

# Oregon

## Introduction and Table of Contents

April 8, 2011

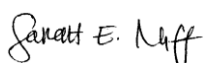
To the Reader:

The *Compendium of State HIV Testing Laws* describes key state HIV testing laws and policies. Each state's HIV testing laws are unique and many have undergone revision or supplementation since the release of the [CDC's 2006 HIV testing recommendations](#). The *Compendium* is designed to help clinicians understand HIV testing laws and to implement sound HIV testing policies. It should not, however, be used as an official legal document.

The NCCC provides clinical consultation for healthcare providers as part of the HRSA [AIDS Education and Training Centers](#) program. Clinicians with questions about HIV testing are encouraged to call the *National HIV Telephone Consultation Service (Warmline)* at (800) 933-3413. The Warmline also provides advice on HIV management, including antiretroviral treatment. Other NCCC consultation services include: the National Clinicians' Post-Exposure Prophylaxis Hotline ([PEPLINE](#)) at (888) 448-4911 for advice on managing occupational exposures to HIV and hepatitis; and the National Perinatal Consultation and Referral Service ([Perinatal HIV Hotline](#)) at (888) 448-8765 for consultation on preventing mother-to-child transmission of HIV.

We update the *Compendium* periodically, but it is beyond the scope of the project to perform updates and verification concurrent with all changes. We encourage readers to send updates (with citations when possible) and comments to Sarah Neff at [neffs@nccc.ucsf.edu](mailto:neffs@nccc.ucsf.edu).

Thank you,



Sarah E. Neff, MPH  
Director of Research and Evaluation

&



Ronald H. Goldschmidt, MD  
Director

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The Warmline, PEPLINE, and Perinatal Hotline are part of the National HIV/AIDS Clinicians' Consultation Center (NCCC) based at San Francisco General Hospital/ UCSF. The NCCC is a component of the **AIDS Education and Training Centers (AETC) Program** funded by the Ryan White CARE Act of the **Health Resources and Services Administration (HRSA)** HIV/AIDS Bureau in partnership with the **Centers for Disease Control and Prevention (CDC)**.

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## Definitions and Helpful Resources

April 8, 2011

### Definitions Commonly Used Nationally

- **Anonymous Testing** – Patient’s name is not recorded with test results.
- **Confidential** – Patient’s name is recorded with test results.
- **HIV Prevention Counseling** – Refers to an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV and developing a plan to take specific steps to reduce risks.<sup>1</sup>
  - **Pre-test counseling** can include: (1) discussing HIV, risk factors and prevention methods; (2) explaining the meaning of positive and negative test results and their implications; (3) assessing the patient’s personal and social supports; (4) determining the patient’s readiness to cope with test results; (5) discussing disclosure of test results to others; and (6) advising the patient if reporting positive test results to health authorities is required.
  - **Post-test counseling** can include: (1) informing the patient of the results and meaning of the test results; (2) providing education about avoiding risks of sexual and injection drug exposures; and, for patients who test positive, (3) assessing the impact of test results for the patient and family; (3) explaining treatment options; (4) discussing partner counseling and disclosure of test results to others; and (5) initiating a support and treatment plan.
- **General Consent** – Consent for HIV screening is included in the general medical consent.
- **HIV** – Human Immunodeficiency Virus.
- **Informed Consent** – A process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions.<sup>1</sup>
- **Name-based reporting** – Cases are reported by patient name (required in all states except HI and VT).
- **Opt-in** – Patients typically are provided pre-HIV test counseling and must consent specifically to an HIV-antibody test, either orally or in writing.<sup>2</sup>
- **Opt-out** – Performing HIV screening after notifying the patient that: the test will be performed; and the patient may elect to decline or defer testing. Assent is inferred unless the patient declines testing.<sup>1</sup>
- **Routine Testing** – HIV screening that is performed routinely during health-care encounters.
- **Rapid Testing** – Testing with any of the six FDA-approved rapid HIV tests that produce results in 30 minutes or less.<sup>3</sup>
- **Specific Consent** – Consent for the HIV screening is separate from the general medical consent.

### Helpful Resources

**CDC Recommendations and Guidelines:** <http://www.cdc.gov/hiv/topics/testing/guideline.htm>

**Emergency Department Implementation Guide:** <http://edhivtestguide.org/>

**Prenatal HIV Testing Website:** <http://www.cdc.gov/hiv/topics/perinatal/1test2lives/>

**For questions or comments about the compendium, contact NCCC:** [neffs@nccc.ucsf.edu](mailto:neffs@nccc.ucsf.edu)

**Clinicians with questions about HIV testing can call the Warmline at 800-933-3413.**

<sup>1</sup> Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings. MMWR Recomm Rep. 2006 Sep 22;55(RR-14):1-17; quiz CE1-4. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

<sup>2</sup> <http://www.cdc.gov/mmwr/PDF/wk/mm5145.pdf>

<sup>3</sup> <http://www.cdc.gov/hiv/topics/testing/resources/factsheets/rt-lab.htm>

# Oregon

## A Quick Reference Guide for Clinicians to Oregon HIV Testing Laws

April 8, 2011

This Quick Reference Guide for clinicians is a summary of relevant Oregon state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Oregon HIV testing laws, please refer to the section of the Compendium that follows this Quick Reference Guide.

### Informed Consent

- Informed consent required; oral or written not specified (see *State Policies Relating to HIV Testing, 2011*, below, for exceptions).

### Counseling

- No specific provisions regarding counseling were found.

### Provisos of Testing

- **Anonymous**
  - Anonymous testing is available at designated anonymous testing sites.
- **Rapid**
  - No specific provisions regarding rapid testing were found.
- **Routine**
  - HIV test is included as part of routine panel of tests for pregnant women.

### Disclosure

- Notification to sexual and needle-sharing partners of possible exposure to HIV is not required.

### Minor/Adolescent Testing

- Persons 15 years or younger may consent to HIV testing.

## **Oregon**

### ***Perinatal Quick Reference Guide:***

#### **A Guide to Oregon Perinatal HIV Testing Laws for Clinicians**

April 8, 2011

This Perinatal Quick Reference Guide for clinicians is a summary of relevant Oregon perinatal state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Oregon HIV testing laws, please refer to the corresponding section of the *State HIV Testing Laws Compendium* ([www.nccc.ucsf.edu](http://www.nccc.ucsf.edu)), “Testing of pregnant women and/or newborns.”

#### **Prenatal**

- Testing of pregnant women in prenatal care is through the opt-out process. Attending providers must test or cause to test pregnant women with their consent along with other routine tests within the first 10 days of the first professional visit.

#### **Labor & Delivery**

- Testing of pregnant women presenting to labor or delivery is through the opt-out process. Attending providers must test or cause to test pregnant women with their consent along with other routine tests.

#### **Neonatal**

- No specific provisions regarding neonatal testing were found.

#### **Other**

- Declination of testing must be documented in the medical record.

# Oregon State Policies Relating to HIV Testing, 2011

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### Oregon Revised Statutes [ORS]

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	Policy Category	Type	Section Code(s)
RESTRICTIONS/ MANDATES	Restrictions on use of HIV test	Insurance companies may not rate or deny coverage on basis of test results without appropriate confirmatory tests	OAR 836-050-0250
	Mandatory testing within the criminal justice system	Persons charged with crimes involving potential transmission to victims	14 ORS §135.139
		Juveniles charged with crimes involving potential transmission to victims	34 ORS §419C.475
		Occupational exposure – law enforcement officers, parole officers, corrections officers may seek mandatory testing of source	36 ORS §433.085
		Oregon Youth Authority wards may only be tested at own request or by court order	OAR 416-600-0010
	Mandatory testing outside of the criminal justice system	General exposures – occupational – exposed persons may request testing of source	36 ORS §433.065 36 ORS §433.080

		Occupational exposure – law enforcement officers, EMS, firefighters may seek mandatory testing of source individual	36 ORS §433.085	
		Boxers, wrestlers, referee applicants	OAR 230-020-0300	
PRE-TESTING	Mandatory offering of HIV/AIDS information and/or testing	Mandatory offering of HIV information to exposed workers	OAR 333-012-0246	
		Judge must notify charged individual and victim of availability of testing	14 ORS §135.139	
		Opioid treatment programs	OAR 415-020-0040	
		Clients on the waiting list and admitted to chemical dependency service providers	OAR 415-051-0005 OAR 415-051-0025	
		Midwives must inform patients of availability of HIV testing and counseling	OAR 332-025-0022	
		Sexual education courses must include HIV information	30 ORS §366.455	
	Informed consent	Informed consent required for consent obtained by physicians, other licensed health care providers, and those acting on behalf of health care facilities – oral or written not specified	OAR 333-012-0265 36 ORS §677.097 36 ORS §433.045 36 ORS §433.075	
		Exceptions to required consent	36 ORS §433.045	
		Consent required for insurance testing	OAR 836-050-0250	
	Counseling requirements	Post-test counseling required for positive HIV test for criminals	14 ORS §135.139	
		Judge must notify victim of availability of counseling	14 ORS §135.139	
		Offenders in the care of Oregon Youth Authority require pre- and post-test counseling	OAR 416-600-0040	
		Pre- and post-test counseling required for HIV/AIDS prevention services programs	OAR 410-143-0060	
	Anonymous testing	Anonymous testing programs report to county health department	OAR 166-150-0065	
	TE	Disclosure/confidentiality	HIV test results as confidential	36 ORS §433.045 OAR 333-012-0270

		Exceptions to confidentiality	OAR 333-012-0270
		Disclosure of HIV status of sex offender to victim	14 ORS §135.139
		Disclosure to emergency medical services	OAR 333-012-0270
		Physicians may notify exposed contacts	OAR 333-012-0270
	Reporting	Name-based reporting, not required for anonymous testing	OAR 333-018-0015
		Laboratories must report prevalence quarterly	OAR 333-018-0030
		Blood banks, plasma centers, sperm banks, anatomical gift services, insurance companies must report prevalence quarterly	OAR 333-018-0030
OTHER	Testing of pregnant women and/or newborns	Attending providers must test or cause to test pregnant women in prenatal care with their consent along with other routine tests within 10 days of the first professional visit – opt-out testing	36 ORS §433.017 OAR 333-019-0036
		Attending providers must test or cause to test pregnant women presenting to labor and delivery with their consent along with other routine tests – opt-out testing	36 ORS §433.017 OAR 333-019-0036
		Declination of testing must be documented in the medical record	OAR 333-019-0036
	Testing of minors/adolescents	Minors under 15 may consent to HIV testing and treatment	OAR 413-040-0430 OAR 333-012-0265
		Minors of any age under the jurisdiction of OYA may consent to testing	OAR 416-600-0030
	Rapid HIV testing	No related laws found	
	Training and education of health care providers	No related laws found	

## Recommended Resources

### Oregon Revised Statutes

<http://www.leg.state.or.us/ors/>

This document is a product of the National HIV/AIDS Clinicians' Consultation Center at San Francisco General Hospital, UCSF.  
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<http://www.nccc.ucsf.edu/>

**Oregon Administrative Rules**

<http://arcweb.sos.state.or.us/banners/rules.htm>

**Oregon Department of Human Services – HIV/STD/TB Programs**

<http://oregon.gov/DHS/ph/hst/index.shtml>

**Oregon DHS - HIV Data and Analysis**

<http://egov.oregon.gov/DHS/ph/hiv/data/oars333.shtml>



<b>Title 14: Procedure in Criminal Matters Generally</b>
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OR Title 14 Code §	Code Language
§ 135.139	<p><b>Notice of availability of testing for HIV and other communicable diseases to person charged with crime; when court may order test; victim's rights.</b></p> <p>(1) When a person has been charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the district attorney, upon the request of the victim or the parent or guardian of a minor or incapacitated victim, shall seek the consent of the person charged to submit to a test for HIV and any other communicable disease. In the absence of such consent or failure to submit to the test, the district attorney may petition the court for an order requiring the person charged to submit to a test for HIV and any other communicable disease.</p> <p>(2)(a) At the time of an appearance before a circuit court judge on a criminal charge, the judge shall inform every person arrested and charged with a crime, in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, of the availability of testing for HIV and other communicable diseases and shall cause the alleged victim of such a crime, if any, or a parent or guardian of the victim, if any, to be notified that testing for HIV and other communicable diseases is available. The judge shall inform the person arrested and charged and the victim, or parent or guardian of the victim, of the availability of counseling under the circumstances described in subsection (7) of this section.</p> <p>(b) Notwithstanding the provisions of <a href="#">ORS 433.045</a>, if the district attorney files a petition under subsection (1) of this section, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that:</p> <p>(A) The person charged committed the crime; and</p> <p>(B) The victim has received a substantial exposure, as defined by rule of the Department of Human Services.</p> <p>(3) Notwithstanding the provisions of <a href="#">ORS 433.045</a>, upon conviction of a person for any crime in which the court determines from the facts that the transmission of body fluids from one person to another was involved and if the person has not been tested pursuant to subsection (2) of this section, the court shall seek the consent of the convicted person to submit to a test for HIV and other communicable diseases. In the absence of such consent or failure to submit to the test, the court shall order the convicted person to submit to the test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such order.</p> <p>(4) When a test is ordered under subsection (2) or (3) of this section, the victim of the crime or a parent or guardian of the victim, shall designate an attending physician to receive such information on behalf of the victim.</p> <p>(5) If an HIV test results in a negative reaction, the court may order the</p>

OR Title 14 Code §	Code Language
	<p>person to submit to another HIV test six months after the first test was administered.</p> <p>(6) The result of any test ordered under this section is not a public record and shall be available only to:</p> <ul style="list-style-type: none"> <li>(a) The victim.</li> <li>(b) The parent or guardian of a minor or incapacitated victim.</li> <li>(c) The attending physician who is licensed to practice medicine.</li> <li>(d) The Department of Human Services.</li> <li>(e) The person tested.</li> </ul> <p>(7) If an HIV test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling as required by the Department of Human Services, by rule. The results of HIV tests ordered under this section shall be reported to the Department of Human Services. Counseling and referral for appropriate health care, testing and support services as directed by the Director of Human Services shall be provided to the victim or victims at the request of the victim or victims, or the parent or guardian of a minor or incapacitated victim.</p> <p>(8) The costs of testing and counseling provided under subsections (2), (3) and (7) of this section shall be paid through the compensation for crime victims program authorized by <a href="#">ORS 147.005</a> to <a href="#">147.367</a> from amounts appropriated for such purposes. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.</p> <p>(9) When a court orders a convicted person to submit to a test under this section, the withdrawal of blood may be performed only by a physician licensed to practice medicine or by a licensed health care provider acting within the provider's licensed scope of practice or acting under the supervision of a physician licensed to practice medicine.</p> <p>(10) No person authorized by subsection (9) of this section to withdraw blood, no person assisting in the performance of the test nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.</p> <p>(11) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the information. Any violation of this subsection is a Class C misdemeanor.</p> <p>(12) As used in this section:</p> <ul style="list-style-type: none"> <li>(a) "HIV test" means a test as defined in <a href="#">ORS 433.045</a>.</li> </ul>

<b>OR Title 14 Code §</b>	<b>Code Language</b>
	<p>(b) "Parent or guardian of the victim" means a custodial parent or legal guardian of a victim who is a minor or incapacitated person.</p> <p>(c) "Positive reaction" means a positive HIV test with a positive confirmatory test result as specified by the Department of Human Services.</p> <p>(d) "Transmission of body fluids" means the transfer of blood, semen, vaginal secretions or other body fluids identified by rule of the Department of Human Services, from the perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.</p> <p>(e) "Victim" means the person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the crime.</p>

<b>Title 30: Education and Culture</b>
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OR Title 30 Code §	Code Language
§ 336.455	<p><b>Human sexuality education courses; criteria.</b></p> <p>(1) Course material and instruction for all human sexuality education courses that discuss human sexuality in public elementary and secondary schools shall enhance students' understanding of sexuality as a normal and healthy aspect of human development. Course instruction shall be appropriate for the age of the pupils and satisfy the following criteria:</p> <p>(a) Be comprehensive.</p> <p>(b) As an integral part of the health education curriculum, include information about responsible sexual behaviors and hygienic practices that eliminate or reduce the risks of pregnancy, exposure to human immunodeficiency virus, hepatitis B and other infectious or sexually transmitted diseases and shall be designed to allay those fears concerning the risks that are scientifically groundless.</p> <p>(c) Promote abstinence for school-age youth and mutually monogamous relationships with an uninfected partner for adults as the safest and most responsible sexual behavior. However, abstinence shall not be taught to the exclusion of other material and instruction on contraceptive and disease reduction measures. Human sexuality education courses shall acknowledge the value of abstinence while not devaluing or ignoring those young people who have had or are having sexual intercourse.</p> <p>(d) Include a discussion of the possible emotional, physical and psychological consequences of preadolescent and adolescent sexual intercourse and the emotional, physical and psychological consequences of unintended pregnancy. Pupils shall be provided with statistics based on the latest medical information regarding both the possible side effects and health benefits of all forms of contraceptives, including the success and failure rates for prevention of pregnancy.</p> <p>(e) Stress that sexually transmitted diseases are serious possible hazards of sexual contact. Pupils shall be provided with statistics based on the latest medical information regarding the efficacy of contraceptives in preventing human immunodeficiency virus infection and other sexually transmitted diseases.</p> <p>(f) Advise pupils of the laws pertaining to their financial responsibility for their children.</p> <p>(g) Advise pupils of the circumstances in which it is unlawful under ORS 163.435 and 163.445 for persons 18 years of age or older to have sexual relations with persons younger than 18 years of age to whom they are not married.</p> <p>(h) Teach that no form of sexual expression is acceptable when it physically or emotionally harms oneself or others and teach pupils not to make unwanted physical and verbal sexual advances, how to decline unwanted sexual advances or accept the refusal of unwanted sexual advances. Pupils shall be taught that it is wrong to take advantage of or to exploit another person. Materials and information shall be presented in a manner sensitive to the fact that there are students who have experienced sexual abuse.</p> <p>(i) Validate through course material and instruction the importance of</p>

<b>OR Title 30 Code §</b>	<b>Code Language</b>
	<p>honesty with oneself and others, respect for each person's dignity and well-being, and responsibility for one's actions.</p> <p>(j) Assist students in the development and practice of effective communication skills, the development of self-esteem and the ability to resist peer pressure.</p> <p>(k) Encourage family communication and involvement and help students learn to make responsible decisions.</p> <p>(2) Any course in any public elementary and secondary school, the main purpose of which is to teach human sexuality education or human immunodeficiency virus education, or both, shall emphasize that abstinence from sexual contact is the only method that is 100 percent effective against unintended pregnancy, sexually transmitted diseases and human immunodeficiency virus when transmitted sexually. Abstinence is to be stressed, but not to the exclusion of other material and instruction on contraceptive and disease reduction measures. Such courses are to acknowledge the value of abstinence while not devaluing or ignoring those young people who have had or are having sexual intercourse.(3) Nothing in this section prohibits instruction in sanitation, hygiene or traditional courses in biology.</p>

<b>Title 34: Human Services; Juvenile Code; Corrections</b>
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OR Title 34 Code §	Code Language
§ 414.153	<p><b>Authorization for payment for certain point of contact services.</b></p> <p>In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to insure access to public health services through contract under ORS chapter 414, the state shall:</p> <p>(1) Unless cause can be shown why such an agreement is not feasible, require and approve agreements between prepaid health plans and publicly funded providers for authorization of payment for point of contact services in the following categories:</p> <p>(b) Human immunodeficiency virus and acquired immune deficiency syndrome prevention services; and</p>
§ 419C.475	<p><b>Authority to order HIV testing.</b></p> <p>(1) Whenever a youth offender has been found to be within the jurisdiction of the court under <a href="#">ORS 419C.005 (1)</a> for having committed an act from which it appears that the transmission of body fluids from one person to another as described in <a href="#">ORS 135.139</a> may have been involved or a sexual act may have occurred, the court shall order the youth offender to submit to HIV testing as provided in <a href="#">ORS 135.139</a> if the victim, or parent or guardian of the victim, requests the court to make such an order.</p> <p>(2) The court may also order the youth offender or the parent or guardian of the youth offender to reimburse the appropriate agency for the cost of the test.</p>

<b>Title 36: Public Health and Safety</b>	
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OR Title 36 Code §	Code Language
§ 433.006	<p><b>Investigation and control measures.</b></p> <p>In response to each report of a reportable disease, the local public health administrator shall assure that investigations and control measures, as prescribed by Department of Human Services rule, shall be conducted.</p>
§ 433.017	<p><b>Test of blood of pregnant woman required; patient consent; rules</b></p> <p>(1) Every licensed physician attending a pregnant woman in this state for conditions relating to her pregnancy during the period of gestation or at the time of delivery shall, as required by rule of the Department of Human Services, take or cause to be taken a sample of blood of every woman so attended at the time of the first professional visit or within 10 days thereafter. The blood specimen thus obtained shall be submitted to a licensed laboratory for such tests related to any infectious condition which may affect a pregnant woman or fetus, as the department shall by rule require, including but not limited to an HIV test as defined in ORS 433.045.</p> <p>(2) Every other person permitted by law to attend a pregnant woman in this state, but not permitted by law to take blood samples, shall, as required by rule of the department, cause a sample of blood of such pregnant woman to be taken by a licensed physician, and have such sample submitted to a licensed laboratory for the tests described under subsection (1) of this section.</p> <p>(3) In all cases under subsections (1) and (2) of this section the physician shall request consent of the patient to take a blood sample. No sample shall be taken without such consent.</p>
§ 433.045	<p><b>Consent to HIV test required; exceptions.</b></p> <p>(1) Except as provided in subsection (6) of this section and ORS 433.017, 433.055 (3) and 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining informed consent as described in subsection (2) or (7) of this section.</p> <p>(2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider or facility shall comply with the requirement of subsection (1) of this section through a procedure substantially similar to that specified in ORS 677.097. Any other person shall comply with this requirement through use of such forms, procedures and educational materials as the Department of Human Services shall specify.</p> <p>(3) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall</p>

OR Title 36 Code §	Code Language
	<p>disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any Department of Human Services rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.</p> <p>(4) Any person who complies with the requirements of this section shall not be subject to an action for civil damages.</p> <p>(5) An HIV test shall be considered diagnosis of venereal disease for purposes of ORS 109.610.</p> <p>(6) The Department of Human Services shall prescribe by rule a procedure whereby an individual who is housed in a state institution and is incapable of granting informed consent for an HIV test may be tested.</p> <p>(7) Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the use of such a test must be revealed to the applicant and the written consent thereof obtained. The consent form shall disclose the purpose of the test and the persons to whom the results may be disclosed.</p> <p>(8) As used in this section:</p> <p>(a) 'HIV test' means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.</p> <p>(b) 'Person' includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance producer, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them. For purposes of subsection (3) of this section, 'person' does not include an individual acting in a private capacity and not in an employment, occupational or professional capacity.</p> <p>(c) 'State institution' means all campuses of the Oregon State Hospital, the Blue Mountain Recovery Center and the Eastern Oregon Training Center.</p>
§ 433.055	<p><b>Prevalence studies.</b></p> <p>(1) The Department of Human Services shall conduct studies of the prevalence of the HIV infection in this state. Its findings shall be reported to the Public Health Advisory Board, the Conference of Local Health Officials, the Emergency Board and other interested bodies at regular intervals, commencing in January 1988. The Department of Human Services may cause the prevalence study of persons sentenced to the Department of Corrections of this state, as defined in <a href="#">ORS 421.005</a>, to be</p>



OR Title 36 Code §	Code Language
	<p>made.</p> <p>(2) The Department of Human Services shall contract with an appropriate education agency to prepare a curriculum regarding HIV infection, acquired immune deficiency syndrome (AIDS) and prevention of the spread of AIDS for all school districts and offer workshops to prepare teachers and parents to implement the curriculum. The department shall award incentive grants from funds available therefor to school districts to encourage use of the curriculum in the schools.</p> <p>(3) Prior informed consent to HIV antibody testing need not be obtained from an individual if the test is for the purpose of research as authorized by the Department of Human Services and if the testing is performed in a manner by which the identity of the test subject is not known, and may not be retrieved by the researcher.</p>
§ 433.060	<p><b>Definitions for ORS 433.060 to 433.085.</b></p> <p>As used in <a href="#">ORS 433.060</a> to <a href="#">433.085</a> unless the context requires otherwise:</p> <p>(1) "Department" means the Department of Human Services.</p> <p>(2) "Health care facility" means a facility as defined in <a href="#">ORS 442.015</a> and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 and 430.397 to 430.401 or ORS chapter 430.</p> <p>(3) "Hepatitis test" means a test of an individual for the presence of hepatitis B or C or for any other substance specifically indicating the presence of hepatitis B or C.</p> <p>(4) "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.</p> <p>(5) "Licensed health care provider" or "health care provider" means a person licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or <a href="#">ORS 682.216</a>, or under comparable statutes of any other state.</p> <p>(6) "Local public health administrator" means the public health administrator of the county or district health department for the jurisdiction in which the reported substantial exposure occurred.</p> <p>(7) "Local public health officer" means the health officer, as described in <a href="#">ORS 431.418</a>, of the county or district health department for the jurisdiction in which the substantial exposure occurred.</p>

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	<p>(8) "Occupational exposure" means a substantial exposure of a worker in the course of the worker's occupation.</p> <p>(9) "Source person" means a person who is the source of the blood or body fluid in the instance of a substantial exposure of another person.</p> <p>(10) "Substantial exposure" means an exposure to blood or certain body fluids as defined by rule of the Department of Human Services to have a potential for transmitting the human immunodeficiency virus based upon current scientific information.</p> <p>(11) "Worker" means a person who is licensed or certified to provide health care under ORS chapters 677, 678, 679, 680, 684 or 685 or <a href="#">ORS 682.216</a>, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory, as defined in <a href="#">ORS 438.010 (1)</a>, a firefighter, a law enforcement officer, as defined in <a href="#">ORS 414.805</a>, a corrections officer or a probation officer.</p>
§ 433.065	<p><b>Procedures for HIV testing; rules.</b></p> <p>(1) The Department of Human Services shall by rule prescribe procedures:</p> <p>(a) Whereby a worker who has experienced an occupational exposure may request or cause to be requested the source person's voluntary informed consent to an HIV test;</p> <p>(b) Whereby a person who, while being administered health care, has experienced a substantial exposure from a worker shall be given notice of such exposure and be given opportunity to request or cause to be requested the worker's voluntary informed consent to an HIV test; and</p> <p>(c) Whereby a person who has experienced a substantial exposure shall be offered information about HIV infection, methods of preventing HIV infection and HIV tests.</p> <p>(2) Rules prescribing procedures under subsection (1)(a) of this section may require the participation or intervention of the health care facility and licensed health care provider providing care to the source person and may require the further participation or intervention of the local public health administrator or local public health officer.</p> <p>(3) Where the source person under subsection (1)(a) of this section is not known to be under the care of a health care facility or provider or cannot be located, and in the case of procedures under subsection (2) of this section, the rules may require the participation and intervention of the local public health administrator.</p> <p>(4) The rules under this section may also include, but need not be limited to, time frames within which the notice and other procedures are to be performed and by whom, prescribed forms for reporting of exposures, and for recording of results of procedures undertaken and restrictions upon disclosure of such reports and records only to specific persons.</p>

OR Title 36 Code §	Code Language
§ 433.075	<p><b>Informed consent required; confidentiality.</b></p> <p>(1) The informed consent provisions of <a href="#">ORS 433.045 (1)</a> and (2) apply to any request for consent to an HIV test under rules adopted pursuant to <a href="#">ORS 433.065</a>.</p> <p>(2) When a source person is deceased, consent for voluntary informed consent under <a href="#">ORS 433.065</a> shall be from the next of kin.</p> <p>(3) When an HIV test is performed pursuant to <a href="#">ORS 433.080</a> or rules adopted under <a href="#">ORS 433.065</a>, the exposed person requesting the test, or the exposed person's employer in the case of an occupational exposure, shall be responsible for the cost of the testing.</p> <p>(4) Where an employer provides a program of prevention, education and testing for HIV exposures for its employees, the employee to be tested under the provisions of this Act shall comply with the procedures provided by such program. Such program must be approved by the Department of Human Services.</p> <p>(5) When an HIV test is performed pursuant to <a href="#">ORS 433.080</a> or rules adopted under <a href="#">ORS 433.065</a>, the results shall be reported confidentially to the person who suffered the substantial exposure giving rise to the test.</p> <p>(6) The confidentiality provisions of <a href="#">ORS 433.045 (3)</a> apply to any person who receives an HIV test result pursuant to <a href="#">ORS 433.080</a> or rules adopted under <a href="#">ORS 433.065</a>. Any person who complies with the requirements of this subsection shall not be subject to an action for damages.</p>
§ 433.080	<p><b>When test may be required; procedure to require test; rules.</b></p> <p>When the Department of Human Services declares by rule that mandatory testing of source persons could help a defined class of workers from being infected or infecting others with the human immunodeficiency virus, the following apply:</p> <p>(1) When a source person, after having been first requested to consent to testing by rules adopted under <a href="#">ORS 433.065</a>, has refused or within a time period prescribed by rule of the department has failed to submit to the requested test, except when the exposed person has knowledge that the exposed person has a history of a positive HIV test, the exposed person may seek mandatory testing of the source person by filing a petition with the circuit court for the county in which the exposure occurred. The form for the petition shall be as prescribed by the department and shall be obtained from the local public health department.</p> <p>(2) The petition shall name the source person as the respondent and shall</p>

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	<p>include a short and plain statement of facts alleging:</p> <p>(a) The petitioner is a worker subjected to an occupational exposure or a person who has been subjected to a substantial exposure by a worker administering health care and the respondent is the source person;</p> <p>(b) The petitioner is in the class of workers defined by rule of the Department of Human Services under this section;</p> <p>(c) All procedures for obtaining the respondent's consent to an HIV test by rules adopted under <a href="#">ORS 433.065</a> have been exhausted by the petitioner and the respondent has refused to consent to the test, or within the time period prescribed by rule of the department has failed to submit to the test;</p> <p>(d) The petitioner has no knowledge that the petitioner has a history of a positive HIV test and has since the exposure, within a time period prescribed by rule of the department, submitted a specimen from the petitioner for an HIV test; and</p> <p>(e) The injury that petitioner is suffering or will suffer if the source person is not ordered to submit to an HIV test.</p> <p>(3) The petition shall be accompanied by the certificate of the local public health administrator declaring that, based upon information in the possession of the administrator, the facts stated in the allegations under subsection (2)(a), (b) and (c) of this section are true.</p> <p>(4) Upon the filing of the petition, the court shall issue a citation to the respondent stating the nature of the proceedings, the statutes involved and the relief requested and, that if the respondent does not appear at the time and place for hearing stated in the citation, that the court will order the relief requested in the petition.</p> <p>(5) The citation shall be served on the respondent together with a copy of the petition by the county sheriff or deputy. The person serving the citation and petition shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court.</p> <p>(6) The hearing shall be held within three days of the service of the citation upon the respondent. The court may for good cause allow an additional period of 48 hours if additional time is requested by the respondent.</p> <p>(7) Both the petitioner and the local public health administrator certifying to the matter alleged in the petition shall appear at the hearing. The hearing of the case shall be informal with the object of resolving the issue before the court promptly and economically between the parties. The parties shall be entitled to subpoena witnesses, to offer evidence and to cross-examine. The judge may examine witnesses to insure a full inquiry into the facts necessary for a determination of the matter before the court.</p> <p>(8) After hearing all of the evidence, the court shall determine the truth of</p>

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	<p>the allegations contained in the petition. The court shall order the respondent to submit to the requested test by a licensed health care provider without delay if, based upon clear and convincing evidence, the court finds that:</p> <ul style="list-style-type: none"> <li>(a) The allegations in the petition are true;</li> <li>(b) The injury the petitioner is suffering or will suffer is an injury that only the relief requested will adequately remedy; and</li> <li>(c) The interest of the petitioner in obtaining the relief clearly outweighs the privacy interest of the respondent in withholding consent.</li> </ul> <p>(9) If the court does not make the finding described in subsection (8) of this section, the court shall dismiss the petition.</p> <p>(10) Failure to obey the order of the court shall be subject to contempt proceedings pursuant to law.</p>
§ 433.085	<p><b>HIV and hepatitis testing at request of law enforcement officer; procedure.</b></p> <p>(1) Notwithstanding any other provision of law, any employee of the Department of Corrections, law enforcement officer as defined in <a href="#">ORS 414.805</a>, parole and probation officer, corrections officer, emergency medical technician, firefighter or paramedic who in the performance of the individual's official duties comes into contact with the bodily fluids of another person may seek to have the source person tested for HIV and hepatitis B or C by petitioning the circuit court for an order compelling the testing.</p> <p>(2) The petition submitted to the court must set forth the facts and circumstances of the contact and the reasons the petitioner and a medically trained person representing the petitioner, if available, believe the exposure was substantial and the testing would be appropriate. The petition must also include information sufficient to identify the alleged source person and the location of the alleged source person, if known. The court shall hold an ex parte hearing in person or by telephone on the day of receipt of the petition, if possible, or within a reasonable period not to exceed three judicial days. Upon a showing that the petitioner has been exposed to the bodily fluids of another person and the circumstances create probable cause to conclude that a significant possibility exists that the petitioner has been exposed to HIV or hepatitis B or C, the court shall order the testing of the source person.</p> <p>(3) If the court orders a test under subsection (2) of this section:</p> <ul style="list-style-type: none"> <li>(a) The order shall direct the source person to allow the required test to be performed by a licensed health care provider without delay and may specify a time when the test must be completed. If the source person is in custody or otherwise subject to the legal control of another person, the order may be directed to the agency with custody of, or the other person with legal control over, the source person and direct the agency or other person to provide the source person with a copy of the order and ensure that the required test is performed.</li> </ul>

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	<p>(b) The petitioner shall designate a physician to receive the test results on behalf of the petitioner.</p> <p>(c) The order must inform the source person, agency or other person of who is to receive the results of the test and of how to obtain payment for costs under subsection (6) of this section.</p> <p>(d) The order shall be served on the source person, or the agency with custody of or other person with legal control over the source person, in the manner directed by the court. The court may provide for service of the order by any means appropriate to the circumstances of the source person, including but not limited to service by the petitioner or by directing the sheriff to serve the order. Any costs of service shall be paid as provided under subsection (6) of this section.</p> <p>(e) The order is enforceable through the contempt powers of the court.</p> <p>(4) The results of any test ordered under this section are confidential and subject to the confidentiality provisions of <a href="#">ORS 433.045 (3)</a>. The results shall be made available only to those persons authorized under <a href="#">ORS 433.045 (3)</a> and to the petitioner, the physician designated by the petitioner to receive the results, the Department of Human Services, the subject person and any physician designated by the subject person to receive the results.</p> <p>(5) If the test results are negative, the court may order the subject person to submit to additional testing six months after the first test was conducted.</p> <p>(6) No charge or filing fee may be imposed for the filing of a petition under this section. The cost of any testing ordered under this section shall be the responsibility of the employer of the petitioner.</p>

**Title 52: OCCUPATIONS AND PROFESSIONS**

<b>OR Title 52 Code §</b>	<b>Code Language</b>
§ 677.097	<p><b>Procedure to obtain informed consent of patient.</b></p> <p>(1) In order to obtain the informed consent of a patient, a physician or podiatric physician and surgeon shall explain the following:</p> <ul style="list-style-type: none"><li>(a) In general terms the procedure or treatment to be undertaken;</li><li>(b) That there may be alternative procedures or methods of treatment, if any; and</li><li>(c) That there are risks, if any, to the procedure or treatment.</li></ul> <p>(2) After giving the explanation specified in subsection (1) of this section, the physician or podiatric physician and surgeon shall ask the patient if the patient wants a more detailed explanation. If the patient requests further explanation, the physician or podiatric physician and surgeon shall disclose in substantial detail the procedure, the viable alternatives and the material risks unless to do so would be materially detrimental to the patient. In determining that further explanation would be materially detrimental the physician or podiatric physician and surgeon shall give due consideration to the standards of practice of reasonable medical or podiatric practitioners in the same or a similar community under the same or similar circumstances.</p>

<b>Oregon Administrative Rules – Title 166: Archives Division</b>
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Title 166 OAR	Code Language
166-150-0065	<p><b>County Health -- Public/Community Health Records</b></p> <p>(4) Communicable Disease Intake Report Series is used to identify persons with communicable diseases such as sexually transmitted diseases, HIV, tuberculosis, food-borne diseases, and others. Information contained in the report may include name of disease, patient identification, name of physician, symptoms, laboratory results, and other related data. Information from this intake report may be transferred to the investigation report or the intake report may be attached to the investigation report. (Minimum retention: 1 year)</p> <p>(9) HIV Test Records Series documents the results of anonymous or confidential HIV tests. Information contained in the records may include test results, demographic information, patient history, number of test results, and other related data. Anonymous testing programs do not give the name of the patient, and may include only a client number and demographic information such as race, age, and sex. Confidential programs include the name and address of the patient which is then kept confidential. (Minimum retention: 2 years)</p>



**Oregon Administrative Rules – Title 230: Department of Oregon State Police,  
Boxing and Wrestling Commission**

<b>Title 230 OAR</b>	<b>Code Language</b>
230-020-0300	<b>Medical Examination of Boxer, Wrestler and Referee Applicants</b>  (5) Boxer, wrestler, or referee applicants for initial or renewal licensing must also submit evidence that the applicant has, within the previous 30 days, been administered an HIV test for the presence of AIDS antibodies and that the results of such test were negative.

<b>Oregon Administrative Rules – Title 333: Department of Human Services, Public Health Division</b>
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Title 333 OAR	Code Language
332-025-0022	<p><b>Standards of Care</b></p> <p>Standards of care for the determination of initial visits, laboratory tests, prenatal visits, education/counseling/anticipatory guidance, emergency access, intrapartum care, postpartum care, and newborn care include:</p> <p>(5) EDUCATION/COUNSELING/ANTICIPATORY GUIDANCE: The midwife must offer information or referral to community resources on childbirth preparation, breast-feeding, exercise and nutrition, parenting, and care of the newborn. Using the informed consent process, birth attendants must inform pregnant women and their families about available obstetric and pediatric tests and procedures, multiple genetic marker screen, chorionic villi sampling, amniocentesis, prenatal Rho immune globulin, ultrasound, human immunodeficiency virus (HIV) counseling and testing, newborn metabolic screening, eye prophylaxis, herpes testing and treatment, neonatal vitamin K and circumcision. The midwife shall counsel the parents regarding the current Centers for Disease Control (CDC) protocol regarding Group B Strep testing, and document the client's informed consent.</p>
333-012-0264	<p><b>Procedures for Determining HIV and Hepatitis B Status of Source Person Following Occupational Exposure to Body Fluids</b></p> <p>(1) Any worker who experiences an occupational exposure may make a confidential written report of the incident and request for intervention to the health care provider and/or health care facility primarily responsible for the care of the source person. The employer representative may also make such a report and/or request.</p> <p>(2) A health care facility shall establish and follow written procedures by which such reports and requests are first presented to the facility by the exposed worker and then, in turn, by the facility to the source person's primary health care provider;</p> <p>(3) When the care of the source person is not being provided in a health care facility, the exposed worker or their employer representative may make the report and request for intervention directly to the source person's health care provider or if the source person's health care provider is unknown, the local health department (see sections 5(a)-(d) below);</p> <p>(4) Once the report is received, the health care facility or source person's health care provider shall evaluate the evidence that the exposure was substantial. If the facility or source person's health care provider judge that the exposure was not substantial, the exposed worker may request their own health care provider to evaluate whether or not the exposure was substantial. If the respective health care providers do not agree, the</p>

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	<p>local health department administrator or designee shall decide whether or not the exposure is substantial, upon request. If it is judged to have been a substantial exposure, the source person's health care provider shall notify the exposed worker whether the source person has been tested for HIV or for hepatitis B or C, and, if so, what the test results were, provided that:</p> <p>(a) The individual whose HIV or hepatitis B or C test information is released is notified in writing of this disclosure; and</p> <p>(b) The identity of the person tested for HIV or hepatitis B or C is not explicitly disclosed during the notification process. Any individual who has HIV or hepatitis B or C information about another individual pursuant to this subsection shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as otherwise required or permitted by Oregon law.</p> <p>(5) The exposed worker or their employer representative may make a written report of the substantial exposure and request for intervention to the local public health department for the jurisdiction in which the exposure occurred, if any of the following circumstances exist:</p> <p>(a) A specimen is not obtained from the source person within two working days after the written report is received by the source person's health care provider, regardless of the reason;</p> <p>(b) No health care provider for the source person is known;</p> <p>(c) The health care provider who has received a report of an occupational exposure and request for intervention finds that the facts stated do not demonstrate that a substantial exposure has occurred;</p> <p>(6) Under any of these circumstances, the local public health officer will review the facts and decide whether a substantial exposure did in fact occur.</p> <p>(7) Intervention by the local public health department. When the local public health administrator is notified of an occupational exposure, within two working days he or she shall follow the procedures outlined above in sections 4(a) and (b).</p> <p>(8) Pursuant to <a href="#">ORS 433.065</a> and <a href="#">433.006</a>, an exposed worker shall be offered information about HIV and Hepatitis B or C infections, methods of preventing HIV or Hepatitis B or C infections, HIV and Hepatitis B or C tests and assistance in following the procedures outlined above. For employed workers this information and assistance shall be provided by the employer of the worker. Persons who are self-employed may obtain this information and assistance from a representative of the local health department.</p>
333-012-0265	<p><b>Informed Consent</b></p> <p>(1) General scope. Pursuant to <a href="#">ORS 433.045</a>, no person shall submit the blood of an individual to an HIV test without first obtaining informed</p>

<b>Title 333 OAR</b>	<b>Code Language</b>
	<p>consent or ascertaining that informed consent is obtained. This requirement does not apply to the HIV testing of women during pregnancy or delivery (ORS 433.045, 433.017 and OAR 333-018-0030), or HIV testing of deceased persons in the anatomical gift setting or the official medical examiner setting or where a clinical laboratory performs an HIV test on a specimen obtained outside of Oregon.</p> <p>(2) Who may give consent:  (a) Anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give consent for HIV testing of that individual;  (b) A minor under 15 years of age may also give consent.</p> <p>(3) Statutory exceptions to the requirement of informed consent prior to HIV testing:  (a) Pursuant to ORS 433.055(3), informed consent for an HIV test need not be obtained from an individual if the test is for the purpose of research as authorized by the Division and if the testing is performed in a manner by which the identity of the individual is not known, and may not be retrieved by the researcher;  (b) Pursuant to Section 20(4), Chapter 600, Oregon Laws 1987, informed consent for an HIV test need not be obtained from an individual convicted of sex crimes or drug-related crimes who is tested for HIV infection by the Oregon Department of Corrections after being screened for and found to have evidence for possible exposure to HIV;  (c) Nothing herein is intended to exclude any other exceptions that may arise under Oregon law.</p> <p>(4) Informed consent for HIV tests ordered by licensed physicians. In obtaining informed consent for an HIV test, a licensed physician shall follow the procedure in ORS 677.097.</p> <p>(5) Informed consent for HIV tests ordered by other licensed health care providers or persons acting on behalf of licensed health care facilities. In obtaining informed consent for an HIV test, and other licensed health care provider or persons acting on behalf of a licensed health care facility shall use a procedure that is substantially similar to that specified in ORS 677.097.</p> <p>(6) Informed consent for HIV tests ordered or arranged for by insurers, insurance agents, or insurance support organizations. In obtaining informed consent for an HIV test, an insurer, insurance agent, or insurance support organization as defined in ORS 746.600, or persons acting in behalf thereof, shall comply with the rules of the Insurance Division, OAR 836-050-0200 through 836-050-0255, which contain substantially the same procedures as specified in subsection (7)(a) of this rule.</p> <p>(7) Informed consent for HIV tests ordered or arranged for by any persons other than those covered in sections (4), (5), and (6) of this</p>

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	<p>rule. Informed consent for HIV tests ordered or arranged for by any persons other than: licensed physicians; other licensed health care providers; persons acting on behalf of licensed health care facilities; or insurers, insurance agents, and insurance-support organizations, as defined in ORS 746.600, shall be obtained as specified in this section:</p> <p>(a) Procedure for informed consent. Except as provided in subsection (7)(b) of this rule, in order to obtain informed consent for an HIV test of an individual, any person subject to section (7) of this rule shall carry out the following procedure:</p> <p>(A) Provide the individual for his/her retention a copy of the form as specified in Appendix 1;</p> <p>(B) Orally summarize for the individual the substance of the statement in Appendix 1 and specify alternatives to the HIV test in the particular instance, and if the test information will be disclosed to others, who those others will be;</p> <p>(C) Explain the risks from having the HIV test. This shall include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement that there may be circumstances under which disclosure might be permitted or required without consent; and a statement of the potential consequences in regards to insurability, employment, and social discrimination if the HIV test results become known to others;</p> <p>(D) Inform the individual that he or she has the right to request additional information from a knowledgeable person before giving consent;</p> <p>(E) Ask the individual to be tested whether he/she has any further questions, and if so, provide the individual a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests and the consequences of being tested or not tested;</p> <p>(F) Have the individual sign a consent form as specified in Appendix 1, after having had an opportunity to read it;</p> <p>(G) Maintain the signed form as specified in Appendix 1 for at least seven years.</p> <p>(b) Exemptions from use of the form as specified in Appendix 1:</p> <p>(A) Blood banks, plasma centers, and sperm banks may apply to the State Public Health Director for exemption from mandatory use of a form as specified in Appendix 1. In order to be eligible for such exemption, the blood bank, plasma center, or sperm bank must use a form or forms having a content substantially similar to that specified in Appendix 1. Approval of exemption by the State Public Health Director shall be in writing and shall be effective as to the form or forms approved for use under the application. The application must be in writing, dated and signed by the executive officer of the blood bank, plasma center, or sperm bank, and include a copy of the form or forms for which exemption is requested;</p> <p>(B) If exemption is granted, all procedures specified in paragraphs (7)(a)(B)-(G) of this rule shall be applied in using the approved form adopted by the blood bank, plasma center, or sperm bank.</p>

<b>Title 333 OAR</b>	<b>Code Language</b>
333-012-0266	<p><b>Procedures for Soliciting HIV Testing Following Occupational Exposures to Body Fluids</b></p> <p>(1) Pursuant to <a href="#">ORS 433.065</a>, concerning who may request that testing be done and the procedures to be followed in obtaining test results:</p> <p>(1) Procedures described under Section 333-012-0264 should be followed. If it is judged that the exposure was substantial, the source person's health care provider or local health department shall approach the source person or the source person's health care representative and solicit consent to testing. This rule applies both to exposed workers who are employed by the facility and to exposed workers whose substantial exposure occurs during preadmission care of source persons transported to that facility;</p> <p>(2) When the source person is deceased, a request for consent to testing under this section shall be made to the person having the right to control the remains of the decedent, as specified in ORS 97.130. When a source person is unable to give consent as determined by the health care provider, anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give consent for HIV testing of that individual. If, within reasonable effort, such a person cannot be found, consent may be given by two physicians licensed to practice medicine in the state of Oregon.</p> <p>(3) The fact that a request for consent to a test was made, the date of the request, and whether or not the source person or the source person's health care representative consented to be tested shall be recorded in writing and signed by the health care provider or local public health administrator or designee requesting consent. This record shall immediately be made available to the exposed worker.</p> <p>(4) If consent for testing is given, the HIV test results may be released to the exposed worker provided that :</p> <p>(a) The individual whose HIV test results are released is notified in writing of this disclosure; and</p> <p>(b) The identity of the person tested for HIV is not explicitly disclosed during the notification process. Any individual who has HIV information about another individual pursuant to this subsection shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as otherwise required or permitted by Oregon law.</p> <p>(5) If consent for HIV testing is refused, see section 333-012-0269 for procedures for mandatory HIV testing.</p>
333-012-0267	<p><b>Procedures Following Substantial Exposure of a Patient by a Health Care Worker</b></p> <p>(1) Any worker who has been the source of a substantial exposure to a patient while administering health care to that patient shall cause that exposure to be reported in writing to the exposed patient and to the worker's employer or health care facility where the exposure occurred within two days of the incident. Upon request by the health care worker</p>

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	<p>or health care facility, the local health department shall provide assistance in making this notification to the exposed patient. The report shall advise the exposed patient if the worker will consent to an HIV test if it is requested. If the worker does not consent, the report will indicate that the exposed patient may request, with the assistance of the local public health department, the worker to consent to an HIV test. If two days have passed after a substantial exposure and a witness to the incident has reason to believe the patient has not been notified of the substantial exposure, the witness shall, if a worker, and may, if not a worker, notify either the health care worker's employer or the local health department and provide details of the incident.</p> <p>(2) An exposed patient who has received a report of an exposure under section (1) of this rule may make a written request for intervention to the local public health administrator. Upon receipt of the report, the local health department administrator or designee shall, within two working days, request the health care worker to consent to testing. The fact that a request for consent to a test or tests was made, the date of the request and whether or not the source person consented to be tested shall be recorded in writing and signed by the local public health administrator or designee requesting the consent. The record shall immediately be made available to the exposed patient.</p> <p>(3) Pursuant to <a href="#">ORS 433.065</a>, a patient who has experienced a substantial exposure by a person providing them health care shall be offered information about HIV infection, methods of preventing HIV infection, and HIV tests. This information will be provided by the patient's primary care provider. Upon request by the patient's health care provider, the local health department administrator or designee shall provide assistance in providing this information to the exposed patient.</p>
333-012-0268	<p><b>Other Procedures to be Followed</b></p> <p>(1) When an HIV test is performed pursuant to OAR 333-012-0269, the blood specimen must be drawn by a licensed physician or another licensed health care provider under the supervision of a licensed physician or licensed nurse practitioner. The test(s) must be performed in a licensed clinical laboratory, which will report the results only to an authorized person pursuant to <a href="#">ORS 438.430</a>. Once received from the laboratory, test results shall be reported confidentially both to the source person and to the person who suffered the substantial exposure giving rise to the test.</p> <p>(2) Except as provided in <a href="#">ORS 433.080</a>, the informed consent provisions of OAR 333-012-0265 and the confidentiality provisions of OAR 333-012-0270 shall apply to HIV testing pursuant to OAR 333-012-0267 and 333-012-0269.</p> <p>(3) Pursuant to <a href="#">ORS 433.075(4)</a>, where an employer provides a program of prevention, education and testing for HIV exposures for its employees,</p>

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	<p>the program will be considered to be approved by the Oregon Health Division if the employee to be tested receives counseling regarding infection control, uniform body fluids precautions, sexual/needle-sharing abstinence and safer sex practices including advice about precautionary measures to be taken with partners at risk of exposure to HIV while test results are pending. The Oregon Health Division will make the educational materials needed for such a program available at cost to any employer who requests such materials in writing. Laboratories used for testing services must comply with College of American Pathologists or U.S. Centers for Disease Control proficiency standards on a regular basis. If an employer does not have a testing program in place, the employer shall notify the exposed worker of a health care provider who will perform testing, or an exposed worker may seek medical treatment from a health care provider of his or her choice.</p>
333-012-0269	<p><b>Procedures for Mandatory HIV Testing Following Occupational Exposure to Body Fluids</b></p> <p>(1) The provisions of <a href="#">ORS 433.080</a>, which describe the legal petition process for mandatory testing of a source person, may be invoked only if the petitioner:</p> <ul style="list-style-type: none"> <li>(a) Has received a substantial exposure, and at the time of exposure either was an exposed worker or was a patient exposed to a health care worker during the provision of health care services;</li> <li>(b) Has followed the procedures for soliciting voluntary HIV testing following occupational exposures to body fluids as outlined in OAR 333-012-0266;</li> </ul> <p>(3) Provides written documentation from a licensed health care provider that the petitioner meets the above criteria (subsections (a) and (b)). Once this documentation is received, mandatory testing must be done within three weeks following the petition, if, on adjudication, it is found that the petitioner's claim has merit.</p> <p>(2) The exposed worker/patient must agree to undergo HIV testing in order to activate the mandatory provisions of <a href="#">ORS 433.080</a>. Written certification from a health care provider that such a test specimen has been submitted must be provided at the time the petition is filed to request a court order for mandatory testing of the source person.</p> <p>(3) The mandatory provisions of <a href="#">ORS 433.080</a> shall only be activated if decisions regarding a specific medical intervention, such as post-exposure prophylaxis, will be significantly influenced based on the results of the test.</p>
333-012-0270	<p><b>Confidentiality</b></p> <p>(1) General. Pursuant to ORS 433.045(3), no person shall disclose or be compelled to disclose the identity of any individual who has an HIV-positive test result or HIV diagnosis, in a manner which permits identification of the subject of the test, except as required or permitted</p>



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	<p>by the law of this state or any rule, or as authorized by the individual whose blood is tested. For purposes of this rule HIV test result means a positive HIV test result.</p> <p>(2) Disclosure to or for tested individual. Positive and Negative HIV test results may be disclosed to the tested individual. HIV test results may be disclosed to the person ordering the test and to any other individual authorized by the laws of Oregon to give consent to medical procedures for the individual.</p> <p>(3) Medical Information. When a licensed physician, other licensed health care provider, or licensed health care facility obtains an HIV test or HIV diagnosis of an individual, the test result, documentation of informed consent, and HIV diagnosis may be entered into the routine medical record of that individual maintained by that licensed physician, other licensed health care provider, or licensed health care facility. The information in the record may be disclosed in a manner consistent with ORS 192.518 to 192.526 to persons who must review the record for the purpose of treatment, payment or health care operations as those terms are defined in ORS 192.519.</p> <p>(4) A physician may notify an individual who has had a substantial exposure to another individual whether that individual has been HIV tested, and, if so, what the test results were, provided that:</p> <p style="padding-left: 40px;">(a) The individual whose HIV test result is released is notified in writing of this disclosure; and</p> <p style="padding-left: 40px;">(b) The identity of the HIV tested person is not explicitly disclosed during the notification process. Any individual who receives an HIV test result about another individual pursuant to this rule shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as required or permitted by Oregon law.</p> <p>(5) Reporting HIV test results to public health authorities. Reporting the identity and test result of an individual with a HIV-positive test result to the Local Public Health Authority or Division on a death certificate, or as required or permitted by OAR 333-018-0000 through 333-018-0030 is not a breach of confidentiality.</p> <p>(6) In the anatomical gift setting, the identity of a HIV tested deceased individual and that individual's HIV test results may be released to licensed physicians, other licensed health care providers, or licensed health care facilities to the minimum extent necessary to prevent contaminated anatomical parts from being transplanted into other individuals.</p> <p>(7) Disclosure with authorization. Possession of HIV test results or HIV diagnosis does not confer the right to disclose this information to others, except as permitted by this rule and otherwise by Oregon law. HIV test</p>

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	<p>results or HIV diagnosis and the identity of the tested individual may be released to any other party only with the specific written authorization of the tested individual. General consent for release of medical records is not sufficient. If, in the judgment of the attending licensed physician the patient is incapable of making health care decisions, then anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give authorization for release of HIV test results of that individual. The authorization for release of HIV test results and HIV diagnosis must specifically include:</p> <ul style="list-style-type: none"> <li>(a) The statement that the HIV test result and HIV diagnosis may be released;</li> <li>(b) The specific purpose for which the HIV result and HIV diagnosis may be released;</li> <li>(c) Those to whom the HIV result and HIV diagnosis may be released;</li> <li>(d) The specific time period during which the release may occur; and</li> <li>(e) The date of the authorization, and the signature of the individual giving authorization.</li> </ul>
333-012-0320	<p><b>HIV and Hepatitis B Testing of Health Care Providers</b></p> <p>(1) HIV testing and hepatitis B testing of health care providers is not required by the Division.</p> <p>(2) All reviewable health care providers are encouraged to voluntarily undergo testing for HIV infection. Any reviewable health care provider is encouraged to either:</p> <ul style="list-style-type: none"> <li>(a) Demonstrate serologic evidence of immunity to the hepatitis B virus from vaccination; or</li> <li>(b) To know his or her HBsAg status and, if that status is positive, is encouraged to know his or her HBeAg status.</li> </ul> <p>(3) The provisions of section (2) of this rule shall not be deemed to authorize any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance agent, insurance-support organization as defined in <a href="#">ORS 746.600</a>, government agency, employer, research organization or agent of any of them to require HIV testing of any health care provider as a condition of practice. Nor shall such provisions be deemed to create a legal standard of care for reviewable health care providers.</p>
333-018-0000	<p><b>Who is Responsible for Reporting</b></p> <p>(1) Each Health Care Provider knowing of or attending a case or suspected case of any of the diseases, infections, or conditions listed in OAR 333-018-0015 shall report such cases as specified. Where no Health Care Provider is in attendance, any individual knowing of such a case shall report in a similar manner.</p> <p>(2) Each Health Care Facility, where more than one Health Care Provider may know or attend a case or suspected case, may establish</p>

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	<p>administrative procedures to ensure that every case is reported without duplication.</p> <p>(3) Each Licensed Laboratory shall report test results as specified in OAR 333-018-0015(5). When more than one Licensed Laboratory is involved in testing a specimen, the laboratory that is responsible for reporting the test result directly to the Licensed Physician caring for the patient shall be responsible for reporting.</p>
333-018-0005	<p><b>To Whom Reports Shall Be Made</b></p> <p>(1) In general, if the patient is an Oregon resident, reports shall be made to the Local Public Health Authority for the patient's place of residence.</p> <p>(2) With the consent of the Local Public Health Authority and the Department of Human Services (DHS), reports may be made directly to DHS (e.g., via electronic reporting).</p> <p>(3) In urgent situations when Local Public Health Authority staff are unavailable, case reports shall be made directly to DHS.</p> <p>(4) Where the case is not an Oregon resident, reports shall be made either to the patient's Local Public Health Authority (if in another of the United States) or directly to DHS.</p> <p>(5) Licensed Laboratories shall report directly to the DHS HIV Program:</p> <ul style="list-style-type: none"> <li>(a) All tests indicative of and specific for HIV infection as required by OAR 333-018-0015;</li> <li>(b) All CD4+ T-lymphocyte counts; and</li> <li>(c) All HIV viral load tests.</li> </ul>
333-018-0010	<p><b>Form of the Report</b></p> <p>(1) Each report from a Health Care Provider shall include at least the identity, address, and telephone number of the person reporting and of the attending Licensed Physician, if any; the name of the person affected or ill, that person's current address, telephone number, and date of birth; the diagnosed or suspected disease, infection, or condition, and the date of illness onset.</p> <p>(2) Each report from a Licensed Laboratory shall include at least the name and telephone number of the reporting laboratory; the name, age or date of birth, and county of residence of the person from whom the laboratory specimen was obtained; the date the specimen was obtained, the name, address and telephone number of that person's Health Care Provider; the name or description of the test, and the test result.</p> <p>(3) All reports shall be made by telephone or by other means approved by the Local Public Health Authority, consistent with the needs for timely reporting as provided in OAR 333-018-0015.</p>

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	(4) Upon request, Health Care Providers and Licensed Laboratories shall provide to any Local Public Health Authority or DHS public health official additional information of relevance to the investigation or control of reportable diseases or conditions (e.g., reported signs and symptoms, laboratory test results (including negative results), potential exposures, contacts, and clinical outcomes).
333-018-0015	<p><b>What Is to Be Reported and When</b></p> <p>(1) Health Care Providers shall report all cases or suspected cases of the diseases, infections, microorganisms, and conditions specified below. The timing of Health Care Provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.</p> <p>(2) When Local Public Health Authorities cannot be reached within the specified time limits, reports shall be made directly to DHS, which shall maintain an around-the-clock public health consultation service.</p> <p>(3) Licensed Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.</p> <p>(4) Reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:</p> <p style="padding-left: 40px;">(c) Within one Local Public Health Authority working day: HIV infection (does not apply to anonymous testing) and AIDS</p>
333-018-0030	<p><b>Laboratory Reporting of HIV Testing Activity</b></p> <p>(1) Licensed laboratories shall report to the Department of Human Services (DHS), on a quarterly basis beginning March 1, 2007, a summary of the number of individuals tested and the number with HIV-positive test results:</p> <p style="padding-left: 40px;">(a) Laboratories shall report test results separately for males and females within the following age groups:</p> <p style="padding-left: 80px;">(A) &lt;5 years; (B) 5–12 years; (C) 13–19 years; (D) 20–29 years; (E) 30–39 years; (F) 40–49 years; (G) 50–64 years; and (H) ≥65 years.</p> <p style="padding-left: 40px;">(b) This report shall also identify the test type used to identify positives and negatives.</p> <p style="padding-left: 40px;">(c) Reports shall be submitted via electronic means in comma</p>

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	<p>separated or other format mutually agreeable to DHS and reporting laboratory.</p> <p>(d) Such reporting shall be on a statistical basis only and shall not otherwise identify individuals.</p> <p>(2) Blood banks, plasma centers, sperm banks, anatomical gift services and insurance companies shall report to DHS, on a quarterly basis beginning March 1, 2007, a summary of the number of individuals HIV tested during the three previous months, the number with HIV-positive test results, and the number with negative results:</p> <p>(a) For insurance companies, this requirement applies to all tests performed at the request of the company for insurance eligibility purposes.</p> <p>(b) This report shall also identify the test system used to identify positives and negatives.</p> <p>(c) Such reporting shall be on a statistical basis only and shall not identify individuals.</p>
333-019-0036	<p><b>Special Precautions Relating to Pregnancy and Childbirth</b></p> <p>(1)(a) Blood samples drawn from women during pregnancy or at delivery pursuant to ORS 433.017 shall be submitted for standard tests for reportable infectious diseases or conditions which may affect a pregnant woman or fetus. Routine tests submitted shall include syphilis, hepatitis B, and HIV. Tests using bodily fluids other than blood that have equal or better sensitivity and specificity may be substituted for the blood test.</p> <p>(b) "Consent of the patient to take a sample of blood" (as stated in ORS 433.017, Section 3) or other bodily fluid, is defined as notifying the patient or her authorized representative of the tests which will be conducted on that specimen. The patient or her authorized representative shall be informed that she may decline any or all of the tests.</p> <p>(c) If a patient declines any of the offered tests, documentation shall be included in the medical record.</p> <p>(2) Any person attending the birth of an infant (e.g., licensed physicians, persons acting under the direction of a licensed physician, midwives) shall evaluate whether the newborn is at risk for chlamydial or gonococcal ophthalmia neonatorum. If so, they shall ensure that the newborn receives erythromycin or tetracycline ophthalmic ointment or a comparable prophylactic treatment into each eye within two hours after delivery.</p>

<b>Oregon Administrative Rules – Title 410: Department of Human Services, Division of Medical Assistance Programs</b>
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Title 410 OAR	Code Language
410-143-0060	<p><b>DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE PROGRAMS</b></p> <p><b>HIV/AIDS PREVENTION SERVICES PROGRAM</b></p> <p><b>Procedure Codes -- Effective for Services Provided on or After February 1, 1994</b></p> <p>(1) Public Health HIV Counseling and Testing - Code PUB01. This code includes:</p> <p>(a) Pre-test counseling:</p> <p>(A) Counseling covering basic facts about HIV, modes of transmission, risk factors, testing methodology, procedures, alternatives and risks of the test. Distribute condoms;</p> <p>(B) Risk assessment of factors that place client at risk for contracting HIV;</p> <p>(C) Risk reduction counseling as appropriate;</p> <p>(D) Phlebotomy and specimen processing.</p> <p>(b) Post-test counseling:</p> <p>(A) Counseling, provide test results, and reiterating basic facts about HIV;</p> <p>(B) Risk reduction counseling; condom demonstration, dispense condoms to client;</p>

<b>Oregon Administrative Rules – Title 413: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs</b>
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Title 413 OAR	Code Language
413-040-0400	<p><b>HIV Testing of Children in SOSCF Custody and HIV Confidentiality Policy</b></p> <p>HIV testing is an intrusive medical procedure which can have serious social consequences. The Department will subject children in its custody to this procedure only if it is medically indicated. When a child in Department custody is tested for HIV, informed consent procedures shall be followed and the results of the test held in strictest confidence.</p>
413-040-0420	<p><b>HIV Antibody Testing</b></p> <p>(1) For children and youth in Department custody, the HIV antibody test is to be done only to facilitate the medical care of the child if clinically indicated after a thorough medical evaluation by a doctor knowledgeable about HIV infections. The test is not to be used to screen individuals with high risk behaviors or any other groups, nor to satisfy the curiosity of Department staff or contracted providers.</p> <p>(2) Under the direction of a physician, infants born to mothers known to have engaged in high risk behaviors may be tested for HIV. The presence of HIV infection in an infant can be determined only after the mother's antibodies are gone from the child's bloodstream. Because maternal antibody crosses the placenta, the presence of HIV infection can only be determined after a series of tests.</p> <p>(3) Victims of sexual abuse who have been exposed to blood or semen may be tested for HIV. If the child can understand, informed consent procedures shall be used (I-B.5.1, 413-040-0430). A physician knowledgeable in HIV care should be consulted immediately for consideration of HIV post-exposure prophylaxis.</p> <p>(4) The Department shall not license any private child-caring agency whose admission criteria include a mandatory HIV test.</p> <p>(5) The Department shall not contract with any service provider whose admission criteria include a mandatory HIV test.</p>
413-040-0430	<p><b>Informed Consent</b></p> <p>(1) No person shall submit the blood of an individual to an HIV test without first obtaining informed consent or ascertaining that informed consent is obtained, consistent with subsection (7) of this rule.</p> <p>(2) As legal custodian and guardian of the child, the Department may grant medical consent and authorize medical treatment. Children 13</p>

<b>Title 413 OAR</b>	<b>Code Language</b>
	<p>years of age or older should be included in this planning and also consent. The Department must have a medical statement that the HIV test is necessary for care and treatment before ordering or arranging for a test. If the Department orders or arranges for an HIV test, informed consent procedures must be followed. A minor of any age may consent to a HIV test; and when the minor's consent is given, the consent of the minor's parents or guardians is not necessary for diagnosis, care or treatment. However, such consent must be informed consent.</p> <p>(3) In all cases involving a child old enough to give informed consent, the worker shall try to obtain the consent of the child. However, if the physician and Department staff believe an HIV test is necessary to provide information necessary for the care of the child, and that child objects to the test and will not consent, the following options are available:</p> <p>(a) SDA Manager or designee after consultation with the child's physician, may consent to the test for the child over the child's objection (413-020-0150 (c)(A)(iii); or</p> <p>(b) The worker may petition the court to order the child to be tested.</p> <p>(4) Department staff are responsible to assure that informed consent is obtained when children in Department custody are to be given an HIV test. If the medical provider does not obtain the informed consent, Department staff shall do so or arrange for it to be done prior to the test.</p> <p>(5) If a child is placed pursuant to a Voluntary Custody Agreement or a Voluntary Placement Agreement, the parent and the child retain the authority to consent to the test. The Department does not have the authority to consent to the test on behalf of the parent unless such authority is included in the express terms of the Agreement.</p> <p>(6) Providers are not authorized to consent to a child's HIV test.</p> <p>(7) Informed consent shall be obtained in the following manner, giving consideration to the child's age and ability to understand:</p> <p>(a) Provide the person for his/her retention a copy of the CF 990, HIV Test Informed Consent.</p> <p>(b) Orally summarize for the person the substance of the statements in the CF 990 and specify alternatives to the HIV test in the particular instance, and if the test information will be disclosed to others, who those others will be.</p> <p>(c) Explain the risks from having the HIV test. This shall include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement that there may be circumstances under which disclosure might</p>



<b>Title 413 OAR</b>	<b>Code Language</b>
	<p>be permitted or required without consent; and a statement of the potential consequences in regards to insurability, employment, and social discrimination if the HIV test results become known to others.</p> <p>(d) Inform the person that he or she has the right to request additional information from a knowledgeable person before giving consent.</p> <p>(e) Ask the person to be tested whether he/she has any further questions, and if so, provide a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests and the consequences of being tested or not tested.</p> <p>(f) Have the person sign the CF 990, HIV Test Informed Consent, after having had an opportunity to read it.</p>
413-040-0440	<p><b>Counseling</b></p> <p>A child being referred for HIV antibody testing must be referred for pre- and post-test counseling.</p>
413-040-0450	<p><b>Confidentiality</b></p> <p>(1) Many Department records are exempt from disclosure and are strictly confidential under the public records exemptions or confidentiality status. All medical records are privileged information. AIDS and/or HIV test results are specifically designated highly confidential by statute (ORS 433.045) and Department Health Administrative Rule (333-12-270, 1-9) and must be held in the most strictly observed confidence possible to avoid consequences of casual or inappropriate disclosure of information. Information regarding a client's HIV status is to be maintained in a locked file separate from the case.</p> <p>(2) In order to provide services to the child and to administer Department's child welfare services, Department staff may inform only those directly involved in case planning and who have a need to know, that a child or an adult who has a significant role in the child's plan, has AIDS or is HIV positive. The identification of who has a need to know in order to adequately meet the needs of the child shall be determined through a staffing which includes the worker, supervisor and Department central office (Personal Care Coordinator) representative, and should include input from the physician, county Health Department who ordered the test, or the HIV Program of the Department's Health Policy cluster.</p> <p>(3) For children receiving services under a Voluntary Custody Agreement (CF 1005) or a Voluntary Placement Agreement (CF 499), the responsible parent(s) shall always be involved in making medical decisions for the child, and have access to medical information.</p> <p>(4) Each person who subsequently gains access to this information must</p>

<b>Title 413 OAR</b>	<b>Code Language</b>
	<p>keep it in strictest confidence (ORS 433.045(3)). The worker shall advise all persons who have access to the medical information of their duty to safeguard the confidential nature of the information.</p> <p>(5) If the Department learns from any source that a child is HIV positive, the above procedures must be followed.</p> <p>(6) Pursuant to Health cluster Rule 333-012-0270, if the Department possesses information that an adult client or other person associated with a case is HIV positive, this does not confer the right to disclose the information, except as permitted by Oregon law.</p> <p>(7) If disclosure of HIV information is deemed necessary for planning in the context of a court hearing, the worker shall not disclose the status in open court without either the written consent of the infected persons or a court order.</p>

**Oregon Administrative Rules – Title 415: Department of Human Services, Addictions and Mental Health Division: Addiction Services**

Title 415 OAR	Code Language
415-020-0040	<p><b>Treatment Services General</b></p> <p>(1) Treatment Services: The Opioid Treatment Program shall provide to patients the following services and activities and document the time or manner of each service or activity in the patient record:</p> <p>(d) HIV/AIDS, tuberculosis, sexually transmitted diseases, and other infectious disease information,</p> <p>(e) Completion of HIV/TB/STD risk assessment within 30 days of admission;</p>
415-051-0005	<p><b>Definitions</b></p> <p>(17) "Interim informational services" mean services provided by a chemical dependency service provider for clients who are on a waiting list for chemical dependency services. The purposes of the services are to reduce the adverse health effects of alcohol and other drug abuse, promote the health of the individual, and reduce the risk of transmission of disease. At a minimum, interim information services include:</p> <p>(a) Counseling and education about HIV and tuberculosis, about the risks of needle sharing and of transmission to sexual partners and infants, and about steps that can be taken to ensure that HIV and TB transmission does not occur;</p> <p>(b) Referral for HIV or TB services if necessary; and</p> <p>(c) For pregnant women, counseling on the effects of alcohol and drug use on the fetus, as well as referral for prenatal care.</p>
415-051-0025	<p><b>Admission Policies and Procedures (chemical dependency service provider)</b></p> <p>(1) Admission Criteria: The program shall have written criteria for accepting or refusing admission requests, including steps for making referrals for individuals not admitted to the program. The criteria shall be available to clients, staff, and the community and require:</p> <p>(a) For persons determined to be appropriate for admission, the program to ensure that the onset of outpatient treatment occurs within five weeks of application to the program. The program shall provide interim informational services until an individual is admitted to the program. These services should include education and referral to counseling about infectious diseases (HIV, tuberculosis, hepatitis A, B, or C, sexually-transmitted diseases), referral to prenatal care for pregnant women,</p>

<b>Title 415 OAR</b>	<b>Code Language</b>
	referral to medical care when appropriate, referral to self-help support groups, education about the effects of alcohol and other drug use on the fetus, and crisis intervention when appropriate.
415-051-0040	<b>Medical Services</b>  (1) Medical Protocols: The alcohol and other drug treatment program shall have medical protocols approved by a medical director under contract with a program and/or written reciprocal agreement with a medical practitioner under managed care. The protocols shall be in full compliance with standards, ethics, and licensure requirements of the medical profession and these rules and:  (f) Require that the program provide HIV/AIDS, tuberculosis, sexually transmitted disease, hepatitis and other infectious disease information and risk assessment, including any needed referral, within 30 days of admission; and

<b>Oregon Administrative Rules – Title 416: Oregon Youth Authority</b>	
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<b>Title 416 OAR</b>	<b>Code Language</b>
416-600-0000	<p><b>HIV TESTING OF YOUTH IN OREGON YOUTH AUTHORITY CUSTODY</b></p> <p>Purpose</p> <p>The purpose of these rules is to set forth procedures and criteria that the Oregon Youth Authority (OYA) will use when testing offenders held in close custody facilities for HIV. HIV testing is an intrusive medical procedure which can have serious social consequences and OYA will subject offenders in its custody to this procedure only if it is requested by the offender or as a result of a court order. When an offender in OYA custody is tested for HIV, informed consent procedures will be followed and the results of the test held in strictest confidence.</p>
416-600-0020	<p><b>HIV Antibody Testing</b></p> <p>(1) For offenders in OYA close custody, the HIV antibody test will be done only at offender request or by court order. The test will not be used to screen offenders in high risk behavior or any other groups, nor to satisfy the curiosity of OYA staff or contracted providers.</p> <p>(2) The OYA will carry out a test for HIV antibodies when an offender is ordered by a court order under ORS 419C.475 and 135.139 to submit to an HIV test.</p>
416-600-0030	<p><b>Informed Consent</b></p> <p>1) No person will submit the blood of an offender in the custody of the OYA to an HIV test without first obtaining informed consent from the offender or obtaining a copy of the court order requiring an HIV test under ORS 419C.475 or 135.139.</p> <p>(2) A minor of any age may consent to a HIV test; and when the minor's consent is given, the consent of the minor's parents or guardians is not necessary for diagnosis, care, or treatment. However such consent must be informed consent.</p> <p>(3) OYA facility health services will ensure that informed consent is obtained prior to the blood of an offender in OYA custody being tested for HIV. Documentation of the offender's informed consent will be maintained in the offender's medical file for a minimum of seven years. Only specially trained health and mental health care staff are authorized to obtain an offender's informed consent to test blood for the HIV antibody.</p> <p>(4) Informed consent will be obtained by authorized staff in the following</p>

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	<p>manner, giving consideration to the offender's age and cognitive ability:</p> <p>(a) Explain the risks from having the HIV test. This will include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement detailing circumstances under which disclosure might be permitted or required without consent; and a statement of the potential consequences in regard to insurability, employment, and social discrimination if the HIV test results become known to others;</p> <p>(b) Orally summarize for the offender the substance of the statements in the OYA HIV Test Informed Consent form and specify alternatives to the HIV test in the particular instance, and whether the test information will be disclosed to others, who those others will be, and for what purpose;</p> <p>(c) Inform the offender that he/she has the right to request additional information from a knowledgeable person before giving consent;</p> <p>(d) Ask the offender to be tested whether he/she has any further questions, and if so, provide a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests, and the consequences of being tested or not tested;</p> <p>(e) Have the offender sign the OYA HIV Test Informed Consent form after having had an opportunity to read it;</p> <p>(f) Provide the offender with a copy of the OYA HIV Test Informed Consent form for his/her retention.</p>
416-600-0040	<p><b>Counseling</b></p> <p>An offender who is considering whether or not to consent to an HIV antibody test or who has been court-ordered to submit to an HIV antibody test under ORS 419C.475 or 135.139 will receive pre- and post-test counseling services by OYA health care staff who have received HIV counseling training from the Health Division of the Oregon Department of Human Services.</p>
416-600-0050	<p><b>Confidentiality</b></p> <p>(1) Many of OYA records are exempt from disclosure or strictly confidential under the public records exemptions or confidentiality status. All medical records are privileged information. AIDS and/or HIV test results are specifically designated highly confidential by statute (ORS 433.045) and Oregon Health Division Administrative Rule (OAR 333-012-0270(1)-(9)) and must be held in the most strictly observed confidence possible to avoid consequences of casual or inappropriate disclosure of</p>

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	<p>information.</p> <p>(2) All HIV test information released with the authorization of the tested offender must be labeled with a statement which substantially states, "This information may not be disclosed to any one without the specific written authorization of the individual."</p> <p>(3) Any OYA staff who has received HIV test information about an offender is prohibited from further disclosure without written authorization of the offender or as required by federal law, state law, or any rule, including any Oregon Department of Human Services rule considered necessary for public health or health care purposes.</p>

**Oregon Administrative Rules – Title 582: Department of Human Services,  
Children, Adults and Families Division: Vocational Rehabilitation Services**

<b>Title 582 OAR</b>	<b>Code Language</b>
582-030-0030	<b>Release to Clients, Parents, Guardians and Legal Representatives (by vocational rehabilitation services)</b>  (4) Informed written consent from the client is required for the release of any information about sexually transmitted diseases or birth control to a parent or guardian for any client regardless of age.



<b>Oregon Administrative Rules – Title 836: Department of Consumer and Business Services, Insurance Division</b>
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Title 836 OAR	Code Language
836-050-0237	<p><b>Unfair Trade Practices</b></p> <p>Failure of an insurer to comply with any provision of OAR 836-050-0240 or 836-050-0245, or the requirement in OAR 836-050-0250(2)(a) that testing for HIV infection be done only with the informed consent of the applicant for insurance, is an unfair trade practice under ORS 746.240.</p>
836-050-0240	<p><b>General Principles</b></p> <p>(4) Testing for or asking medical questions about HIV infection, including ARC and AIDS, is prohibited when not done in conjunction with testing for or asking medical questions about other health conditions. However, testing for HIV infection alone is permissible if the applicant has answered affirmatively that the applicant has tested positive in any HIV antibody test or has been diagnosed as having HIV infection, including AIDS or ARC.</p>
836-050-0250	<p><b>Testing for HIV Infection</b></p> <p>(1) An insurer may not rate or deny coverage on the basis of test results unless the rating or denial is based on a test protocol consisting of two positive ELISA tests confirmed by a Western Blot test or another test or test series that the state epidemiologist finds to be no less accurate. This testing series may be performed on blood samples, or on oral specimens or urine obtained and tested according to approval by the federal Food and Drug Administration. If the result of a Western Blot test is indeterminate, the insurer may postpone action on the application not longer than six months after the date of that Western Blot test in order to retest the applicant for conclusive Western Blot test results. The insurer may rate or deny coverage only if retesting produces the positive testing result or if the applicant declines the retesting or fails to respond to a request for retesting by the insurer.</p> <p>(2) The following provisions apply to all testing for HIV infection and consent therefor:</p> <p>(a) Testing may be done only with the informed consent of the applicant. Any test that helps an insurer determine the presence of HIV infection and is performed in conjunction with an insurance application shall have a signed consent by the applicant regarding the specific types of tests involved. This consent shall require the applicant to designate the person to whom final positive test results are to be reported. The applicant may designate a named physician, the county health department or the applicant directly. An insurer may obtain the consent of the applicant at any time in the underwriting process prior to obtaining a sample or specimen.</p>

<b>Title 836 OAR</b>	<b>Code Language</b>
	<p>(b) The consent form must be submitted to the Director for approval before use. A consent form may not be used unless the Director has approved the form as complying with OAR 836-050-0230 to 836-050-0255.</p> <p>(c) An insurer shall disclose to the applicant when soliciting consent that the test is used for determining insurability.</p> <p>(d) A copy of an informational brochure containing the information in Exhibit 1 shall be given to the applicant prior to or at the time of consent. [Exhibit not included. See ED. NOTE.] The consent form and informational brochure may be combined in one form.</p> <p>(e) A consent form signed by an applicant is valid for six months following the date that the consent form was signed. The consent form must so state. If after six months the test is not performed or retesting is needed, a new signed consent form must be obtained.</p> <p>(3) All final positive HIV results shall be directly or indirectly disclosed to the applicant as provided in this section. Information about the results that an insurer acquires through required tests other than from a physician shall be disclosed to the applicant through the physician or county health department named by the applicant for that purpose, so that the physician or county health department may give further explanation of the results to the applicant. Such information may be disclosed directly to the applicant only if the applicant requested disclosure in the consent form and if the insurer, after receipt of positive HIV results confirmed through the protocol in section (1) of this rule, has given the applicant another opportunity to designate a physician or county health department. Direct disclosure to the applicant of final positive HIV results shall include a notice that gives the Oregon AIDS Hotline numbers for securing local assistance and advises the applicant to call the Oregon AIDS Hotline or consult a physician.</p> <p>(4) An insurer may report only positive test results determined under section (1) of this rule to the person or person designated in the consent form and to affiliates, reinsurers, employees and contractors of the insurer in relation to the underwriting of the insurance application. For positive test results as defined in section (1) of this section, an insurer may also make a report of a nonspecific abnormality determined by the testing of blood, oral specimen or urine to the Medical Information Bureau. An insurer may not make a report to the Medical Information Bureau when positive or inconclusive results occur only with respect to preliminary tests, even when the applicant fails to follow up with the required protocol.</p>
836-050-0255	<b>Inquiries Regarding Past Test Results</b>

<b>Title 836 OAR</b>	<b>Code Language</b>
	<p>Insurers may ask whether an applicant has tested positive in any HIV antibody test, subject to the following restrictions:</p> <p>(1) General questions asking only whether the applicant has taken such a test, regardless of outcome, are prohibited.</p> <p>(2) Except as provided in this section, an insurer may not rate or deny coverage based merely on an affirmative response on the application to a questions about past test results. Before rating or denying coverage, the insurer must confirm a positive result to the full test protocol described in OAR 836-050-0250 through medical records or current retesting unless:</p> <p>(a) The applicant fails to respond to a request by the insurer for the medical records or for retesting; or</p> <p>(b) The insurer is informed that the applicant declines such further testing.</p>