
Amended HIV Testing Public Health Law

Chapter 308 of the Laws 2010

**Statewide Webcast:
September 22, 2010**

**Sponsored by the NYS Department of Health and
NYC Department of Health and Mental Hygiene**

Topics to be addressed:

- Major components of the amended public health law
- Specific settings and providers affected by the law
- Simplified process for obtaining patient consent for HIV testing
- Responsibility of health care providers to arrange for follow-up medical care for all patients who test HIV positive
- Timeline for implementation of the new law including the development of regulations by the NYSDOH
- Frequently asked questions

Requirement to offer HIV testing

- Effective September 1, 2010
- HIV related test offered to individuals between the ages of 13 and 64 years of age; and younger or older if there is evidence or indication of risk activity
- The offer is mandated for certain settings and by certain Providers

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.

Settings Impacted by the Law

- The law applies to the following health care settings:
 - ✓ inpatient unit of a general hospital
 - ✓ emergency department of a general hospital
 - ✓ primary care services in the outpatient department of a hospital
 - ✓ primary care services in a diagnostic and treatment center
 - ✓ Private physician office (refer to next slide)

Providers required to make the offer regardless of setting

- Physicians, physician assistants, nurse practitioners, or midwives providing primary care*
- *Primary Care means the medical fields of family medicine, general pediatrics, primary care, internal medicine, primary care obstetrics, or primary care gynecology

HIV testing messages

- Continued emphasis on streamlining testing messages
- Prior to consent or testing, a person ordering the test shall provide:
 - 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 and infected people in their lives from becoming infected or being infected themselves with different strains of HIV.

HIV Testing messages (cont.)

- 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 or expires by its terms.

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 an appointment for follow-up medical care if the patient consents.**

Simplified 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.
- An updated Part B form is available in English and Spanish
- Model forms are available at www.health.ny.gov

Occupational Exposure

HIV testing without consent 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.

Revised Disclosure practices

- A written statement regarding confidentiality and re-disclosure no longer has 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

Sharing of confidential information in cases where the patient is deceased

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

HIV testing remains voluntary

- The law mandates **the offer** of HIV testing only
- HIV testing is voluntary and requires the consent of the person being tested or someone authorized to consent for the individual
- No change in exceptions

Exceptions to voluntary HIV testing

- Newborns
- Blood, body parts, and organ donations
- 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.
- Sexual assault defendant testing
- For certain types of insurance

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

- At least once to every person between the ages of 13 and 64 (or younger or older, if indicated)
- Additional offers of testing need to be made for persons whose risk behaviors indicate testing

CDC Recommendations on Frequency of Testing

- The Centers for Disease Control and Prevention recommends that persons get tested at least once
- Re-tested once a year or more if they engage in any of the following risk behaviors:
 - Injecting drugs or steroids with shared equipment (such as needles, syringes, or works)
 - Having unprotected anal, vaginal, or oral sex
 - Exchanging sex or drugs for money
 - Having unprotected sex with anyone who has engaged in any of the activities above or whose HIV status is not known

Different types of HIV tests

- The testing consent component of the law applies specifically to testing performed to diagnose HIV infection.
- The law does not apply to tests performed to monitor HIV disease progression or treatment such as viral loads, CD4 counts, or HIV resistance

Age and Capacity to Consent

- 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 between 13-18 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 capable of providing consent.

Consent Forms

- NYSDOH has provided model forms
- In the interim, continue to use the previous version of DOH-2556 (5/05) and DOH-2556i (6/05)
- No form required if you are offering a rapid test, but need to document consent in the medical record.

What are the standard documentation requirements?

- Consent must be noted in the patient's medical record.
- This should include date and name of person ordering the test
- Refusal would be documented on a general medical consent form by patients indicating in a clearly marked place near their signature that they do not wish to be tested for HIV.
- If general medical consent form is not used, the refusal should be noted in the patient's medical record including date and name of the person making the note.
- Revoking consent can be done orally or in writing.

Consent and confirmatory testing for rapid tests

- Patients who give oral consent for a rapid HIV test do not have to sign a written consent for western blot confirmation

When is a patient medical record considered HIV protected?

- The inclusion of a general consent and/or documentation of a required offer for HIV testing in a patient record, does not make the record HIV protected.

Linking HIV positive patients to care applies to all setting and providers

- The requirement for providing or arranging for a medical appointment for those diagnosed as HIV-infected applies to anyone providing HIV testing
- Examples of some exceptions: testing done for a blinded research protocol or for procuring body parts for transplantation.

Reimbursement for HIV testing

- Chapter 308 has not changed the way HIV diagnostic testing is paid for.
- Medicaid rate structures and reimbursement mechanisms are not impacted at this time.
- Any future changes communicated to providers in the “Medicaid Update.”
- 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).

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

- Only applies to occupational exposure involving a source patient who is deceased, comatose or otherwise unable to consent.
- The medical benefit of knowing the source person's test result must be documented in the exposed person's medical record.
- Implementation of the Family Health Care Decision Act also extends the definition of authority for treatment and life care decisions.

When will the DOH begin to enforce the provisions of the HIV testing law?

- The law is effective September 1, 2010.
- DOH is aware there will be implementation challenges related to the HIV testing law due to the abbreviated time between the enactment and effective date.
- Work collaboratively with facilities and providers over the next several months as they come into compliance with the various provisions.

Exceptions to the mandatory offer

- Individual is being treated for a life threatening emergency.
- Individual has previously been offered or has been the subject of an HIV related test
- When the individual lacks the capacity to consent (and no other appropriate person is available to provide consent).

Arrangements for Follow-Up Care

- 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 reflect the name of the provider/facility with whom the appointment was made.
- Providing contact information for a Designated AIDS Center is not sufficient

Physician certification of informed consent on laboratory HIV test requisition form

- No longer required.
- Laboratories may continue to use existing stock of requisition forms.
- At the time the laboratory revises its form, the lines for certifying consent should be removed.

What is the status of the Regulations?

- Regulations will be drafted this Fall.
- Stakeholder input from members of the community, health care providers, and representatives from local government will be actively solicited as part of the regulation drafting process.

When will Stakeholder meetings take place?

- The AIDS Institute is in the process of planning stakeholder meetings now.
- Information about the meetings will be posted on the DOH website as it becomes available.
- Individuals may also provide feedback or ask questions at any time by contacting us at our special internet address
HIVtestlaw@health.state.ny.us

Resources

DOH website: <http://www.health.ny.gov>

click on HIV/AIDS on left side

click on Testing

Archive of this webcast:

- Available in early October
- Notice will be widely distributed
- Check DOH website for link

Archive of this broadcast

- Information about how to access the archive will be widely disseminated in early October
- Visit the DOH website for updates

Provider Training Resources

- HIV/AIDS Regional Training Centers also on DOH website - <http://www.health.ny.gov>
click on HIV/AIDS on left side
click on Training
- Clinical Education Initiative:
www.ceitraining.org
Or call 1-800-233-5075

Please continue to submit
questions electronically...

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