



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.  
*Commissioner*

James W. Clyne, Jr.  
*Executive Deputy Commissioner*

September 1, 2010

Dear Colleague:

On July 30, 2010, Governor David A. Paterson signed Chapter 308 of the Laws of 2010, authorizing significant changes in HIV testing in New York State. Statewide, approximately one-third of HIV-positive people go undiagnosed until they are at advanced stages of infection. The new law was enacted to increase HIV testing and help HIV-positive New Yorkers protect their own health and that of others. In keeping with recommendations issued by the Centers for Disease Control and Prevention in 2006, the new New York State law requires (with limited exceptions) the offer of an HIV test to patients between the ages of 13 and 64 in primary care settings, emergency departments and inpatient settings. If the test being ordered produces results in one hour or less, the patient can grant consent through a signed general consent for medical care or through a documented oral exchange. All provisions of the new law are effective as of September 1, 2010. Key changes to previous New York State law are listed below.

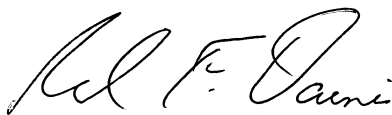
- HIV testing must be offered to anyone between the ages of 13 and 64 receiving hospital or primary care services, with limited exceptions noted in the law. The offer must be made to inpatients, to people seeking services in emergency departments and to anyone receiving primary care as an outpatient at a clinic, at a hospital or from a physician, physician assistant, nurse practitioner or midwife.
- Consent for HIV testing remains in effect until it is revoked or expires. Patients can provide consent for HIV testing through any of the following methods:
  - **Oral consent.** Consent can be obtained verbally for HIV tests – including point-of-care tests and tests that run on multiplatform analyzers – if they produce results in 60 minutes or less. Consent must be documented in the patient’s medical record. The oral consent provision does not apply to testing performed in correctional facilities.
  - **General written consent for medical care.** Consent can be obtained through a signed consent for general medical care if the general consent form gives the patient an opportunity to refuse HIV testing (that is, an opportunity to opt out of being tested for HIV).
  - **A simple signed statement.** Under the new law, a patient can provide written consent by signing a simple statement declaring that he or she consents to HIV testing. The New York State Department of Health will develop model forms for obtaining written consent; providers may however develop their own forms based on these models.
- Before being asked to consent to HIV testing, patients must be given the seven points of information about HIV required by the Public Health Law. This information can be given orally or in writing.

- Health care providers must arrange an appointment for HIV-related medical care for any patient with a positive test result who consents to such an appointment.
- Health care providers do not need to certify that informed consent has been obtained before ordering HIV testing by a laboratory or other facility.
- People who are deceased, comatose or otherwise incapable of providing consent may now be tested for HIV in certain circumstances without consent, if they are the source of an occupational exposure.

Feedback from stakeholders will inform further the development of regulations to implement this change in New York State law. For additional information, please visit the New York State Department of Health website ([www.nyhealth.gov](http://www.nyhealth.gov)) or the New York City Health Department website ([www.nyc.gov/health/hivtesting](http://www.nyc.gov/health/hivtesting)). Questions not covered in the attached fact sheet may be sent to [hivtestlaw@health.state.ny.us](mailto:hivtestlaw@health.state.ny.us).

Changes in New York State law and new testing technologies have made HIV testing simpler and faster. By working together to routinely offer HIV testing, we can reduce HIV transmission and save the lives of many New Yorkers. Thank you for your dedication and contribution to keeping New Yorkers healthy.

Sincerely,



Richard F. Daines, M.D.  
New York State Commissioner of Health



Thomas Farley, M.D., M.P.H.  
New York City Health Commissioner

#### Attachments

S: Testing Law Colleague Letter Daines-Farley