



What you Need to Know About Illinois Law To Conduct Voluntary HIV Testing

Brief Overview for Clinicians*

In 2006, the U.S. Centers for Disease Control and Prevention (CDC) released guidelines recommending that health care providers conduct routine HIV testing for all patients ages 13-64. In 2007, Illinois updated the state's HIV testing law to reflect these guidelines. The Illinois Department of Public Health in May 2012 revised regulations reflecting the updated law. This fact sheet summarizes the current HIV testing law and regulations.

Informed Consent

Consistent with CDC recommendations, Illinois requires trained professionals (not necessarily a health care provider) to obtain informed consent, either written or verbal, before administering voluntary HIV testing:

- Informed consent for HIV testing, including pre-test information (see below), must be documented, either with the patient's signature, the signature of the subject's legally authorized representative, or if obtained verbally, by the health care provider in the patient's medical record.
- Consistent with CDC guidelines, specific consent for HIV testing may be included on the same form as the general consent for health care, as long as the patient understands that he or she can consent to general health care without consenting to HIV testing, and the form makes clear how the individual can opt-out of HIV-testing.
- Consistent with CDC guidelines, the law allows "opt-out" HIV testing in which a patient is informed that testing will occur unless he/she specifically declines it.
- Informed consent and pre-test information, is required because it gives individuals the opportunity to ask questions and decide to accept or decline an HIV test.

Required Pre-Test Information

Consistent with CDC guidelines, Illinois requires health care professionals to provide pre-test information - which can be delivered in writing, verbally, by video, electronic or other means - to individuals offered voluntary HIV testing. Required elements include:

- Meaning of test results including its purpose, potential uses, limitations, and procedures to be followed.

- Voluntary nature of the test and the right to withdraw consent at any time.
- Right to anonymous testing and confidentiality. If anonymous testing is requested but not performed on-site, the individual must be referred to another site. Call 800-AID-AIDS (800-243-2437) for anonymous testing locations.
- If appropriate, availability of additional or confirmatory testing.
- If appropriate, availability of referrals for further information or counseling.

Note: The law requires health care providers to counsel their pregnant patients about HIV and conduct opt-out HIV testing. Additional pre-test information is required.

For more information about testing of pregnant women, see:

Illinois Perinatal Prevention Act:

http://www.aidschicago.org/pdf/2007/adv_perinatal_fact_sheet_2007_law.pdf

24/7 Perinatal HIV hotline website: www.hivpregnancyhotline.org

Exceptions to Consent and Pre-Test Information Requirements

Informed consent and pre-test information are not required when, in the judgment of the treating physician, such testing is medically indicated and there is general consent to treatment (i.e., cases where obtaining specific consent for HIV testing is not feasible and HIV disease is suspected based on clinical indicators).

State law allows HIV testing without consent in a few additional circumstances:

- Individuals involved in a blood or other bodily fluid exposure with a health care worker, law enforcement officer, or paramedic, if a physician determines that the exposure is likely to transmit HIV.
- Individuals charged with certain criminal sexual offenses.
- Newborns whose mother's HIV status is undocumented.

Age of Consent

In Illinois, minors 12 years of age or older can consent to HIV testing and treatment without parental consent or notification

Confidentiality and Disclosure of Test Results

Illinois prohibits any person from disclosing the HIV-positive status of anyone else without that individual's explicit written permission. This includes health care professionals who diagnose or treat HIV infection. Without the patient's written consent a health care professional may not disclose a patient's status to his or her roommate, employer, landlord, family member, or any other individual. This means that health care professionals should not use friends or family members as translators when discussing HIV.

HIV information can be shared within the health care setting for purposes of treatment, payment and health care operations. Internal use must be limited to agents or employees responsible for treatment, payment and operations, and only the minimum necessary information may be disclosed.

The only sexual partner who may be notified about a patient's HIV status is the person's legal spouse or legal partner in a civil union, and then only after the patient has been given a chance to notify the spouse or partner him or herself. Only a physician may disclose to a spouse or civil union partner. The law does not require notification of the spouse and protects physicians acting in good faith whether or not they notify the spouse.

When a minor tests positive for HIV, the health care professional who ordered the test may, but is not required, to tell the minor's parents. If the health care professional believes it is in the minor's best interest to disclose to the parents or legal guardian, the provider may do so only after giving the minor a chance to disclose to his/her parents first. The law protects health care professionals acting in good faith whether or not they disclose the minor's HIV status to his/her parents.

Penalties for violating confidentiality or testing requirements range from \$2,000 minimum for negligent violations and \$10,000 minimum for intentional or reckless violations.

Delivery of HIV Test Results

Confirmed positive HIV test results should be delivered in person whenever possible. Notification by phone is permitted if the identity of the patient or his or her representative can be verified. The provider must make at least two attempts to deliver the positive test results. If a health care professional is unable to deliver the results within 14 days, then the information should be passed on to the local health department, no later than 21 days after receipt of the test result.

Unconfirmed positive results of HIV screening tests should not be disclosed unless the person being tested is counseled about the preliminary nature of the result, the need for confirmatory testing and has consented to receive the preliminary result. Release of preliminary results must include a disclaimer that HIV has not been diagnosed.

Negative HIV test reports should be delivered in person when feasible. It is recommended that individuals with HIV negative results should receive counseling about risk reduction strategies, future STI screening, the possibility that recent infection cannot be detected by standard tests, and the benefits of repeat testing.

Referrals for Care for HIV-Positive Individuals

When an individual is notified of a confirmed positive test result, they must be given referrals for counseling and treatment. If the referral is to a different health care provider, written consent should be obtained to allow information to be shared with that provider.

Case Reporting

Confirmed cases of HIV must be reported to the relevant local or state health department within seven days of the confirmed test result.

References and Resources:

Illinois AIDS Confidentiality Act:

www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1550&ChapAct=410%26nbsp%3B305%2F&ChapterID=35&ChapterName=PUBLIC+HEALTH&ActName=AIDS+Confidentiality+Act%2E

Illinois HIV/AIDS Confidentiality and Testing Code:

<http://ilga.gov/commission/jcar/admincode/077/07700697sections.html>

U.S. Centers for Disease Control and Prevention guidelines for HIV testing:

<http://www.cdc.gov/mmwr/pdf/rr/rr5514.pdf>

Fact Sheet on 2007 perinatal HIV prevention law:

http://www.aidschicago.org/pdf/2007/adv_perinatal_fact_sheet_2007_law.pdf

Illinois Department of Public Health: <http://www.idph.state.il.us/>

ACLU of Illinois: www.aclu-il.org

AIDS Legal Council of Chicago: www.aidslegal.com

AIDS Foundation of Chicago: http://www.aidschicago.org/pdf/2007/adv_perinatal_fact_sheet_2007_law.pdf

Pediatric AIDS Chicago Prevention Initiative: www.pregnantandpositive.org

*This fact sheet is designed to provide legal information. No portion of this fact sheet constitutes legal advice. Specific legal questions should be directed to legal counsel.