

New CDC Guidelines for HIV Screening: Ethical Implications for Health Care Providers

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The Centers for Disease Control and Prevention (CDC) has announced significant changes in its recommendations for HIV screening.¹ The agency's new recommendations differ from prior policies and established practices in several important ways. These differences include the following:

- HIV screening is to be “a normal part of medical practice” for adult (under age 65) and adolescent (over age 12) patients in all health care settings unless the prevalence of HIV infection is “documented” to be less than .1 percent in a particular provider's patient population.
- Informed consent prior to testing is not required. Instead, the health care professional need only notify the patient that an HIV test will be performed unless the patient declines. The CDC concludes that “[g]eneral informed consent for medical care should be considered sufficient . . . for HIV testing,” and no separate written consent for the test should be required.
- HIV testing should be done without requiring pre-test or concurrent counseling. Prevention counseling is “strongly encouraged” as part of an HIV screening program only in settings, such as STD clinics, where risk behaviors are regularly assessed.

Ethical issues implicated in the CDC's new guidelines arise at two points. First, the ethical foundation for routine screening programs requires an assessment of several factors that identify and balance anticipated benefits and costs. Second, the implementation of routine screening raises ethical issues for health care providers. Certain assumptions about the implementation of a screening program may be essential to the balance of benefits and burdens; and if these assumptions fail, the ethical justification for the program is weakened.

Justification for routine HIV screening

Routine screening for HIV has been controversial because of anticipated negative consequences related to cost and effectiveness, as well as to confidentiality, privacy, and discriminatory treatment of persons who are HIV-positive. The ethical

framework used to examine routine screening programs includes an analysis of factors that relate to whether the program's benefits outweigh its anticipated negative consequences. Matthew Wynia sets out the following criteria:²

- The disease should be “important.”
- The test must be followed by effective action.
- Targeted or narrower testing must miss a large number of affected individuals.
- The test itself is accurate.
- Screening is cost-effective.
- Screening is acceptable to the general public.

The CDC justifies its recommendation of routine screening along the lines suggested by Wynia. The CDC notes that treatment for HIV is now quite effective in extending life and that counseling individuals who know they carry the virus has proven effective in reducing behaviors that risk transmission. It further observes that treatment and risk-avoidance counseling are not available to persons who do not know they are HIV-positive, estimated to be as many as one-quarter of the approximately 1 million persons living with HIV. The CDC also describes significant improvements in testing, both in terms of immediacy and accuracy. The CDC argues that the expected gains in terms of preventing the spread of HIV and extending the lives of HIV-positive individuals outweigh the costs of the expanded volume of testing.

The final calculus of costs and benefits may depend, however, on how the recommended routine screening program is implemented.

Ethical issues in implementing routine HIV screening

The new CDC recommendations raise many significant operational issues for health care providers. For example, a health care provider following the new CDC guidelines may violate state law in those states that have adopted more restrictive standards for HIV testing. The CDC hopes that

its recommendations will trigger changes in state law in the future, but that has not happened at this early stage.

Beyond purely operational issues, however, routine HIV screening as recommended by the CDC triggers certain ethical obligations on the part of providers. Among these are obligations relating to voluntariness, continuing care, and confidentiality and privacy

Voluntariness. The CDC recommends that counseling and informed consent be abandoned as prerequisites for HIV testing; however, the recommendations do not give providers *carte blanche* to test every patient. The CDC guidelines require that the provider inform the patient specifically that an HIV test will be performed and that the patient may decline the test. In its guidance to health care professionals, the CDC emphasizes that the provider should provide the patient with adequate information, in written or oral form, to allow the patient to make a decision.

As testing for HIV becomes routine, however, it is possible that the required notification to the patient, including the patient's right to decline, will be abandoned in practice. Such concerns are exacerbated by the recommendation that no written documentation of consent is required. What begins as a transparent opt-out system could become instead a screening program that operates without the knowledge or acquiescence of the patient. Furthermore, although the CDC guidelines recognize that there are many reasons a patient may decline an HIV test (including fears of partner violence, cost of treatment, and discrimination), the guidelines tell the provider to "encourage" the refusing patient to submit to the test, both when it is first offered and at subsequent visits. If the testing is to be voluntary, as the CDC envisions, providers must pay attention to the line between encouragement and coercion.

Continuing care. Routine testing for HIV imposes obligations for continuing care upon health care providers who test their patients. First, the CDC guidelines require that health care professionals provide their patients who have positive test results with "counseling, support, and prevention services." If these services are not available in the practice setting where the testing is done, the provider should make arrangements for the patient "to obtain necessary services from another clinical provider, local health department, or community-based organization."

In addition, the CDC recognizes that providing treatment for the patients who test positive for HIV is "essential"; and further, that "HIV screening without such linkage confers little or no benefit to the patient." If routine testing for HIV reveals previously undiscovered cases of the infection, as is expected, then providers will find themselves with patients to whom they may owe a duty of continuing care, at least at some level. Limitations on access to care for HIV (among uninsured populations, for example, or in less urban areas where the health care system may be ill-equipped for providing HIV treatment) may undercut one of the essential justifications for routine screening. The CDC, however, maintains that "even if only a limited fraction of patients . . . are linked to care, the survival benefits per dollar spent on screening represent good comparative value" for society generally, if not for the individual patient.

Confidentiality and privacy. Confidentiality and privacy of medical information relating to HIV status are core concerns in ethical and legal issues relating to HIV because of experiences of stigmatization and discrimination. For this reason, the CDC states that providers should communicate HIV test results in a confidential manner, which eliminates the use of mail or of telephone messages for communicating results and may require securing non-family translators for patients who do not speak English.

The CDC responds to concerns for confidentiality as well by recommending that test results should be included in "the patient's confidential medical record [available to all] health care providers involved in the patient's clinical management." The concept of a "confidential medical record," however, is somewhat archaic as a wide range of persons have ready access to an individual's medical records. HIPAA, for example, specifically allows parties other than the patient's direct caregivers, including health plans, for example, access to the patient's confidential medical information. While one may argue that information concerning an individual's HIV test results should be accorded no more protection than any other medical information, one can hardly argue that medical information is routinely confined only to the patient's direct caregivers.

In addition, the values of confidentiality and privacy can conflict with other ethical obligations in the context of infectious disease. The extent to which there may be a duty to disclose the patient's HIV test results to individuals at

risk of transmission, or to public health authorities, is not resolved in the CDC's recommendations. Instead, the provider is simply directed to "strongly encourage" patients to disclose HIV status to at-risk partners and to inform the patients that they might be contacted by public health department staff.

Conclusion

The September 2006, CDC recommendations for routine screening for HIV raise ethical issues on a policy level and for individual health care providers. Improvements in the effectiveness both of HIV tests and in the treatment for the disease provide the foundation for this new policy. The ethical justification for routine screening depends in part on

access to prevention counseling and treatment for the disease. Furthermore, the CDC insists that no patient is to be tested without his or her knowledge that an HIV test will be performed, even as it moves the system toward more routine screening for HIV.

NOTES

1. Centers for Disease Control and Prevention, "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings," *Morbidity and Mortality Weekly Report* (September 22, 2006): available at www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm.
2. M.K. Wynia, "Routine Screening: Informed Consent, Stigma and the Waning of HIV Exceptionalism," *American Journal of Bioethics* 6, no. 4 (July 2006): 5-8.