

Testing Healthcare Workers For AIDS Is Costly, Ineffective

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The debate on whether healthcare professionals should be tested for the human immunodeficiency virus (HIV) has fired up recently, especially since the case of the Florida dentist who infected five patients. Until then most patients and healthcare professionals perceived the risk of patient infection as theoretical at best. But repeated questions have arisen recently about the *mandatory* testing of medical staff members. Under pressure from patients, the media, and healthcare advocates, hospitals are now dealing with the issue of screening healthcare workers, including medical staff, for HIV.

The pressures for mandatory screening raise a host of important legal and ethical issues. This article discusses only legal issues.

PROBLEMS WITH MANDATORY TESTING

In the past year, particularly with the development of the new "Patient Rights" chapter of the *Accreditation Manual for Hospitals* (Joint Commission for Accreditation of Healthcare Organizations) and of the Patient Self-Determination Act, healthcare providers have become more sensitive to issues involving patient rights. Among the numerous rights that have been recently asserted is patients' "right" to know their practitioners' health status. This issue is more complicated in situations in which patients do not freely "choose" their practitioners, as in:

- Acute care facilities where practitioners are assigned from call lists
- Managed care settings such as health maintenance organizations
- Facilities where nurses are assigned as part of a routine scheduling process

The few available statistics about healthcare practitioners' health status do not offer much assurance to those who want a clear-cut answer. The Centers for Disease Control (CDC), Atlanta, has estimated that approximately 7,000 of the 180,000 persons diagnosed with acquired



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immune deficiency syndrome (AIDS) in the United States are healthcare workers. The CDC estimates that 436 physicians, 25 of whom were surgeons, have died of complications related to HIV infection. The CDC has also estimated that the risk of an infected doctor or dentist transmitting HIV to a patient is somewhere between 2 and 24 in 1 million.¹

Despite this small risk, a recent Gallup Poll revealed that Americans are overwhelmingly in favor of testing healthcare workers for HIV infection. Indeed, another study revealed that a majority of physicians and nurses also favor mandatory testing of healthcare workers for HIV.²

However, mandatory testing is costly and could prove ineffective. If all 7 million healthcare workers in the United States were tested *once* for HIV and hepatitis B virus (HBV), it is estimated that it would cost between \$350 million and \$525 million. (The cost of testing per person is between \$50 and \$75.) Where the money for such testing would come from and whether it would be better spent in providing AIDS education and research, are important questions.

Those considering mandatory testing for healthcare workers should look at the example of *Illinois and Louisiana, which tried mandatory HIV testing for marriage license applicants, with abysmal results. In both states, marriage license applicants were required to be tested for HIV before issuance of the license. Both states have since repealed these laws, primarily because of the costs connected with such mandatory testing.*

In the first year of testing in Illinois, for example, out of 70,846 people applying for marriage licenses, 8 tested positive. Of those 8, 4 were in high-risk categories. The cost of this testing during that first year was \$2.5 million, which amounted to \$312,500 per positive test result. More important, applications for marriage licenses went down 22.5 percent during the period of mandatory testing, because many Illinois residents went to neighboring states to get married to avoid the delays associated with waiting for

HIV test results.³ The same scenario occurred in Louisiana.

But even if mandatory testing were affordable, it is not effective. The fact that a healthcare worker on a single day tests negative does not guarantee that the healthcare worker (1) is not then infected with the HIV virus, (2) is not capable of transmitting HIV to a patient, and (3) will not contract the virus in the future. Accordingly, *repeat* mandatory testing may be the only way to ensure that healthcare workers are uninfected.

CDC RECOMMENDATIONS

The issue of mandatory testing is complex and problematic. But before it can be determined whether such testing is appropriate or warranted, a closer look at the CDC recommendations on healthcare workers infected with HIV or HBV is beneficial.

In July 1991 the CDC published recommendations on preventing transmission of HIV and HBV from healthcare workers to patients during exposure-prone invasive procedures. The recommendations constitute an important benchmark for providers to use in establishing their own policies and procedures to deal with HIV- and HBV-infected healthcare professionals.⁴

The CDC based its recommendations on three considerations:

- Infected healthcare workers who adhere to universal precautions and who do not perform

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invasive procedures pose no risk for transmitting HIV or HBV infection.

- Infected workers who adhere to universal precautions and who perform certain exposure-prone procedures pose a small risk for transmitting HBV to patients.

- HIV is more difficult to transmit than HBV.

The CDC's recommendations advise healthcare workers and facilities to implement the following measures to minimize the risk of HBV or HIV transmission to patients (see **Box**).

The CDC's recommendations do *not* support mandatory testing for HIV or HBV. Although the recommendations suggest the use of an expert review panel in determining a healthcare worker's fitness for continued practice, the guidelines are vague about the characteristics, composition, and structure of such a panel. This leaves the institution or organization much leeway in structuring its own expert review panel.

COURT CASES

Recently a few court cases have addressed some issues regarding HIV-infected workers. Last year a Pennsylvania appellate court ruled that a hospital can inform patients treated by a doctor who tested positive for HIV, despite the physician's privacy interests.⁵

Similarly, the New Jersey Superior Court ruled that Princeton Medical Center did not discriminate against an HIV-infected physician when it

CDC RECOMMENDATIONS

- All healthcare workers should adhere to universal precautions and current guidelines for disinfection and sterilization of reusable devices used in invasive procedures. Workers who have exudative lesions or weeping dermatitis should not care for patients directly or even handle patient-care equipment or devices used in performing invasive procedures until the condition resolves.

- HIV- or HBV-infected workers may perform invasive, but not exposure-prone, procedures as long as they practice recommended surgical or dental techniques and follow universal precautions and current recommendations for sterilization and disinfection.

- Each medical, surgical, and dental organization and institution should identify all exposure-prone procedures

performed by its workers. (The CDC has withdrawn this recommendation after much debate with healthcare organizations.)

- Workers who perform exposure-prone invasive procedures should know their HIV-antibody and HBV-antigen status.

- HIV- or HBV-infected workers should not perform exposure-prone invasive procedures unless they have been advised by an "expert review panel" under what circumstances (e.g., prior notification of patients), if any, they may continue to perform such procedures.

- Mandatory testing of workers for HIV antibody or HBV antigen is not justified by the small risk that infected workers will transmit HIV or HBV to patients during exposure-prone inva-

sive procedures.

- HIV- or HBV-infected workers whose practices are modified should, whenever possible, be allowed to continue appropriate patient-care activities.

- The advisability of notifying patients on whom exposure-prone invasive procedures have been performed by HIV- or HBV-infected workers should be determined on a case-by-case basis, considering specific risks, confidentiality issues, and available resources. The CDC recommends carefully designed and implemented follow-up studies to determine more precisely the risk of transmission during such procedures. Decisions about notification and follow-up studies should be made in consultation with state and local public health officials and legal counsel.

required him to disclose his condition to patients, even though the court emphasized the importance of the physician's privacy rights.⁶

These cases are more aggressive in supporting the patient's right to know the HIV status of his or her healthcare worker than are the CDC recommendations. It remains to be seen what effect, if any, the recommendations will have on future judicial decisions.

ADA ADDS ANOTHER ANGLE

A new wrinkle has appeared on the horizon—the Americans with Disabilities Act of 1990 (ADA). This act, which went into effect July 26, 1992, for organizations employing 25 or more, provides that persons with HIV may have a substantially limiting disability and must be given special consideration with regard to employment.⁷ Accordingly, employers are required to make reasonable accommodations to the physical or mental limitations of HIV-infected healthcare workers unless they can demonstrate that accommodation imposes an undue hardship on the business's operation.

In this circumstance, obtaining more information regarding a healthcare worker's HIV status may not be helpful from an employment perspective. By attempting to test mandatorily all healthcare workers in those states where such testing is not specifically outlawed, a facility may find itself having to make extensive reasonable accommodations for persons who show no other sign of illness, but who are perceived to be disabled by virtue of their HIV infection. It is also not clear whether such testing would pass muster under the ADA.

POLICIES FOR INFECTED WORKERS

Hospitals and other healthcare providers must address the issue of HIV- or HBV-infected professionals in light of federal and state statutes enacted to protect individuals with such conditions. Accordingly, each facility should carefully prepare and implement written policies concerning HIV- and HBV-infected healthcare professionals. Each provider should develop and implement detailed initial and continuing educational programs for all professionals. A facility should periodically distribute to its employees the most current medical information on HIV and HBV, using the CDC recommendations and any other medically certified information from a reliable source, such as a state's department of health.

Any action by a provider with regard to HIV- and HBV-infected healthcare professionals should be taken only on a case-by-case basis, after consultation with an expert review panel such as

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that described in the CDC recommendations. Providers should enact policies that ensure the privacy of all HIV- and HBV-infected healthcare professionals. Any discussion with an individual, including the work of an expert review panel, should be held in strictest confidence. Any information related to the professional's physical condition should be disclosed only to those who have a legal right to such information.

The information available at this time indicates that mandatory testing of healthcare professionals is not warranted and, furthermore, is inefficient and extremely costly. Such wholesale testing, even where it might be legally permitted, produces little usable clinical information and may well run afoul of the ADA. Better education regarding HIV and HBV transmission and the rigorous application of universal precautions in the healthcare setting appear to be the most reasonable and most effective responses right now to the issue of HIV-infected healthcare professionals. □

NOTES

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