
HIV Testing Legislation

Chapter 308 of the Laws 2010

Amending HIV Testing Public Health Law

AIDS Institute
Brief Update

Why is this Legislation important?

- Approximately 20% of HIV-positive New Yorkers are unaware of their infection status and 33% of persons newly identified with HIV have been infected long enough that they are diagnosed with AIDS within one year.
- This Legislation will promote increased and earlier HIV testing; and promote linkage to treatment and care.
- Consistent with the significant advances achieved in both HIV testing and medical treatment for HIV/AIDS.
- More in line with the recommendations issued by the federal Centers for Disease Control and Prevention (CDC).

Prior to consent or testing

- Prior to consent or testing, a person ordering the test shall provide an explanation of the cause of HIV/ AIDS, available treatments, prevention strategies, voluntary nature of testing, confidentiality protections, and the prohibition of discrimination

Informed Consent

- HIV related testing consent can now be a part of a signed general consent; durable and in effect until revoked or expires.
- Documented oral consent is acceptable for a rapid HIV test [except in Correctional settings].
- Oral notification must be provided whenever an HIV test is performed and documented in the individual's medical record.
- Individuals will still be provided an opportunity to decline HIV testing and testing will only be done with full patient consent after the patient is provided with pre-test education and information.

Consent Forms

- NYSDOH will develop “standardized model” informed consent forms.
- Providers may use alternate forms, without specific approval from NYSDOH, however all forms must be consistent with the NYSDOH “standardized model” forms.

HIV Post Test (Negative)

- HIV post test messages are tailored to status.
- Negative post test messages must emphasize identified risk behaviors.

HIV Post Test (Positive)

- Positive post test counseling messages will remain the same; however, **the person ordering the HIV test must provide or arrange for follow-up medical care if the patient consents.**

Occupational Exposure

HIV testing will be allowed in cases where:

- The source person is deceased, comatose or unable to provide consent, and his or her health care provider determines that mental capacity to consent is not expected to be regained in time for the exposed person to receive appropriate medical care, as determined by the exposed person's health care provider; and
- An authorized representative for the source person is not available or expected to become available in time for the exposed person to provide appropriate medical care.

Occupational Exposure, cont.

- In these very specific situations a provider shall order an anonymous HIV test of the source person and the results of the anonymous test, but not the identity of the source person would be disclosed to the exposed person's provider.
- The results of the HIV test of the source person would not be disclosed to the Source person or placed in the source person's medical record.

Physician Certification

- Physicians no longer certify that informed consent has been obtained before ordering HIV related testing by a laboratory or other facility.

Required “offer”

- Requires that an HIV related test be offered to every individual between the ages of 13 and 64 years of age
- In these health care settings
 - inpatient
 - emergency department
 - primary care services in the outpatient department of a hospital
 - freestanding diagnostic and treatment center
 - physician, physician assistant, nurse practitioner, or midwife providing primary care (ie. family medicine, general pediatrics, internal medicine, obstetrics, gynecology)

HIV Surveillance Data

- NYSDOH is authorized to use HIV testing information in the aggregate without identifying patient information for the improvement of the quality of medical care provided to individuals with HIV/AIDS.
- NYSDOH is authorized to share identifying information with public health disease programs within State DOH or local health departments.
- Data obtained "upon periodic monitoring of HIV infection" be reported to the Commissioner of Health.

Definitions of HIV test

- Updates the definition of "HIV related testing" to mean tests approved for the diagnosis of HIV.
- Establishes the definition of "Rapid HIV test or testing" to mean any laboratory screening test or tests approved for detecting antibodies to HIV, that produce results in sixty minutes or less, and encompasses a confirmatory HIV related test if the screening test is reactive.

Sharing of confidential information in cases where the patient is deceased

- Provides limited access to confidential HIV information to the executor or administrator of an estate when needed to fulfill the responsibilities of such a position

Revised Disclosure practices

- A written statement regarding confidentiality and re-disclosure no longer have to be provided for *routine disclosures* to
 - Providers assisting in rendering care or,
 - For disclosures made to health insurers in the day-to-day course of the billing process

Report to Governor and Legislature

In 2012 the Legislation will be reviewed for impact based on measures including,

- The total number of persons who are tested for HIV infection
- The total number of persons who access care and treatment

Effective Date

- The law is effective September 1, 2010, with Regulations to follow

...Please submit questions
electronically...

HIVtestlaw@health.state.ny.us

Slide set prepared by

Dan O'Connell
Dao03@health.state.ny.us

Johanne Morne
Jem18@health.state.ny.us