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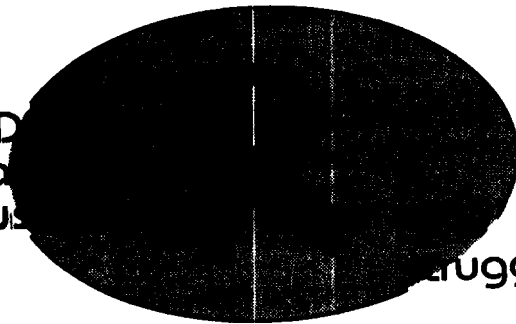
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No. 20710

We all have the power to prevent AIDS

AID
O
US



struggle

Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

G O V E R N M E N T N O T I C E

DEPARTMENT OF HEALTH

No. 1479

10 December 1999

NATIONAL POLICY FOR HEALTH ACT, 1990 (ACT NO. 116 OF 1990)

I, ME TSHABALALA-MSIMANG, Minister of Health, intends in terms of section 2 of the National Policy for Health Act, 1990 (Act No. 116 of 1990), to determine national policy to be applied in respect of testing for HIV as set out in the schedule hereto.

Interested persons are invited to submit, within two months of publication of this notice, any substantiated comments or representations on the proposed policy to the Director-General: Health, Private Bag X828 Pretoria, 0001 (For the attention of the Director: HIV / AIDS and STD's).

SCHEDULE**NATIONAL POLICY ON TESTING FOR HIV**

Testing for HIV infection presents serious medical, legal ethical economic and psychological implications in the health care setting. Because HIV infection is a life threatening condition, reasonable persons or health care workers will attach significance to the outcome of an HIV test, especially a positive diagnosis. For these reasons, and in accordance with the constitutional guarantees of freedom and security of the person, and the right to privacy and dignity, the following HIV testing policy shall constitute national policy. This policy applies to persons able to give consent, as well as to those legally entitled to give proxy consent to HIV testing in terms of the law.

Circumstances under which HIV testing may be conducted

- 1.(1) Testing for the human immuno-deficiency virus may be done **only in the following** chuticcs-
 - (a) upon individual request, for diagnostic or treatment purposes, with the informed consent of that individual;

- (b) on the recommendation of a medical doctor that such testing is clinically indicated, with the informed consent of the individual;
 - (c) as part of HIV testing for research purposes, with the informed consent of the individual and in accordance with national legal and ethical provisions regarding research;
 - (d) as part of screening of blood donations, with the informed consent of the individual and in accordance with statutory provisions regarding blood donations;
 - (e) as part of unlinked and anonymous testing for epidemiological purposes undertaken by the national, provincial or local health authority or an agency authorised by any of these bodies, without informed consent, provided that HIV testing for epidemiological purposes is carried out in accordance with national legal and ethical provisions regarding such testing;
 - (f) where an existing blood sample is available, and an emergency situation necessitates testing the source patient's blood (eg when a health care worker has sustained a risk-bearing accident such as a needle-stick injury), HIV testing may be undertaken without informed consent but only after informing the source patient that the test will be performed, and providing for the protection of privacy. The information regarding the result may be disclosed to the health care worker concerned but must otherwise remain confidential and may only be disclosed to the source patient with his or her informed consent; or
 - (g) where statutory provision or other legal authorisation exists for testing without informed consent.
- (2) Routine testing of a person for HIV infection for the perceived purpose of protecting a health care worker from infection is impermissible regardless of consent.
 - (3) HIV testing of an employee in the workplace is prohibited unless justified by an order of Labour Court, in accordance with the Employment Equity Act No. 55 of 1998, section 7(2).
 - (4) Proxy consent may be given where the individual is unable to give consent.

Informed consent, pre-test counselling and post-test counselling

2. (1) Testing for HIV infection at all health care facilities will be carried out with informed consent, which includes pre-test counselling. The information regarding the result of the test must remain fully confidential, and may be disclosed in the absence of an overriding legal or ethical duty only with the individual's fully informed consent.
- (2) In the context of HIV/AIDS, testing with informed consent means that the individual has been made aware of, and understands, the implications of the test.
- (3) Consent in this context means the giving of express agreement to HIV testing in a situation devoid of coercion, in which the individual should feel equally free to grant or withhold consent. Written consent should be obtained where possible.
- (4) Pre-test counselling should occur before an HIV test is undertaken. It should be a confidential dialogue with a suitably qualified person, such as a doctor, nurse or trained HIV counsellor, undertaken as a means of passing on information and gaining consent.
- (5) Posters, pamphlets and other media (including videos) may be used in making information on HIV/AIDS available, but cannot be regarded as a general substitute for pre-test counselling.
- (6) A doctor, nurse, or trained HIV counsellor should accept, after personal consultation, an individual's decision to refuse pre-test counselling and HIV testing. Psychological competence in understanding and dealing with the diagnosis of a life-threatening condition, rather than educational or social status, should be the yard-stick for this decision. Such a decision should only be made on a case-by-case basis and should be recorded in writing.
- (7) A doctor, nurse or trained HIV counsellor should also ensure that post-test counselling takes place as part of the process of informing an individual of an HIV test result.
- (8) Where a health care facility lacks the capacity to provide a pre-test or post-test counselling service, a referral to a counselling agency or another facility with the capacity to provide counselling should be arranged before an HIV test is performed, and when an HIV test result is given.

- (9) **Where a patient presents with recognisable HIV/AIDS-specific symptoms but no facilities exist for pre-test counselling, then treatment for the specific symptom or illness should proceed without an HIV test. Referral for pre-test counselling with a view to a possible HIV test must occur at the earliest opportunity.**

Interpretation of policy

3. **In all instances, this policy shall be interpreted to ensure respect for rights to privacy, dignity and autonomy.**

Definitions

4. (1) **AIDS**

Acquired Immune Deficiency Syndrome (AIDS) is the late and most severe stage of HIV disease and is characterised by signs and symptoms of severe immune-deficiency, where the body loses the ability to fight against infections because the immune system is weakened.

(2) **Epidemiological purposes**

Epidemiology is the study of the distribution of diseases in society, and the application of this information for the prevention and control of disease. HIV testing for epidemiological purposes is therefore HIV testing in order to obtain information regarding the distribution of HIV infection within society.

(3) **HIV**

The Human Immuno-Deficiency Virus is the virus that causes AIDS.

(4) **HIV testing**

HIV Testing is any form of medical testing to determine the HIV status of a person.

(s) **Informed Consent**

Informed Consent to an HIV test means that the individual understands and agrees to an HIV test. Informed consent implies that the individual understands what the test is, why it is necessary and the benefits, risks, alternatives and possible social implications of the outcome.

(6) Post-Test Counselling

Post-test counseling is **the counselling** provided when **an** individual receives his or her **HIV test*** Post-test **counselling involves** one or **more** sessions (**ideally at least two**) and **should** include **discussions** on:

- Feedback and understanding of **results**;
- If the result is negative:
 - Strategies **for** risk reduction;
 - Possibility of **infection** in the 'window' period;
- If the result is positive:
 - Immediate emotional** reaction and **concerns**;
 - Personal, family** and **social** implications;
 - Difficulties** a **client** may foresee and possible coping **strategies**;
 - Who** the client **wants** to **share** the **results** with;
 - Immediate needs and **social support** identification;
 - Follow-up** supportive **counselling**; and
 - Follow-up **medical care**.

(7) Pre-Test Counseling

Pre-test counseling is that **counselling** given to an individual **before** an **HIV test**, to make sure that **the individual** has **sufficient information** to make an **informed decision** about having **an HIV test**. **Pre-test counselling** should include **discussions** on:

- What an HIV test is, the purpose of the test**;
- The meaning of a positive test result, including the practical implications** such as **medical** treatment and care, **sexual relations, psycho-social implications, work etc**;
- Assessment of **personal** risk of **HIV** infection;
 - Safer sex and strategies to **reduce risk**;
 - Coping with a positive test **result**, including who to **tell** and **identifying** needs and **support services**; and
 - An **opportunity for decision making** about taking the **HIV test**.

(8) Proxy Consent

Proxy consent **is** consent by a person **legally entitled** to grant consent on behalf of another **individual**. For **example**, a parent or **guardian** of a child **below the** age of **consent** to **medical** treatment may give proxy consent to **HIV** testing of the **child**.

ME TSHABALALA-MSIMANG
MINISTER OF HEALTH