

Frequently Asked Questions regarding the NYS HIV Testing Law

Overview

1. When does the testing law go into effect?

The most recent amendments to the NYS HIV testing law are effective April 1, 2015. Previous amendments were made in 2010 and 2014. Refer to Q. 3.

2. What are the Department's expectations around compliance?

The Department has worked collaboratively since the 2010 amendments to the HIV testing law went into effect to assist providers in complying with its terms. With the adoption of the regulations, we expect that all facilities and providers have implemented the routine offer of testing and other provisions of the law or have made their specific technical assistance needs known to the Department and are making substantial progress toward full compliance.

Starting in 2015, the NYSDOH has contracted with IPRO to conduct a review of hospital policies and protocols, and patient charts related to streamlined HIV testing. The findings of this review will result in facility based technical assistance and corrective action plans as appropriate to ensure implementation of the HIV testing law standards.

In the event of a patient complaint, the complaint will be reviewed by the Department. Action will be taken with the provider or facility as appropriate. The patient complaint form can be located at <http://www.health.ny.gov/forms/doh-4299.pdf>.

3. What are the key provisions of the 2010, 2014 and 2015 amendments to the HIV testing law?

2010

HIV testing must be offered to all persons between the ages of 13 and 64 receiving hospital or primary care services with limited exceptions noted in the law. The offering must be made to inpatients, persons seeking services in emergency departments, persons receiving primary care as an outpatient at a clinic or from a physician, physician assistant, nurse practitioner or midwife.

Prior to being asked to consent to HIV testing, patients must be provided information about HIV required by the Public Health Law.

Health care and other HIV test providers administering HIV testing must arrange, with the consent of the patient, an appointment for medical care for those confirmed as positive.

HIV test requisition forms submitted to laboratories will be simplified and no longer require provider certification of informed consent having been obtained.

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Deceased, comatose or persons otherwise incapable of providing consent, and who are the source of an occupational exposure, may now be tested for HIV in certain circumstances anonymously without consent.

Confidential HIV information may be released without a written statement prohibiting re-disclosure when routine disclosures are made to treating providers or to health insurers to obtain payment.

2014

Elimination of the requirement for written consent to conduct an HIV test. Oral consent is now acceptable in all settings except for correctional facilities.

Enhanced data sharing allowing for the sharing of surveillance data between local and state health departments and health care providers for the purpose of individual linkage and retention in care.

2015

Elimination of the requirement for written consent within correctional facilities.

Required Offer of HIV Testing

4. Does the requirement that HIV testing be offered to all persons between the ages of 13 and 64 apply in all medical settings?

The requirement for the offering of testing applies to persons receiving inpatient or emergency department services at hospitals, persons receiving primary care services through hospital outpatient clinics, diagnostic and treatment centers, and persons receiving primary care services from physicians, physician assistants, nurse practitioners and midwives regardless of setting. Exceptions to this requirement are detailed in the response to Q. 5. Practitioners who see their patients on a regular basis may consider incorporation of the offer of HIV testing as part of routine physical exams and well child visits to meet the requirement.

5. What are the exceptions to the mandatory offer of HIV testing in the hospital, diagnostic and treatment center, and primary care settings noted in the law?

The law does not require an offer of testing to be made:

- When the individual is being treated for a life threatening emergency.
- When the individual has previously been offered or has previously been tested for HIV (unless otherwise indicated due to risk factors).
- When the individual lacks the capacity to consent (though in these cases the offer may also be made to an appropriate person who is available to provide consent on behalf of the patient).

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6. Instead of making the offer, can we just let patients know that testing is available if they want it or assume they don't need one if they have been tested before?

No. Letting a patient know that testing is available is not an offer of testing. An example of an offer would be "We are routinely offering HIV testing to all of our patients ages 13 and up. Would you like to be tested for HIV?" HIV testing must also be offered when it is clinically indicated.

7. Must an individual have risk factors for HIV to be offered an HIV test?

The offer must be provided to all patients age 13-64 as noted in Q. 3. In addition if it is determined a person is presenting with risk factors a person should be offered the test regardless of frequency. See Q. 15 for risk factors.

8. As a patient, what do I do if when I'm seeking care, I am not offered an HIV test?

If you meet the criteria set out by the law and are not offered an HIV test by a health care provider, you should bring it to the attention of that provider and ask for a test or an explanation for why the offer was not made. If you believe your health care provider is not complying with the law, send your name and contact information, the name of the provider, and whatever details you think would be helpful to doh.sm.HIV.Testing.Law and the situation will be reviewed. Or, you can complete a patient complaint form (<http://www.health.ny.gov/forms/doh-4299.pdf>) and submit the form to the address listed on the form.

9. Is HIV testing mandatory?

The law mandates the **offer** of HIV testing only, not testing itself. In New York State, HIV testing is voluntary and requires the consent of the person being tested or someone authorized to consent for the individual. Testing is, however, mandatory in certain limited circumstances as follows:

As of February 1997, all newborns in New York State are tested for HIV antibodies. A newborn's test result also provides information about the mother's HIV status.

- Blood, body parts, and organ donations are tested for HIV.
- HIV testing can be required in order to participate in some federal programs, such as the Job Corps and the Armed Forces.
- Under certain conditions, inmates in federal prisons (but not in state or local correctional facilities) are tested for HIV without their consent.
- HIV testing can be required for certain types of insurance, like disability or life insurance. However, insurance companies must tell applicants they will be tested for HIV. In New York State, people cannot be denied health insurance because they are living with HIV or AIDS.

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- Testing may be performed without consent in instances of occupational exposure when the source patients are not able to themselves consent and other conditions are met. Refer to Q. 45-56 for information about circumstances when HIV testing for occupational exposure may be done without consent of the source patient.
- HIV testing may be required of convicted and indicted sex offenders in certain cases.

10. As a facility or clinician covered by the law, can we refer out for testing if someone accepts or ask the person to come back at another time?

In general, it is expected that covered facilities and clinicians have the capacity to order HIV tests. HIV testing should be handled the same way any other routine test is handled in the same facility or office.

11. Are organizations and individuals that are not required to make an offer of HIV testing still covered by other parts of the law?

Yes. Other sections of the law such as obtaining consent, providing information prior to and after testing, making appointments for HIV-infected persons, reporting cases, and protecting confidential information pertain to any group that is conducting HIV testing.

12. Does the offer of HIV testing apply to nursing homes, school-based clinics, college health services, retail clinics, urgent care centers, employee health services, STD clinics, and family planning sites that provide primary care?

Yes. Even though these facilities are not specifically mentioned in the law, if primary care is being provided by a physician, physician assistant, nurse practitioner, or midwife, they are required to make the offer regardless of board certification of the practitioner or setting where primary care is provided.

13. How can I be sure if the state will consider my clinic to be a primary care provider mandated to make the offer of HIV testing?

The important thing is to consider what your facility does rather than what your facility is called. For instance, an urgent care center that offers many or all of the services available at a family physician's office would be considered a primary care provider. However, there are diagnostic and treatment centers that are restricted to ambulatory surgery, and these would not be covered by the mandated testing offer provision since they do not offer primary care.

14. Is it appropriate for people to come to an emergency room for the sole purpose of getting an HIV test?

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It is not anticipated that emergency rooms should become walk-in HIV test sites. As per the law, the test needs to be offered to all persons who receive care in an emergency room, but this would not include those who are not seeking any care other than an HIV test unless the person has been the subject of a recent exposure, assault or has another such urgent circumstance. Persons whose sole reason for presenting at the emergency room is routine screening for HIV should be provided appropriate referrals for testing sites if the test cannot be provided for them at the emergency room. State HIV testing law does not change the Emergency Medical Treatment and Active Labor Act which only requires that hospitals provide care to anyone needing emergency treatment.

15. How often does the offer of HIV testing need to be repeated?

All persons between the ages of 13 and 64 need to be offered an HIV test at least once. In addition, the law requires that offers be made to any person, regardless of age, if there is evidence of risk activity. Testing should be offered annually to persons whose behavior indicates elevated risk such as sexual or drug use activity, or even more often for those with very high risk behaviors such as unprotected anal intercourse. Since many people with behaviors that put them at risk for HIV choose not to disclose their risks, providers should consider adopting a low threshold for recommending the test.

16. Which providers must offer HIV testing under this law?

Providers who must offer HIV testing include:

- Those providing health services in an inpatient or emergency department of a general hospital;
- Primary care providers, defined to include, without regard to board certification, family medicine, general pediatrics, primary care, internal medicine, primary care obstetrics or primary care gynecology, offering primary care services in a hospital outpatient department or diagnostic and treatment center; and
- Physicians, physician assistants, nurse practitioners or midwives providing primary care regardless of setting.

17. For record keeping purposes, is the offer of an HIV test considered confidential HIV information that needs to be protected?

No. Information about the offer is not considered confidential HIV information.

Consent

18. Can informed consent for HIV-related testing be provided and obtained orally?

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Yes. Similar to other clinical laboratory tests, informed consent may be provided and obtained orally.

19. How is the April 1, 2014 amendment different from the 2010 amendment with regard to the testing process?

Effective April 1, 2014 written consent for HIV testing is no longer required. Further, effective 2015. Written consent is no longer required in correctional facilities. At a minimum, HIV testing includes offering a patient the points of education, informing the patient each time an HIV test will be done and giving the patient the opportunity to decline testing.

20. What is the consent process?

Written consent is no longer a requirement for HIV testing. The person ordering the test or a person's representative shall orally notify the subject of the test that an HIV related test will be conducted at such time, and will document the notification in the patient's record. When the subject lacks capacity to consent, a person authorized pursuant to law may consent to health care for the individual, Notification must be provided each time an HIV-related test is being performed.

The law requires there be documentation that the patient was advised that an HIV test is being performed. An example of sufficient language that could be used is: "Patient notified an HIV test is being performed." Another option would be to have a drop down box in an electronic medical record where the provider could 'check' patient notified an HIV test is being performed or 'check' patient declined HIV testing.

21. Do the consent procedures in the law apply to tests used for monitoring HIV disease progression or treatment such as viral loads, CD4 counts, or HIV resistance?

The law applies specifically to testing that is being performed to diagnose HIV infection. Therefore, the law does not apply to tests used for monitoring HIV progression or treatment.

22. Must providers obtain parental consent to test an individual under 18 years old?

No. In New York State, the capacity to consent to an HIV test (either confidential or anonymous) is determined without regard to age. Providers offering HIV testing must make a determination as to the patient's capacity to consent. If a practitioner determines a person under 18 years old does not have the capacity to consent, the offer of testing for the young person should be made to a parent or other person authorized to provide consent. Otherwise, the offer would be made directly to the patient.

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23. Who can offer HIV testing and/or ensure the patient has been given the opportunity to decline? Is there a DOH certification for this?

The Department has not made any rules as to who can and cannot perform these functions, nor is there a certification process. Similar to any informed consent process, however, it is expected that the patient will have an opportunity to have questions answered.

24. How do you handle consent for someone with behavioral health issues?

Persons who present at an emergency room with behavioral health issues and who do not have the capacity to consent for an HIV test do not need to be offered a test. Those who will be receiving inpatient care should be offered the test when they are capable of consenting.

25. What information needs to be provided to persons who will be asked to consent to HIV testing?

Persons being asked to consent to HIV testing must be provided the following explanations:

HIV is the virus that causes AIDS and can be transmitted through: unprotected sex (vaginal, anal, or oral sex) with someone who has HIV; contact with blood as in sharing needles (piercing, tattooing, drug equipment including needles); by HIV-infected pregnant women to their infants during pregnancy or delivery; or while breast feeding.

There are treatments for HIV/AIDS that can help an individual stay healthy.

Individuals with HIV/AIDS can adopt safe practices to protect uninfected persons from acquiring HIV and infected people from acquiring additional strains of HIV.

Testing is voluntary and can be done anonymously at a public testing center.

The law protects the confidentiality of HIV test results and other related information.

The law prohibits discrimination based on an individual's HIV status and services are available to help with such consequences.

The law allows an individual's informed consent for HIV related testing to be valid for such testing until such consent is revoked by the subject of the HIV test.

This information may be provided by the person ordering the test or through his representative (the representative can be a medical or non-medical person) through oral, written or electronic mechanisms with no formal pre-test counseling required. For adults not able to consent for themselves, the Family Health Care Decisions Act stipulates who is able to consent for care in a variety of

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circumstances. The language may be adjusted to meet the needs of particular populations or settings, but the substance of the information must be preserved.

For Resources:

<http://www.health.ny.gov/diseases/aids/providers/testing/index.htm>

26. What are the requirements for documenting HIV testing?

Refer to Q. 20. Per the law, patient refusal does not have to be documented. However, it is best practice and strongly suggested that providers document patient refusals.

Provision of Test Results and Post-test Information Special Rules for HIV-positive tests

27. What is the requirement for post-test counseling?

If a person tests HIV positive, the person ordering the test (or through a representative) must provide the test result, and, with a patient's consent, schedule an appointment for follow-up HIV medical care. In addition, patient counseling should be provided that addresses:

- coping emotionally with the test results;
- discrimination issues relating to employment, housing, public accommodations, health care and social services;
- authorizing the release and revoking the release of confidential HIV-related information;
- preventing high risk sexual or needle-sharing behavior;
- the availability of medical treatment;
- HIV reporting requirements for the purposes of monitoring of the HIV/AIDS epidemic;
- the advisability of contacts being notified to prevent transmission, and to allow early access of exposed persons to HIV testing, health care, and prevention services, and a description of notification options and assistance available to the protected individual*;
- the risk of domestic violence in conformance with a domestic violence screening protocol developed by the commissioner pursuant to law;
- the fact that known contacts, including a known spouse, will be reported to the health department. Protected persons will also be requested to cooperate in contact notification efforts of known contacts. The patient may name additional contacts they wish to have notified with the assistance of the provider or authorized public health officials;
- protection of names and other information about HIV-infected persons during the contact notification process;
- the right to have an appointment made for HIV follow-up medical care, the use of HIV medications for prophylaxis and treatment, and the availability of peer group support; and
- the risk of perinatal transmission.

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- Explain that if a person with HIV appears to have fallen out of care, he or she may be contacted by the medical provider or health department staff to address barriers to entry into care and promote engagement in care

*Protected persons or individuals are persons or individuals with HIV-related medical information beyond the offer of the HIV test.

A person who tests HIV negative must be provided with the result and information concerning risks of infection with participation in sexual and needle-sharing activities. Pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) should be discussed as prevention options. This information may be in the form of written materials such as that available on the Department's website. The negative test result and required information do not need to be provided in person. Other mechanisms such as email, mail, and phone may be used as long as there is an established protocol. Alternative methods of delivering results must be discussed with the patient. It is not appropriate to only tell patients that if they are not contacted, they may assume their tests were negative. However, it is acceptable to provide patients with the required information and a phone number or other means of confirming their negative result if they choose to.

http://www.health.ny.gov/diseases/aids/providers/testing/2005_guidance/negativetestresults.htm

28. Can I test people for HIV and have their results sent to another facility to be provided back to the patients?

The facility conducting the test is responsible for provision of results, counseling and provision of information as appropriate. An exception would be the return of positive results to a patient seen in an emergency room. Since emergency departments and urgent care clinics are not set up for continuing care, they may establish a policy for persons testing positive to receive results through a Designated AIDS Center, an infectious disease clinic, or another appropriate provider.

29. What kind of assistance will the New York State and City Health Departments offer in instances where a newly diagnosed person fails to return for test results and post-test counseling?

In instances where the newly identified HIV-infected patient has not returned for post-test counseling, the HIV Partner Services (PS)/Contact Notification Assistance Program (CNAP) Specialist can assist the medical provider in locating the person to advise them to return to the medical provider for post-test counseling. When positive results are verbally confirmed by the testing provider and the provider requests such assistance, the HIV PS/CNAP Specialist can perform post-test counseling on behalf of the provider.

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If there are partners known to the medical provider, including spouses, and if after repeated follow-up efforts the patient cannot be located or chooses not to return for post-test counseling and/or domestic violence screening, the authorized public health official, in consultation with the reporting medical provider, determines whether notification of known partners should proceed. This decision will primarily be based on the likelihood of the index patient returning for post-test counseling, potential for risk of domestic violence, and the risk to the potentially exposed spouse and/or other sexual and needle sharing partners known to the medical provider. For partner services assistance in New York City, call 212-693-1419. In other parts of the state, call 800-541-2437.

Follow-up Appointments for HIV-infected persons

30. As a medical provider, what are my responsibilities for working with the state or local partner services programs?

Partner services are a cornerstone of HIV prevention efforts that provide an opportunity for sexual or needle sharing contacts of an infected person to be expeditiously offered testing, and if positive, be linked into care. Every physician or other person authorized to order diagnostic testing is required to report HIV and AIDS diagnoses to the health department. This report must include identifying information about any contacts known to the clinical provider or provided to the clinical provider by the infected person. As part of post-test counseling the following information must be provided to the patient:

1. The advisability of contacts being notified to prevent transmission, and to allow early access of exposed persons to HIV testing, health care, and prevention services, and a description of notification options and assistance available to the protected individual;
2. The risk of domestic violence in conformance with a domestic violence screening protocol developed by the commissioner pursuant to law;
3. The fact that known contacts, including a known spouse, will be reported to the health department. That protected persons will also be requested to cooperate in contact notification efforts of known contacts. And protected persons may name additional contacts they wish to have notified with the assistance of the provider or authorized public health officials; and
4. The protection of names and other information about HIV-infected persons during the contact notification process.

Providers have various options for participation in the partner notification process. Materials are available on the Department's website. Additional NYSDOH/NYCDOHMH services may be available such as assistance in locating persons who test positive but who do not return for their results or for attending a post-test counseling session. More information on partner services is available on the Department's website.

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Mandatory Provider Reporting Form must be requested from 518-474-4284 or by requesting hard-copies from the City Health Department.

31. The law requires that persons ordering HIV testing provide or arrange for an appointment for follow-up HIV care for those who test positive and who agree to have such an appointment made. Does that appointment need to be with an infectious disease clinician and what are the documentation requirements?

The law does not specify the clinician specialty but does specify that the appointment must be for follow-up HIV care. The patient's medical record should document the name of the provider/facility with whom the appointment was made. The Department's website includes contact information for Designated AIDS Centers and other resources available for providers to help them fulfill this requirement.

32. Do I need to document that the HIV-infected patient attended the follow-up medical appointment I was required to make for him?

No, the law does not require that you confirm that the appointment was kept. However, best practice, in support of ending the epidemic, would be to establish a protocol that includes confirmation of the individual's attendance at the initial appointment.

33. Does the requirement to provide or arrange for an appointment for follow-up HIV care apply only to those facilities and practitioners noted in law as having to offer testing?

No. These are separate parts of the statute. The requirement for providing or arranging for a medical appointment for those diagnosed as HIV-infected applies to anyone providing HIV testing with some exceptions (such as a blinded research protocol or for a program conducting testing of procured body parts for transplantation).

34. Is it sufficient to provide a person testing HIV positive with the contact information of a Designated AIDS Center or HIV specialist? How quickly does the appointment need to be made?

No. The clinician ordering an HIV test is responsible for arranging for a specific HIV follow-up appointment. Every reasonable effort should be made to link persons who receive positive test results with care, prevention, supportive and partner services. All reasonable efforts should be made to get the newly diagnosed person an appointment as quickly as possible. If you are having difficulty making an appointment for a patient, please contact Lyn Stevens of the AIDS Institute's Office of the Medical Director at 518-473-8815.

35. How soon after an HIV positive result is provided should the appointment for follow-up medical care take place?

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The appointment should take place as soon as possible.

36. In emergency room settings where the person may be tested late at night, may we arrange the appointment on the next business day?

Yes. It is acceptable to have the appointment made the next business day when offices are open.

37. Can a facility offer just an HIV point of care test but refer out to a different provider for confirmatory testing for those who have a preliminary positive rapid result?

No. The law defines a point of care test as one that encompasses confirmatory testing. Sites offering rapid testing are responsible for ensuring that confirmatory testing is done for patients with preliminary positive results. In some facilities the confirmatory specimen may be collected by a different unit within that same facility and the result provided by that unit.

Reimbursement

38. Does this law impact access to Medicaid, Medicare or other insurance reimbursement HIV counseling and testing?

No. Reimbursement mechanisms were not impacted directly by the law. However, some programmatic changes in reimbursement have occurred since the law's implementation. NYSDOH released the following guidance in late June 2011:

The HIV Primary Care Medicaid Program's HIV Testing Visits were subsumed into the Department's Ambulatory Patient Groups (APGs) Methodology effective July 1, 2011. Since that time, only the Federally Qualified Health Centers that are enrolled in the HIV Primary Care Medicaid Program (HPCMP) and that have opted out of APG's can continue to access the HPCMP's HIV Testing codes.

HIV counseling that occurs in conjunction with a medical visit is a billable service when a physician or other qualified health care professional spends time with the patient to discuss at some length topics including but not limited to HIV disease, the importance of testing, and risk factor reduction. Billing for such counseling services is through one of the CPT codes for "Preventive Medicine, Individual Counseling" (CPT codes 99401 - 99404) appropriate for the time spent with the patient and for which adequate documentation is made in the patient's chart. HIV counseling services are distinct from evaluation and management (E&M) services that may be reported and billed separately when performed. In addition, the HIV test itself can be billed, as can the blood draw if a non-rapid test is performed, in a manner appropriate to the provider setting (e.g., hospital outpatient clinic or freestanding diagnostic and treatment center). All billing and payments are subject to and paid in accordance with Medicaid regulation.

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The website below is regularly updated with important, useful and keenly relevant information. We strongly encourage you to review the site:

http://www.health.ny.gov/health_care/medicaid/rates/apg/

Persons with private insurance should refer to their policy or contact their carrier.

Note: Most individuals on Medicaid are enrolled in a Medicaid Managed Care Plan. Reimbursement for HIV testing is governed by the negotiated fees between the Plan and the Provider (except in the cases of FQHC as noted above).

39. Must HIV testing offered under the law be provided free of charge if Medicaid or private insurance is not in place?

No. The HIV testing law has not changed the way HIV testing is paid for. Reimbursement rules for Medicaid and private insurers are subject to change. Patients who would like information about free or anonymous testing sites may call 1-800-541-AIDS (2437).

40. Does the law require insurance companies to pay for the HIV test? What if the patient doesn't have insurance?

Routine HIV screening is covered by Medicaid, Medicare and most private insurance plans, but the law does not necessarily require insurance to pay for an HIV test any time a patient accepts an offer to get one. If a patient accepts the offer of a test but lacks insurance or has insurance that may not pay for the test, clinicians should follow their normal practice for any other test that might be ordered.

Under the Affordable Care Act (ACA), Medicare, Medicaid, and private insurance are either required or incentivized to cover "A" and "B" graded services without copay or other patient cost sharing.

The United States Preventive Task Force (USPSTF) is an independent group of national experts in prevention and evidence based medicine. The Task Force works to improve the health of all Americans by making evidence-based recommendations about clinical preventive services such as screenings, counseling services, or preventative medicines.

HIV screening received a Grade A recommendation

- When the Task Force makes a Grade A recommendation for a screening test, it is because there is strong evidence that the test has large potential benefits and small potential harms.
- The Task Force recommends that (1) clinicians screen adolescents and adults ages 15 to 65 years for HIV infection; younger adolescents and older adults who are at increased risk should also be screened (Grade A); (2) clinicians screen all pregnant women for

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HIV, including those who present in labor whose HIV status is unknown (Grade A).

<http://www.uspreventiveservicestaskforce.org/Page/Document/RecommendationStatementFinal/human-immunodeficiency-virus-hiv-infection-screening#update-of-previous-uspstf-recommendation>

41. If a person does not have insurance or does not want to have his insurance company know he was tested for HIV, can I refer him to a state, local or community provider that conducts free HIV testing?

Yes. If a patient would otherwise refuse an HIV test, it is appropriate to make this kind of referral. Patients who would like information about free or anonymous testing sites may call 1-800-541-AIDS (2437).

Disclosure of HIV-related Information

42. What changes does the law make with regard to disclosure of HIV-related information?

The law adds two exceptions to the current list of exceptions to the requirement that disclosures of HIV-related information be accompanied by a re-disclosure statement. The additional exceptions are disclosure to:

- A health care provider or health facility when knowledge of the HIV related information is necessary to provide appropriate care or treatment to the protected individual, a child of the individual, a contact of the protected individual, or a person authorized to consent for health care for such a contact.
- Third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider.

43. What does the law say about access to confidential HIV information of deceased persons?

The new law clarifies that executors and administrators of an estate shall have access to confidential HIV information as needed to fulfill their responsibilities.

44. May a medical provider discuss a patient's confidential HIV information with another medical provider for the purposes of continuity of care without getting a specific release from the patient? How about community based organizations?

Yes. Such medical provider to medical provider disclosure is standard practice and can be covered by a general consent to use and disclose health information for the purpose of treatment. Non-medical providers should get a specific signed release

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from their clients before divulging or discussing confidential HIV information with anyone.

http://www.health.ny.gov/diseases/aids/providers/testing/oralcosent_vs_written.html

Occupational Exposure

45. How does the April 1, 2014 Amendment effect source patient testing?

The process for consenting to HIV testing has changed. This new process should be used for source patient or exposed person testing:

1. Provide points of information
2. Notify HIV testing is being done
3. The person being tested has the opportunity to refuse
4. Document notification of HIV test in medical record

When discussing testing with the source patient, it is important to explain why the testing is needed - a person has been exposed to their body fluid and will need to take medications that may cause side effects if we don't know the source patient's status, etc.

The following questions are from the 2010 HIV Testing Amendments and are still in effect.

46. If the source patient declines testing in a case of occupational exposure, may we test him anonymously?

No. If the source patient declines testing, no HIV test may be conducted.

47. In what cases can a provider test a source patient of an occupational exposure without that patient's consent?

Situations may occur where a source patient in an instance of occupational exposure is unable to provide consent for HIV testing. The Family Health Care Decisions Act stipulates who is able to consent for care in a variety of circumstances like this. In cases of occupational exposures which create a significant risk of contracting or transmitting HIV infection, an anonymous test may be ordered without consent of the source patient if all of the following conditions are met:

- the source person is comatose or is determined by his or her attending professional to lack mental capacity to consent, and
- the source person is not expected to recover in time for the exposed person to receive appropriate medical treatment, and
- there is no person immediately available who has legal authority to consent in time for the exposed person to receive appropriate medical treatment, and

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- the exposed person will benefit medically by knowing the source person's HIV test results.

Since treatment decisions for the exposed person need to be made expeditiously, with therapy ideally beginning within two hours post exposure, the decision to perform an anonymous test on the source patient may be made immediately if there is no surrogate present to provide consent.

** See next question for patients that are deceased.*

48. How does this standard address HIV testing for a deceased source patient when the next of kin or other person representing the estate is available?

In a situation in which a source patient of an occupational exposure is deceased, anonymous testing should be done. When a patient expires, health care proxy and other surrogacy status ends with death.

49. How should HIV testing be done in occupational exposure cases that meet all of the criteria noted in question 47?

The law allows that the provider order an anonymous test of the source person with results being provided only to the attending professional of the exposed person solely for assisting the exposed person in making appropriate decisions regarding post-exposure medical treatment. The results of the test cannot be disclosed to the source person or placed in that person's medical record.

The source patient may be told that the exposure occurred and an HIV test was performed. It would be appropriate to urge the source patient to accept confidential testing so he may have access to information about his own HIV status.

50. In cases of occupational exposure, how is authorization to conduct anonymous testing obtained?

A clinician may only order an anonymous test in the specific instance of an occupational exposure involving a source patient who is deceased, comatose or otherwise unable to consent, and there is no surrogate available immediately. The medical benefit of knowing the source person's test result must be documented in the exposed person's medical record.

51. It was my understanding that only state and local health departments could provide anonymous HIV testing. Has that changed?

Yes. The law now allows for anonymous testing to be ordered by health care providers in very specific situations involving occupational exposures. Laboratories are no longer required to have a patient name in order to run an HIV test in these

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circumstances. In almost all other instances, anonymous testing is only conducted by staff of state and local health departments. Persons wishing an anonymous test can be referred to one of these by having them call 1-800-541-AIDS (2437).

52. Is there a specific type of HIV test that is to be used for source patient testing in an occupational exposure?

No. However, NYSDOH strongly recommends the use of a 4th generation HIV test. In those organizations subject to OSHA regulations, rapid testing is the mandated technology for source patient testing. NYSDOH guidelines recommend that post exposure prophylaxis should be initiated as soon as possible, ideally within two hours post exposure.

53. Is form DOH-4054 (*Informed Consent to Perform HIV Testing and Authorization for Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood for Body Fluids*) still required?

Due to the fact that source patient authorization is not needed for sharing HIV test results with the exposed person's provider, and written consent is no longer needed. Form DOH-4054, *Informed Consent to Perform HIV Testing and Authorization For Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood for Body Fluids*, **is discontinued**.

54. Is testing of the source patient under the Family Health Care Decisions Act (FHCDA) different?

The FHCDA gives providers the ability to locate someone who has the legal authority to consent to HIV testing before going forward with an anonymous test, as per the amended HIV testing law. Testing under FHCDA is just as if the patient or a health care agent under a health care proxy consented to the test.

Following are the steps to be taken:

- Approach source patient. Determine that the source patient has 'no capacity to consent', then go to next step:
- Approach surrogate for consent. If the surrogate is **immediately** available, obtain consent. If no surrogate is immediately available, go to next step:
- Test source patient anonymously as per the amended HIV testing law.

55. If a source patient is tested anonymously for an occupational exposure, can we inform him when he has regained consciousness that he was tested?

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Yes. The law does not preclude the source from being informed that a test was conducted; however, you cannot inform him of the result or place it in his medical record. A confidential test could be ordered with his consent at that point so he would have the benefit of knowing the result of his HIV test.

56. Can we add a statement to our general medical consent that would allow for source patient testing in the event of an occupational exposure?

Yes. Here is an example of such language: "If a healthcare worker involved in my care and treatment becomes exposed to certain bodily fluids resulting in the possibility of transmission of a blood borne disease, my blood will be tested for HIV, Hepatitis B and Hepatitis C to determine risk of exposure."

Laboratory Questions

57. NYS has required specific statements regarding disclosure of HIV-related information on the laboratory report. Are these statements still required?

A statement regarding re-disclosure of HIV-related information under 10 NYCRR Section 63.5 is no longer required on reports of test results because the lab report is necessary to provide appropriate care or treatment.

58. Does this law change any of the existing requirements for reporting preliminary positive HIV testing results?

No. A preliminary positive may be reported at the request of the ordering provider.

59. Does the change to the law's definition of HIV-related test affect a laboratory's obligation to report to the Department all confirmed positive HIV tests?

No. Laboratory communicable disease reporting requirements are stipulated in Department regulations at 10 NYCRR Section 63.4. The following HIV-related tests are reportable:

1. All reactive/repeatedly reactive initial HIV immunoassay results AND all results (e.g. positive, negative, indeterminate) from all supplemental HIV immunoassays (HIV-1/2 antibody differentiation assay, HIV-1 Western blot, HIV-2 Western blot or HIV-1 Immunofluorescent assay);
2. All HIV nucleic acid (RNA or DNA) detection tests (qualitative and quantitative), including tests on individual specimens for confirmation of nucleic acid-based testing (NAT) screening results;
3. All CD4 lymphocyte counts and percentages, unless known to be ordered for a condition other than HIV;

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4. HIV subtype and antiviral resistance. This reporting requirement should be met with the electronic submission of the protease, reverse transcriptase and integrase nucleotide sequence determined through genotypic resistance testing; and,

5. Positive HIV detection tests (culture).

60. Can HIV lab results be posted on an electronic medical record?

Yes. Facilities may post such information but are responsible for the protection of confidential information.

61. If I am not currently providing rapid HIV testing, where can I find information about how to apply to be able to offer HIV rapid tests?

Information on registering as a Limited Service Laboratory for the performance of HIV rapid tests in clinics and other settings can be found on the DOH website. Physicians or physician practices performing HIV testing must apply for a Clinical Laboratory Improvement Amendments (CLIA) Certificate of Waiver. Instructions and applications are also available online.

Sharing Surveillance Data to Promote Linkage and Retention

This section outlines aspects of the process by which the health department (DOH) will share surveillance information with health care providers as approved by the Commissioner to be shared under Public Health Law (PHL) § 2135, as amended by Section 3 of Part A of Chapter 60 of the Laws of 2014.

62. I have heard that NYS law now allows for the sharing of HIV surveillance information with health care providers to promote patient linkage and retention in care. What are the specifics?

An amendment to NYS Public Health Law (PHL) § 2135 that went into effect on April 1, 2014, does now specifically allow the DOH to share patient-specific identified information with health care providers for the purposes of patient linkage and retention in care. The Department is implementing the 2014 law in accordance with this FAQ, while an amendment to the regulation in 10 NYCRR § 63.4(c) consistent with this FAQ is under development. Summary information regarding changes to law can be found at:

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

63. What type of information is the DOH able to share with health care providers?

The DOH is able to share surveillance information for the purposes of promoting linkage and retention in care. Information most likely to be helpful for this purpose will include the date and type of recent HIV-related laboratory testing, the ordering

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provider/facility of the most recent lab test, recent contact information, and/or a report of death.

64. Which health care providers can request information?

A licensed medical practitioner (e.g., physician, midwife, nurse practitioner or physician assistant) with a documented or verifiable diagnostic, clinical or public health interest in the patient may request information. The health care provider may designate an individual within his/her practice to receive the information. If the DOH does not have a record of the health care provider's association with the patient, the DOH will request information from the provider to document the association.

65. I work at a community-based organization that provides HIV testing. Can the DOH provide me with information for the purposes of patient linkage and retention in care?

Yes. Community-based organizations may receive information from DOH for the purposes of patient linkage and retention in care via requests from the following parties with responsibility for the organization's HIV testing and linkage activities:

- the community-based organization's Medical Director, or his/her designee within the organization;
- a health care provider with a formal, documented relationship with a community-based organization's laboratory testing program, or his/her designee within the organization.

66. I work within a linkage and retention program sponsored by a managed health care organization. Can the DOH help me confirm that my clients are linked and retained in HIV care?

Yes. A Medical Director of your organization or his/her designee within the organization may request information to help with linkage and retention in care.

67. How can I request information about my patients?

Health care providers in NYS outside of New York City (NYC) with urgent requests should call the Bureau of HIV/AIDS Epidemiology at 518-474-4284 between the hours of 8:00am and 4:45pm Monday - Friday. Health care providers in NYC should call the NYC Department of Health and Mental Hygiene (DOHMH) HIV Epidemiology and Field Services Program at 212-442-3388 between the hours of 8:00am and 4:45pm Monday - Friday. NYCDOHMH has launched the "HIV Care Status Reports system" for providers to submit out-of-care patients for query against the Registry regarding current care/vital status. The web-page with information about NYC's CSR is here: <http://www.nyc.gov/html/doh/html/living/hiv-care-reports.shtml>

Should the call lead to a voice messaging system, please leave your contact information and a DOH staff member will return your call. Please do not leave patient names or other patient identifying information on voicemail. Both health

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departments are working to establish secure electronic mechanisms to facilitate communication and accommodate more routine requests for information.

68. What is an urgent request?

While the secure electronic mechanisms to facilitate communication are being established, an urgent or high priority request is defined as an exceptional circumstance in which information from the surveillance registry is critical to establishing linkage or retention in care. Examples of urgent requests might include an HIV-infected pregnant woman lost to care or a patient who has acute HIV infection but is unaware of his/her status.

69. What information is needed to request information about my patients?

Health care providers requesting information should be prepared to provide the following patient information to the DOH: first name, last name, date of birth, sex at birth, last known address and telephone number, and date of last contact with the requesting health provider (including laboratory test type and date). If known and applicable, the following should also be provided: Medicaid Member Client Identification Number (CIN), Social Security Number, New York State Department of Corrections and Community Supervision or Criminal Justice System identifier (NYSID).

70. Can I share information provided to me by the DOH with other medical providers and/or with community-based organizations?

Yes. Information from the DOH provided to the health care provider or his/her designee should be treated as other HIV information already contained within the patient record and so can be shared according to existing rules governing the sharing of HIV medical information with other providers. Information should be handled and stored confidentially and shared in accordance with HIPAA, NYS PHL Article 27, and other applicable laws for sharing of HIV-related information.

71. One of my patients with HIV did not keep her last appointment and I am unable to contact her. Can the DOH help?

The DOH may be able to help in two ways: 1) The DOH may be able to share information with a health care provider on the recent care received, CD4 and viral load testing, the site of that care, and any recent locating information collected through reporting; 2) DOH staff may be able to assist with locating the individual, especially if there is an urgent need to return the individual to care.

72. I am having trouble getting prior medical records on my new patient. Can the DOH provide me with past CD4 and viral load values?

The law authorizes sharing of surveillance data for purposes of linkage and retention in care. Typical information applicable to linkage and retention in care will include the most recent date and site of laboratory testing (CD4 lymphocyte count

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and viral load) as well as locating information. Any information shared for purposes of linkage and retention that is also potentially useful for medical care should be verified with the source institution prior to use for medical care. The surveillance data does not constitute a medical record, and it is not aggregated with the same quality controls as a medical record.

73. Can information be requested for medical-legal documentation to confirm HIV status in my medical records?

No. A clinician needing to establish medical-legal documentation of HIV status should order the appropriate screening and confirmatory HIV testing. Information regarding HIV diagnostic testing, including confirmation of an existing diagnosis, can be found at:

<https://www.health.ny.gov/diseases/aids/providers/testing/index.htm#algorithm>

74. What are Health Department Partner Services, and how do I request these services for my newly diagnosed patients or for patients with established infection?

The Partner Services Program provides a link between health care providers, persons diagnosed with HIV, Chlamydia, gonorrhea or syphilis, and their sexual and/or needle-sharing partners. The Partner Services Program can facilitate partner notification and early testing while maintaining confidentiality of all individuals involved. Partner Services staff work with patients to develop a plan to notify their partners. Based on the patient's needs, staff can notify potentially exposed partners anonymously, as well as help patients who want to tell their partners on their own. At any time, a clinician can request Health Department Partner Services by completion of the NYSDOH-4189 Medical Provider HIV/AIDS and Partner/Contact Report Form (PRF). For assistance with obtaining or completing the PRF, please call 518-474-4284. Additional information can be found at:

http://www.health.ny.gov/diseases/aids/providers/regulations/partner_services/.

Providers in New York City can call the NYC Department of Health and Mental Hygiene (DOHMH)'s Contact Notification Assistance Program (CNAP) at 212-693-1419 for assistance with reporting and notifying partners.

75. What DOH resources are available for my patients living with HIV infection?

NYS DOH and NYC DOHMH have a variety of resources for persons living with HIV infection. A listing of resources is available at:

<https://www.health.ny.gov/diseases/aids/general/resources/index.htm> and
<http://www.nyc.gov/html/doh/html/living/std-homepage.shtml>

Additional Questions

76. Will NYSDOH require any data be reported from health care facilities or private practitioners with regard to activities mandated under this law?

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No. There are no new reporting requirements included in the Law. Medical providers must continue to complete and submit the NYS Medical Provider HIV/AIDS and Partner/Contact Report Form (PRF) within 14 days to report new diagnoses of HIV or AIDS, previously diagnosed persons who are new to clinic, and/or persons needing partner services. As has been the case, New York City physicians are required to send their reports to the NYCDOHMH. Forms or additional information on this routine reporting requirement can be obtained by calling the NYSDOH at 518-474-4284 or NYC DOHMH at 212-442-3388.

77. How can clinicians determine the tests "approved for the diagnosis of HIV"?

Approved testing technologies include those consistent with state and national guidelines for HIV diagnosis. FDA maintains a list of approved diagnostic tests: <http://www.fda.gov/BiologicsBloodVaccines/BloodBloodProducts/ApprovedProducts/LicensedProductsBLAs/BloodDonorScreening/InfectiousDisease/UCM080466>

78. Can HIV-infected minors consent for their own treatment?

In general, as per NYS Public Health Law Section 2504, parental or guardian consent is required for a physician to treat a minor for HIV/AIDS, including in school-based clinics. Family planning clinics can provide only family planning-related care to minors with the minor's consent. Minors who are married or pregnant/parenting can consent for their own care.

79. Do the Health Departments provide outreach to previously diagnosed persons who are named as contacts of newly diagnosed cases? Historically linkage outreach has focused on newly diagnosed cases.

Yes. Recent changes to Public Health law, specifically those designed to use HIV surveillance data to help link and reengage HIV-positive persons to care, have added a focus on reengagement in care for out-of-care previously diagnosed persons named as contacts of newly diagnosed cases. This activity has been identified as a key strategy in the Governor's three-point plan to end AIDS as an epidemic in New York State by the year 2020.