

Amended HIV Testing Public Health Law

Effective September 1, 2010, there are significant changes to HIV testing practices in New York State.

Key provisions of the new legislation include:

- 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.
- Standardized model forms for obtaining informed consent and providing for disclosure will be developed by the New York State Department of Health and posted on the DOH website.
- Consent for HIV testing can be part of a general durable consent to medical care, though specific opt out language for HIV testing must be included.
- Consent for rapid HIV testing can be oral and noted in the medical record (results must be produced in 60 minutes or less).
- Prior to being asked to consent to HIV testing, patients must be provided the seven points of information about HIV required by the Public Health Law.*
- Health care and other HIV test providers authorizing HIV testing must arrange an appointment for medical care for persons confirmed positive.
- HIV test requisition forms submitted to laboratories will be simplified.
- 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 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.

⁺ 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 been the subject of an HIV related test (unless otherwise indicated due to risk factors).
- When the individual lacks the capacity to consent (and no other appropriate person is available to provide consent).

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

1. 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.
2. There are treatments for HIV/AIDS that can help an individual stay healthy.
3. Individuals with HIV/AIDS can adopt safe practices to protect uninfected from acquiring HIV and infected people from acquiring additional strains of HIV.
4. Testing is voluntary and can be done anonymously at a public testing center.
5. The law protects the confidentiality of HIV test results and other related information.
6. The law prohibits discrimination based on an individual's HIV status and services are available to help with such consequences.
7. 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.