for women in labour whose HIV status is unknown through pilot studies and evaluation, before any decision is made about recommended practice.

Additional Reading

Stoltz L, Shap L. *HIV Testing and Pregnancy: Medical and Legal Parameters of the Policy Debate*. Ottawa: Health Canada, 1999. Available at <www.aidslaw.ca>. A comprehensive analysis of the issues raised by pregnancy and HIV testing.

Elliott R, Jürgens R. *Rapid HIV Screening at the Point of Care: Legal and Ethical Questions*. Montréal: Canadian HIV/AIDS Legal Network, 2000. Available at <www.aidslaw.ca>. At 29-32 and 52-59, discusses whether and, if yes, how rapid HIV screening should be offered to pregnant women during labour. See also the ethical analysis in Appendix A.

The information in this series of info sheets is based on two reports prepared by the Canadian HIV/AIDS Legal Network: *HIV Testing and Confidentiality: Final Report and Rapid HIV Screening at the Point of Care: Legal and Ethical Questions*. Copies of the reports and info sheets are available on the Network website at www.aidslaw.ca or through the Canadian HIV/AIDS Clearinghouse (tel: 613 725-3434, email: aids/sida@cpha.ca). Reproduction of the info sheets is encouraged, but copies may not be sold, and the Canadian HIV/AIDS Legal Network must be cited as the source of this information. For further information, contact the Network (tel: 514 397-6828; email: info@aidslaw.ca). **Ce feuillet d'information est également disponible en français.**

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