

**AIDS Institute**  
**Position Statement**  
**HIV Testing of High-Risk Infants in the Newborn Intensive Care Unit (NICU)**

**BACKGROUND**

The AIDS Institute has received many inquiries concerning the Expedited HIV Testing and Comprehensive Newborn Screening Laws as they apply in the newborn intensive care unit (NICU) setting. Facilities are particularly concerned about their legal liability when HIV testing is performed on an infant transferred from a *facility located in a state where newborn HIV testing is not required by law* (e.g., Vermont, Massachusetts, Pennsylvania). Facilities also seek clarification of the HIV pre-test counseling requirements in the NICU. Since knowledge of the newborn's health history and HIV exposure status is critical to treatment decisions, NICU providers routinely discuss these issues with the mother (and/or father). However, because of their own medical conditions, mothers rarely accompany infants transferred to the NICU. In these cases especially, the urgency to identify and treat an HIV-exposed infant may not allow an opportunity to provide parental pre-test HIV counseling before an expedited HIV or newborn HIV screening test is performed.

**POSITION**

There is a governing body of scientific evidence demonstrating the benefit of providing prompt prophylaxis to prevent perinatal transmission when exposure to HIV has occurred. Therefore, when no history of prenatal HIV test status is available, it is the position of the State of New York that a compelling public health interest exists in performing expedited HIV and newborn HIV screening tests without delay. This is particularly true in the case of high-risk, low birth weight infants, who predominate the census of the NICU and for whom the provision of breast milk to supplement feedings is encouraged. *For these reasons, if the mother's HIV status is unknown, expedited HIV testing of an infant transferred to the NICU is indicated.* Further, because the window of opportunity to prevent HIV transmission is limited, the AIDS Institute contends that the provision of parental pre-test HIV counseling, although preferable, should not be a precondition for testing the newborn in the NICU setting. Results of newborn HIV testing should be returned to the mother according to the Newborn Screening Program reporting agreements that the facility has already established with other states.

**LEGAL AUTHORITY**

The intent of the controlling laws supports these recommendations.

**Amendment of 69-1 and addition of 69-6 (Comprehensive HIV Newborn Screening Program)**

**96-40**, Effective 2/1/97

**Legal basis of the rule:** Chapter 220 of the Laws of 1996 and Public Health Law section 2500-f.

**Subject and purpose of the rule:** To ensure that newborns that are born exposed to HIV receive prompt and immediate care and treatment to reduce the risk of HIV transmission from mother to baby.

**Amendment of 405.21(c) (4) and 754.7 (d)(5) (HIV Testing of Newborns) 96-32, AIDS Institute.**

Effective 1/29/97

**Legal basis of the rule:** Public Health Law, section 2803 (2)(a)(v)

**Subject and purpose of the rule:** Implements the Maternal-Pediatric HIV Prevention and Care Program. This program integrates regulations relating to prenatal and newborn testing, including the comprehensive newborn testing program authorized by Chapter 220, into an early identification and intervention program for reducing perinatal HIV transmission and ensuring comprehensive care for HIV-positive women and their infants.

**Amendment of sections 58-8.1 – 58-8.3 and 69-1.3 of Title 10 NYCRR.**

**Expedited HIV testing of women and newborns**

Effective 8/1/99

**Legal basis of the rule:** Public Health Law, sections 2500-a, 2500-f and 576.

**Subject and purpose of the rule:** To insure that women with unknown HIV status receive expedited HIV testing for themselves or on their newborns in order to identify persons at risk and provide appropriate care.

In the memorandum accompanying the comprehensive newborn testing bill (A.4412-c, S-7725), the Legislature indicated its purpose “to ensure that newborns (that) are born exposed to HIV receive prompt and immediate care and treatment that can enhance, prolong and possibly save their lives.” The expedited HIV testing legislation further protects newborns by ensuring that HIV exposure status is available for all infants whose mothers have not been tested for HIV or for whom HIV test results are not available at delivery.

## **CONCLUSION**

The New York State legislature has consistently demonstrated its intent to remove barriers to HIV testing in the prenatal and newborn periods. By doing so, medical providers and patients in New York state have been afforded timely access to information needed to make decisions concerning the administration of prophylactic therapy and the advisability of breastfeeding, which has prevented HIV transmission in many cases. The AIDS Institute urges the endorsement of the policy position described herein as it is in keeping with the Governor and Department’s commitment to reduce the rate of mother-to-infant transmission of HIV to the lowest possible level.