

Ethical Concerns with Opt-Out Testing in Comparison to Voluntary Counseling Testing

Monica White

The University Of Kansas School of Nursing

About the author:

A native of Kansas City, Kansas, Monica was the recipient of a Level II Clinical Excellence Award for her abilities to recognize and assist pediatric patients with their unique health care needs. In early 2009, Monica traveled with a group of students from the University Of Kansas School Of Nursing to Malawi Africa to provide medical and nursing care to the children and staff of an orphanage in Bangula Malawi. Monica is the recipient of the Mattie Ely Nursing Student Scholarship awarded by the Greater Kansas City Black Nurses Association, the David A. Junge Memorial Scholarship, and the Arthur S. & Leora J. Peck Scholarship Awarded by the KU School of Nursing. After graduation, she will start her nursing career on the Medical Oncology Unit at Truman Medical Center, Kansas City, Missouri as a Registered Nurse. Her long-term plans include pursuing an advance degree in nursing with an interest in Public Health and Organizational Leadership.

### Ethical Concerns with Opt-Out Testing in Comparison to Voluntary Counseling Testing

Human Immunodeficiency Virus (HIV) continues to be a prevailing epidemic in the United States (US). Early diagnosis and counseling about high risk behaviors is a major prevention strategy. The Centers for Disease Control (CDC) has recommended testing guidelines to decrease the number of people in the US who are unaware they are living with this disease (Donoghoe, Lane, & Wolf, 2007). Opt-out testing is the new routine testing strategy that does not require a specific consent for testing, but rather consent to opt-out of testing. An ethical concern with current testing methods of voluntary counseling and testing (VCT) is the provider missed opportunities to test. These missed opportunities may be associated with the time required for pretest counseling and signing informed consent (Burman, Cohn, Gardner, Jenkins & Thrun, 2006). Researchers have explored the benefits, risks, and ethical issues associated with this new strategy as opposed to the old strategy of VCT over the last decade.

HIV testing is now placed under the general consent to treat. What is not clear are the cost and consequences that accompany these CDC recommendations (Holtgrave, 2007). Written informed consent promotes patient information and awareness, while protecting patients and physicians; omitting counseling and disclosures may eliminate patient education about HIV and high risk behaviors (Donoghoe, Lane, & Wolf, 2007). The ethical issue with routine testing is the elimination of HIV test specific written consent and pretest counseling. The lack of adequate information related to patients rights to refuse testing along with the risks and benefits are also ethical concerns. Routine testing may be met with barriers from individual states. Most states have pretest counseling incorporated in their HIV testing laws (Donoghoe, Lane, & Wolf, 2007). Opt-out testing may come with consequences such as failure to reduce high risk behavior (Holtgrave, 2007).

### Literature Review

CDC recommendation of opt-out testing occurred in 2006 which warrants testing in all health care settings for ages 13-64. Due to time limitations inherent in the HIV counseling and pretest counseling process, the testing process could become obscured (Holtgrave, 2007). Individuals who engage in high risk behavior will be offered testing annually, whereas routine testing may be discontinued in areas with a seroprevalence of less than 0.1% (Holtgrave, 2007). HIV/AIDS advocates argue that counseling and testing are crucial for the complete comprehension of the psychosocial risk, stigmas, and discrimination that may accompany positive results (Donoghoe, Lane, & Wolf, 2007).

Routine testing is not a new practice. The CDC recommended universal screening for pregnant women in 2001. This recommendation was endorsed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (Bayer, & Fairchild, 2006). These authors also reported that “some pediatricians asserted that babies had a right to be tested because, if infected, they required vigilant medical care before they became sick—a right that trumped the mother’s right to privacy” (pg 648). A pregnant woman not recommended for prenatal HIV testing who has an infected child, will have a valid malpractice suit (Lo, Sengupta, & Wolf, 2000).

The new CDC recommendations may meet resistance from state laws that have been in standing since HIV testing was initiated decades ago. The CDC is a federal agency but its weighty recommendations do not have the power to force states to changes its laws (Donoghoe, Lane, & Wolf, 2007). “The regulations of health and public health are recognized as state

issues” (Donoghoe, Lane, & Wolf, 2007 pg. 3). Several states will have to rewrite their laws just to comply with CDC recommendations. According to Donoghoe, Lane, and Wolf (2007):

The amended statute ties state recommendations on HIV testing to the CDC’s “most current guidelines,” but it explicitly rejects essential components of the recommendations, stating that the CDC’s guidelines “shall in no event be interpreted or implemented in a manner inconsistent with the minimum informed consent standards of this [statute]. ( pg 2)

HIV advocates and lawmakers presume that the lack of disclosure that accompanies the CDC recommendations is inadequate for making informed decisions about testing (Donoghoe, Lane, & Wolf, 2007).

The new testing guidelines may include many patients whose opportunity to test was missed in emergency departments and urgent care clinics. A retrospective review in Denver’s health system explored these opportunities in a study between September 2001 and December 2003 (Burman, Cohn, Gardner, Jenkins & Thrun, 2006). The study showed that “one hundred and twenty of 348 newly diagnosed HIV cases had medical care within our system in the 3 years prior to diagnosing” (pg 329). The study also showed that “one hundred and five of 120 had at least one prior encounter in the emergency department or urgent care center” with thirty two noted to have a CD4 count signifying AIDS (pg 331). The report also noted that obstacles associated with the CDC recommendations in an Emergency Department (ED) or Urgent Care Clinic (UCC) settings are “provider time constraints, expense, and logistics of follow-up and medicolegal implications” (pg 332). The lack of testing in these settings prevented early diagnosis which could have anticipated early treatment and reduce the occurrences of high risk behaviors.

Voluntary counseling and testing has been a proven prevention method in the HIV epidemic and was the technique commonly used before the opt-out approach. VCT aides in the prevention of new HIV occurrences and provides access to HIV- positive appropriate care

(Coates, Collins, Spielberg, & Summers, 2000). “VCT is effective in reducing unsafe behaviors; although brief didactic counseling is often the norm, it is not as effective as client-centered counseling” (pg. 129). A comparison was made between no screening, voluntary screening, and “universal” screening, and it was determined that universal screening was the most cost effective (pg. 133).

There is an estimated 250,000 people who are unaware they are infected with HIV living in the US alone (Holtgrave, 2007). The question that has been presented by many researchers is does VCT or Opt-Out testing have the best patient and public health outcomes. In a study that used scenario analysis and cost-effectiveness analysis; it was shown that targeted counseling and testing would hold the best outcomes (Holtgrave, 2007). The study reported “opt-out testing may reach 23% of people who are infected with HIV unaware, and prevent 9% of 40,000 new HIV infections that occur each year in the U. S.; whereas targeted counseling and testing might identify about 75% of unaware HIV positive individuals, and prevent 36% of new HIV infections” (pg 1018). The preclude cost with the testing was a difference of \$175,000 for one new infection (Holtgrave, 2007, pg 1018).

### Conclusion

The CDC recommends that VCT is the appropriate method in the prevention of new HIV cases and the spread of the disease to others. Opt out testing is a less time consuming method but the possible liabilities associated with the lack of counseling may prove expensive for patient, provider, and the public. Providers have a moral and ethical obligation to warn patients of risks that accompany testing; such as the behaviors that place patients at risk for the disease and the possible discriminations and stigmas that may come with a positive test result. Along with

informing patients of any risk associated with testing, they must also be informed that they have a right to refuse the test. Under the basic concept of informed consent a patient has the right to control what is done to his/her body. CDC recommendations may need to be enhanced to incorporate a productive relationship between federal and state statutes in this matter.

CDC recommendations of opt-out testing have intent to discover more HIV positive patients and raise awareness and provide early diagnosis, but the investment must be made to include counseling in these recommendations. My opinion in this matter is that both the testing and counseling options must be supported to gain control over the spread of HIV and maximize the health of individuals dealing with this virus. Time constraints may place physicians in a position to resist recommending testing. However, through prevention training and accessibility of a HIV specialist in all ER and UCC specific education associated with testing may ease physicians concerns. The ethical issues associated with the new testing strategies leads for further evaluation and discussions related to this matter.

## References

- Bayer, R., & Fairchild, A. (2006, August). Changing the paradigm for HIV testing-The end of exceptionalism. *New England Journal of Medicine*, 355(7), 647-649.
- Burman, W. J., Cohn, D. L., Gardner, E. M., Jenkins, T. C., & Thrun, M. W. (2006, May). Risk-based human immunodeficiency virus (HIV) testing fails to detect the majority of HIV-infected persons in medical care settings [Electronic version]. *Journal of American Sexually Transmitted Diseases Association*, 33(5), 329-333.
- Coates, T., Collins, C., Spielberg, F., & Summers, T. (2000, December). Voluntary counseling, testing, and referral for HIV: New technologies, research findings create dynamic opportunities. *Journal of Acquired Immune Deficiency Syndromes*, 25, s128-s134.
- Donoghoe, A., Lane, T., & Wolf, L. E. (2007, October). Implementing routine HIV testing: The role of state law. *Plos One*, (10), 1-5.
- Holtgrave, D. R. (2007, June). Costs and consequences of the US centers for disease control and prevention's recommendations for opt-out HIV testing. *PLOS Medicine*, 4(6), 1011-1018.
- Lo, B., Sengupta, S., & Wolf, L. (2000, December). Ethical issues in early detection of HIV infection to reduce vertical transmission. *Journal of Acquired Immune Deficiency Syndromes*, 25, s136-s143.