

Governor Blagojevich Enacts Landmark HIV Testing Bill

CHICAGO, IL (June 27, 2007) — Governor Rod Blagojevich today marked National HIV Testing Day by signing into law Senate Bill 929 (Public Law 95-0007), which allows an expansion of voluntary HIV testing while preserving patient rights to testing with informed consent.

“With the signing of this bill today, Illinois will advance a new paradigm for HIV testing that not only streamlines testing but also ensures testing remains informed, ethical, and grounded in the bedrock tenets of patients’ rights,” said AFC Executive Director Mark Ishaug.

The bill, sponsored by State Representative La Shawn K. Ford (D-Chicago) and State Senator Carol Ronen (D-Chicago), resulted from the leadership of the Illinois Department of Public Health (IDPH) to convene and gather input from such diverse stakeholders as the AIDS Foundation of Chicago, the American Civil Liberties Union (ACLU) of Illinois, the AIDS Legal Council of Chicago, the Illinois State Medical Society, the Illinois Hospital Association, and the Chicago Department of Public Health.

The legislation preserves important patient protections—including testing only with informed consent, critical pre-test information, as well as the right to refuse testing—while fulfilling the U.S. Centers for Disease Control and Prevention’s (CDC) call for a more streamlined approach to HIV testing in medical settings. The bill allows patients to consent to testing either verbally or in writing. Previously, providers could test patients for HIV only with their written consent.

“Preserving patients’ medical decision-making rights is fully consistent with the goal of helping more people learn their HIV status,” said John Knight, attorney with the ACLU of Illinois. “We also applaud provisions requiring linkage to care for those who test positive, which is really the only way we can help HIV-positive people vastly improve their health.”

The legislation imposes increased financial damages for violations of the AIDS Confidentiality Act and includes provisions to support statewide training and technical assistance for clinicians, which will be instrumental in persuading healthcare providers statewide to offer HIV testing more readily as a part of routine medical care.

“The challenge over the next several months will be implementation of this new bill,” said David Ernesto Munar, vice president at the AIDS Foundation of Chicago. “We call on Governor Blagojevich and the General Assembly to provide a new, \$2 million appropriation to educate medical providers about best practices in HIV testing and linkage to care so that more of their clients benefit.”

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Highlights of the bill include:

Pre-test information: Consistent with CDC recommendations and current Illinois law, the proposal requires healthcare providers to deliver brief pre-test information to

Patients about HIV and the meaning of test results. Information may be supplied in writing, verbally, by video, or other means. Patients must have the opportunity to ask questions.

- **HIV testing may be done only with the knowledge and informed consent of the person being tested.** Consistent with CDC recommendations and current Illinois law, the proposal preserves the requirement that patients give their informed consent before they receive HIV testing.
- **A patient's verbal consent is sufficient to order an HIV test:** Departing from current law, the proposal would follow CDC recommendations in establishing that patients may give their informed consent to testing in writing or verbally. In either case, the consent must be documented by the healthcare provider.
- **A separate HIV testing consent form is not required:** Consistent with CDC recommendations, doctors may ask patients to sign consent forms that include both general medical care and HIV testing, although doctors who wish to continue to use separate forms which incorporate pre-test information and written consent are free to do so.
- **Opt-out testing allowed:** Consistent with CDC recommendations, the proposal allows doctors to perform opt-out HIV testing. Doctors must tell patients in writing or verbally that they will be tested for HIV unless they refuse. Doctors must tell patients how to refuse testing and may not force patients to receive HIV testing.
- **HIV-positive results delivered in person:** Consistent with CDC recommendations, but not previously required by Illinois law, doctors must tell patients in person about positive test results.
- **Counseling and healthcare referrals required for newly diagnosed patients:** Consistent with CDC recommendations, but not previously required by Illinois law, doctors must refer individuals who test HIV-positive to counseling and medical services to ensure they receive the follow-up assistance they need to safeguard their health and improve their lives.
- **Penalties for violating the AIDS Confidentiality Act:** The proposal doubles the minimum financial damages individuals may collect for violations of the AIDS Confidentiality Act, including testing without informed consent. A reckless or intentional violation of the patient protections of the Act will now carry a minimum civil damages award of \$10,000.
- **Focus on implementation:** The proposal requires the IDPH to lead important statewide implementation activities, including clinician training, technical assistance, and development of standards for the delivery of HIV test results.

The law is effective June 1, 2008.

For more information, visit <http://www.aidschicago.org/advocacy/testing.php>. Contact: John Peller, 312-334-0921 or jpeller@aidschicago.org.