



**AIDS Foundation
OF CHICAGO**



ALCC
AIDS LEGAL COUNCIL OF CHICAGO



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

Brief Overview for Clinicians*

A new Illinois law that changes the state's HIV testing procedures became effective on June 1, 2008. The law was changed in response to U.S. Centers for Disease Control and Prevention guidelines that recommended that all individuals ages 13-64 be tested at least once for HIV as a part of routine healthcare. The new law aims to streamline HIV testing while making sure it is voluntary and not coercive. This fact sheet summarizes the current HIV testing law.

Written or Verbal Informed Consent

Illinois requires healthcare providers to obtain informed consent, either written or verbal, before administering voluntary HIV testing:

- Informed consent for HIV testing must be documented, either with the patient's signature or in the patient's medical record.
- Informed consent is required because it gives individuals the opportunity to ask questions and decide to accept or decline a test.
- Specific consent for HIV testing may be included on the same form as the general consent for healthcare, as long as the individual 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.
- The law allows "opt-out" HIV testing in which a patient is informed that testing will occur unless he/she specifically declines it. Individuals being tested must receive pre-test information (see below), have a chance to ask questions, and be told how to decline testing if they choose.

Required Pre-Test Information

Illinois requires healthcare providers to provide pre-test information—which can be delivered in writing, verbally, by video, or other means—to individuals offered voluntary HIV testing. Required elements include:

- Meaning of test results including its purpose, potential uses, and limitations.
- 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 healthcare 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:

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

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 (i.e., cases where obtaining consent 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 healthcare 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 or older can consent to HIV testing and treatment without parental consent or notification.

Confidentiality

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

The only sexual partner a doctor may notify about a patient's HIV status is the person's legal spouse, and then only after the patient has been given a chance to do so him/herself. The law does not require notification of the spouse and protects a physician acting in good faith whether or not the physician notifies the spouse.

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

first. The law protects health care providers 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.

Case Reporting

Illinois requires all medical providers to complete individual, name-based surveillance case report forms for each individual for whom either HIV or AIDS is diagnosed. An individual who tests preliminarily positive on a rapid HIV test should not be reported until there is a confirmatory Western Blot result.

Reporting is also required for all infants born to HIV-infected mothers. The reports are to be completed by the delivery hospital.

Other Elements of High-Quality Clinical Care

- Test results must be delivered "by personal contact" whenever possible.
- Persons who test positive must be referred for counseling and appropriate HIV care.
- Although not required by law, high-quality screening and treatment programs will also counsel HIV negative patients about risk-reduction.

Reference and Resources:

Illinois AIDS Confidentiality Act:

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

Illinois HIV/AIDS Confidentiality and Testing Code (not updated to reflect 2007 law):

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

Illinois Department of Public Health: www.idph.state.il.us

AIDS Legal Council of Chicago: www.aidslegal.com

AIDS Foundation of Chicago: <http://www.aidschicago.org/advocacy/testing.php>

Pregnant Women and Newborns: www.aidschicago.org/advocacy/perinatal.php

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

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

* 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.