

**Ending the Epidemic Task Force  
Committee Recommendation  
CR1**

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**Recommendation Title: Enforcing and Expanding Routine Testing**

- 1. For which goal outlined in the Governor's plan to end the epidemic in New York State does this recommendation apply? 1, 2 and 3**
  
- 2. Proposed Recommendation:** HIV testing is the first stop on the HIV treatment cascade and the base for HIV prevention. New York State's HIV Testing Law requires healthcare professionals to offer a voluntary HIV test to all patients (with limited exceptions) between the ages of 13 and 64. Studies have shown that routine testing discovers HIV infection among people who do not perceive themselves at risk, yet New York State's testing law is unenforced and often disregarded.

New York State must work to improve adherence to the current law:

- 1) The state should educate medical and social service providers on the requirements of the law, on what a positive or negative test result means, that HIV is a treatable infection, on how to deliver test results in a humane way, on how to protect the rights, dignity and confidentiality of those being tested and on how to link individuals to adequate, affordable healthcare whether they are HIV-positive or HIV-negative and at continued risk. NYS Department of Health contracts should mandate that medical and social service staff receive this education annually. New York State should work with local medical societies and community groups to provide this education. This education will be especially important as New York State expands routine testing to more settings. The state needs to provide a venue for people to report testing that fails to honor a patient's rights.
  
  - 2) The state should eliminate an economic disincentive to testing by using its powers to facilitate the reimbursement of third-party payers for every HIV test. This would include using its power to regulate the insurance industry. Such a measure would also enable the state to examine third-party payer billing records to better understand the scope of testing [see 4 below].
  
  - 3) New York State should use its powers of accreditation, licensing, funding and issuing of guidelines, etc. to make routine HIV testing the standard of care. The state should consider making HIV testing part of obtaining a driver's license or a state identity card for non-drivers [Alex Carballo-Diéguez, Task Force member]. The standard panel of preventative screenings that are part of the annual comprehensive primary care provider visit must include HIV testing and linkage to care. As a best practice, all health care systems required to offer HIV
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testing should establish a prompt in their electronic medical records (EMR) so that providers are notified when a patient is due for an HIV test. Routinized HIV testing and the current HIV testing algorithm need to be integrated into emergency departments, ambulatory care settings, urgent care settings, inpatient and private provider offices.

- 4) New York State should monitor adherence to the HIV testing law. The review of blinded data from regional laboratories might assist in this; facility utilization review might improve our understanding of HIV testing patterns. If all HIV tests were separately billable, the review of reimbursement records of Medicaid, managed care and commercial insurers would help us determine the scope of HIV testing, its expansion over time and the retention of people at risk in care as determined by repeat testing. Until this change from the status quo is achieved, the AIDS Institute will have to dedicate staff and effort to teasing HIV testing information out of current Medicaid billing data.
- 5) New York State should consider sending investigators into the field to monitor adherence to the HIV testing law and penalize providers that fail to offer routine HIV testing, including initial citations and fines for repeat violators.

New York State could expand routine testing in several ways:

- 1) In pursuit of the goal of linking all New Yorkers to ongoing healthcare, New York State should consider requiring that a referral to affordable healthcare accompany every HIV test result, positive or negative, where a patient does not already have such healthcare. In the age of the Affordable Care Act, and following the model of New York City's STI clinics, this referral might be to a New York State IPA/Navigator (In-Person Assistor). This requirement cannot be so complicated that it becomes a disincentive to test.
- 2) New York State should bring HIV testing guidelines (and education about those guidelines) in line with the federal guidelines of the Centers for Disease Control (CDC), which state that HIV testing should be done on an opt-out basis. The goal of this recommendation is to eliminate remaining barriers to routine testing.

In 2006 the CDC revised its HIV testing guidelines. Revisions from previous guidelines that are relevant to this recommendation are: "HIV screening is recommended for patients in all health-care settings after the patient is notified that testing will be performed unless the patient declines (opt-out screening)... Separate written consent for HIV testing should not be required; general consent for medical care should be considered sufficient to encompass consent for HIV testing." ([cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm](http://cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm))

The New York State Department of Health (NYSDOH) reports that: "Beginning April 1, 2014, New York State Public Health Law allows for streamlined oral patient consent to an HIV test. The law no longer requires that patient consent be obtained in writing, except in



correctional facilities.”

[<http://www.health.ny.gov/diseases/aids/providers/testing/law/docs/updates.pdf>]

The AIDS Institute considers that, with the April 1 changes, New York State’s current HIV testing statute is in line with CDC guidelines. NYSDOH now advises providers that: “Key points about HIV testing are provided in writing, verbally or by video before the test.” State-funded educational materials tell providers about the option to provide written materials on those key points to a patient in the waiting room.

The AIDS Institute needs to get the word out to testers that the statute no longer requires signed consent, and that there are now streamlined ways to obtain informed consent. The AIDS Institute also needs to monitor how the revised statute is being translated into clinical practice and whether that practice is consistent with the goal of the CDC guidelines, making HIV testing truly routine. Nothing in this recommendation prevents any provider from obtaining informed consent from patients in a way which is consistent with patient protection; different settings will require different procedures.

- 3) New York State should expand routine HIV testing to other healthcare settings, including pharmacies, settings that deliver dental care, mental health services and social services. The state should expand the funding of rapid HIV testing at school-based health centers. Testers at expanded sites should receive the education outlined in the section above.
- 4) New York State should make FDA-approved over-the-counter self-testing available free of charge to those who request it and follow certain procedures. Self-testing offers an opportunity to reach people who don't want to go to a clinic or discuss HIV with a healthcare professional. These include people who have tested regularly in the past and now experience “testing fatigue” and people traditionally unserved or underserved by the healthcare system. The cost of self-testing now makes it inaccessible to some who need it most. With this recommendation, people would request test kits from STD clinics or community-based organizations and pick them up in person or have them sent by mail. Contact information that the person would provide could help to link those who test positive to care and treatment and those who test negative to prevention services including the offer of PrEP.

**List of key individuals, stakeholders, or populations who would benefit from this recommendation**

- All New Yorkers would benefit
- New Yorkers linked to care would benefit in particular



### List of measures that would assist in monitoring impact

- Review of reimbursement data from Medicaid and other third party payers might give us an idea of the scope of testing, whether it is expanding over time
  - Data on repeat testing might give us an idea on whether people who are HIV-negative and at risk are retained in care
3. **Would implementation of this recommendation be permitted under current laws or would a statutory change be required?** N/A
  4. **Is this recommendation something that could feasibly be implemented in the short-term (within the next year) or long-term (within the next three to six years)?** Within the next year / Unknown.
  5. **Please list the TF numbers of the original recommendations that contributed to this current version:** TF26, TF28, TF29, TF35, TF44, TF86, TF105, TF127, TF150, TF172, TF189, TF190, TF211, TF212, TF245, TF246, TF257, TF260, TF265, TF277, TF289; the rest was generated by discussion in the Testing Lab, the full Prevention Committee, the Task Force and at the NYC Listening Session 11/10.

