HIV Testing: 2010
William M. Valenti MD

On September 1, 2010, New York State’s new HIV testing law took effect. Hopefully, mandatory offering of an HIV test will increase the number of people being tested leading to faster identification of HIV-positive patients who do not know their status.

Unfortunately, in New York and in the United States overall, almost half those who test positive are “late testers” (have the disease AIDS at the time of testing or are diagnosed with AIDS within 12 months of HIV testing).

Good news: when rapid HIV testing is done, verbal consent is sufficient for testing. Bad news: separate, written informed consent is still required for the standard blood test.

Summary
- HIV testing is not mandatory.
- Instead, HIV testing must be offered to all persons ages 13-64 receiving hospital or primary care services, including inpatients, persons seeking services in emergency departments, in outpatient settings (primary care at a clinic or from a physician, physician assistant, nurse practitioner or midwife).
- Consent for HIV testing can be part of a general durable consent to medical care, but must include specific “opt out” language for HIV testing.
- Consent for rapid HIV testing can be oral and noted in the medical record.
- Prior to consenting, patients must be provided seven points of HIV information.
- Persons authorizing HIV testing must arrange an appointment for medical care for persons confirmed positive.
- Deceased, comatose or persons incapable of providing consent and the source of an occupational exposure may be tested for HIV without consent.
- Confidential HIV information may be released without a written consent to treating providers or to health insurers for reimbursement.

Which providers are included in this law?
- Those providing health services in an inpatient or emergency department of general hospital;
- Primary care providers (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.
- School-based clinics.
- Family planning sites providing primary care, pediatrics, obstetrics, or gynecology services.

Providers are not required to offer HIV testing if the patient is:
- being treated for a life threatening condition;
- has previously been offered or has been tested for HIV or
- lacks capacity to consent to an HIV test.

**Is HIV testing mandatory?**
No. The law mandates the *offer* of HIV testing only, regardless of perceived HIV risk. HIV testing is voluntary and requires the consent of test subjects or someone authorized to consent for them.

**How often does HIV testing need to be offered?**
At least once to every person ages of 13 and 64 (younger or older, if indicated). Testing is recommended annually for persons with HIV risk behaviors.

**Has informed consent changed?**
Informed consent for HIV testing can be incorporated into a general medical consent that is consistent with a model to be developed by the Health Department. Consent is durable (in force until its stated term expires or until revoked by the patient). The patient needs to be informed orally each time an HIV test will be done.

For rapid HIV tests, consent may be oral and can be noted in the medical record.

For persons unable to consent, the Family Health Care Decisions Act stipulates who is able to consent for care in various circumstances.

**What are the consent requirements in correctional facilities?**
Written, informed consent is required for rapid or standard HIV blood tests.

**Is parental consent required for individuals 13-18 years old?**
No. If a young person lacks the capacity to consent, the testing offer should be made to a parent or person capable of providing consent.

**How should the general medical consent be changed?**
Required components are - HIV testing may be done, counseling information will be provided, duration of consent, and a clearly marked place for patient to decline testing.

**What are the “Seven Points of Information?”**
This required information may be provided in pre-test counseling sessions or through oral/written mechanisms.
- HIV is the virus that causes AIDS and can be transmitted via:
  - unprotected vaginal, anal, or oral sex with someone who has HIV;
- contact with blood via shared needles (piercing, tattooing, drug equipment/needles),
- HIV-infected pregnant women to their infants during pregnancy, delivery, or while breast feeding.

- Treatments for HIV/AIDS can help an individual stay healthy.
- Safer behaviors can protect uninfected people from acquiring HIV and infected people from acquiring additional strains of HIV.
- Testing is voluntary and can be done anonymously at public testing sites.
- Confidentiality of HIV test results and related information is protected.
- The law prohibits discrimination based on HIV status; services are available to help with such consequences.
- Informed consent for HIV testing is valid until revoked by the person being tested.

**Documentation:** should include the date and name of the person making the note

**Oral consent/ refusal for rapid testing**

Medical settings: in the patient's medical record (with date and name of person ordering the test).
Non-medical settings: in testing documentation for each client.

**Refuse or revoke testing**

Refusal can be documented on a general medical consent form in a clearly marked place near the patient’s signature. Absent a general medical consent form, refusal should be noted in the patient's medical record.

Consent can be withdrawn at any time either orally or in writing, and noted in the medical record, in close proximity to the original consent, and in the current medical record note.

There is no specific expiration period unless specified on the consent form.

**In private, primary care settings where there is no general medical consent, what form should be used?**

Private medical offices can use either of the standard model consent forms provided by the Department or create their own that is consistent with the standard models.

**What is the post-test counseling requirement?**

Those who test HIV positive must be provided counseling or referrals for counseling regarding:
- coping with the emotional consequences of learning the result;
- potential discrimination as a result of disclosure of the test result;
- behavior change to prevent transmission or acquisition of new HIV infection;
- available medical treatments;
- the need to notify contacts.
Medical appointments for HIV-infected persons
The clinician ordering the test is responsible for providing/arranging for an appointment for follow-up HIV care for those who test positive and agree to have such an appointment made.

The patient’s medical record should reflect the name of the provider/facility with whom the appointment was made.

The law does not specify the clinician specialty for referral.

Disclosure of HIV-related Information
May be made without a written disclosure statement to:
- A health care provider or health facility when the HIV related information is necessary to provide appropriate care or treatment.
- Third party payers or their agents to reimburse health care providers for health services; provided that, where necessary, an appropriate authorization for such disclosure has been secured by the provider.
- Executors and administrators of an estate, as needed, to fulfill their responsibilities.

Can a source patient of an occupational exposure be tested without consent?
In occupational exposure with significant risk of contracting or transmitting HIV infection, testing may be ordered if the exposed person will benefit medically by knowing the source person’s HIV status and the source person:
- is deceased, comatose or is determined by his/her attending professional to lack mental capacity to consent, AND
- is not expected to recover in time for the exposed person to receive appropriate medical treatment, AND
- has no person available who has legal authority to consent in time for the exposed person to receive appropriate medical treatment (within 2 hours and generally no later than 36 hours post-exposure).

The source person must be tested anonymously. NYSDOH strongly recommends rapid HIV testing.

Results are provided only to the attending professional of the exposed person to assist in making post-exposure medical treatment decisions. Test results cannot be disclosed to the source person or placed in that person’s medical record.

Are there any new reporting requirements for health facilities, private practitioners or laboratories?
No. Medical providers must continue to report new diagnoses of HIV or AIDS and/or persons needing partner services. Forms or additional information can be obtained by calling (518) 474-4284.
Laboratories are still required to report confirmed HIV test results.

**Can I apply to provide rapid HIV testing?**
Physicians or physician practices must register as a Limited Service Laboratory for rapid HIV testing (see below).

Adapted from New York State Department of Health (see below)

**Resources**

Questions/comments: hivtestlaw@health.state.ny.us

--York State Health Department: full text of legislation, sample forms and guidance.
http://www.nyhealth.gov/diseases/aids/testing/hiv_testing_law.htm

--Requirements for rapid testing
http://www.wadsworth.org/labcert/polep

**HIV Medical Providers**

AIDS Care – 545-7200
AIDS Center/Strong Memorial Hospital – 275 0526
Anthony Jordan Health Center - 423 5800
McCree-McCuller Center/Unity - 368 3200

Dr. Valenti is Clinical Associate Professor of Medicine, University of Rochester School of Medicine and Dentistry and Founding Medical Director, AIDS Care (formed by the merger of Community Health Network and AIDS Rochester).
www.acrochester.org or email: bvalenti@rochester.rr.com