



DATE:	July 20, 2011
TO:	Health Alert Network
FROM:	Eli N. Avila, MD, JD, MPH, FCLM Secretary of Health
SUBJECT:	Amendment to Pennsylvania's Confidentiality of HIV-Related Information Act (Act 148) - Reducing Barriers to HIV Testing in Health Care Settings
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This transmission is a "Health Advisory" and provides important information for a specific incident or situation; may not require immediate action.

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The Pennsylvania Department of Health (Department) released the following statement on July 15, 2011, to inform health care providers that on July 7, 2011, Governor Corbett signed into law Act 59 of 2011, an amendment to Pennsylvania's Confidentiality of HIV-Related Information Act (commonly known as Act 148). The amendment aligns Pennsylvania's HIV law with the 2006 Centers for Disease Control and Prevention (CDC) Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care Settings. The amendments to the law take effect in 60 days.

All amendments are to §7605, Consent to HIV-Related Test. All other sections of Act 148 are unchanged. The amendments include the following:

- Informed *written* consent has been replaced by informed *documented* consent of the subject, as a requirement for the performance of an HIV test. The amendments require that a health care provider document the provision of informed consent, including pre-test information, and whether the subject declined the offer of HIV testing.
- The new language states that the health care provider may offer opt-out HIV testing wherein the subject would be informed that he/she will be tested for HIV unless he/she refuses.
- The Pretest Counseling provision was removed. The requirement remains that any consent be preceded by an explanation of the test, including its purpose, potential uses, limitations and the meaning of its results.
- A negative test result need not be given in person (face-to-face).

The Department believes that the amendments to Act 148 will facilitate increased HIV screening of patients, including pregnant women, in health care settings; foster earlier detection of HIV infection; identify and counsel persons with unrecognized HIV infection and link them to clinical and prevention services; destigmatize the testing process; and further reduce perinatal transmission.

Human Immunodeficiency Virus (HIV) infection and Acquired Immunodeficiency Syndrome (AIDS) remain leading causes of illness and death in the United States and within the commonwealth. Although many adults have been tested for HIV, it is estimated that 25 percent of persons living with HIV are unaware of their infection and therefore unable to benefit from clinical care to reduce morbidity and mortality. A number of these persons are likely to transmit HIV unknowingly.

Treatment has improved survival rates dramatically. However, progress in affecting earlier diagnosis has been insufficient.

The 2006 CDC recommendations advocate routine voluntary HIV screening as a normal part of medical practice for all people 13 to 64 years old, including pregnant women; similar to screening for other treatable conditions. Screening is a basic public health tool used to identify unrecognized health conditions so treatment can be offered before symptoms develop and, for communicable diseases, so that interventions can be implemented to reduce the likelihood of continued transmission.

HIV infection is consistent with all generally accepted criteria that justify screening: 1) HIV infection is a serious health disorder that can be diagnosed before symptoms develop; 2) HIV can be detected by reliable, inexpensive and noninvasive screening tests; 3) infected patients have years of life to gain if treatment is initiated early, before symptoms develop; and 4) the costs of screening are reasonable in relation to the anticipated benefits.

Often, persons with HIV infection visit health care settings years before receiving a diagnosis, but are not tested for HIV. Since the 1980s, the demographics of the HIV/AIDS epidemic in the United States have changed; increasing proportions of infected persons are less than 20 years old, are women, are members of racial and ethnic minority populations, are persons who reside outside of metropolitan areas and are heterosexual men and women who are frequently unaware they are at risk for HIV. As a result, the effectiveness of using risk-based testing to identify HIV-infected persons has diminished.

Prevention strategies that incorporate universal HIV screening have been highly effective (i.e., screening blood donors for HIV and routine screening of pregnant women).

HIV testing in health care settings is an important strategy to increase the number of individuals who know their HIV infection status and, if found to be HIV-infected, are linked to needed care, prevention and support services. HIV testing must be fully integrated into existing patient/clinic flow and approached as a standard of care, such that each patient is recommended HIV testing, regardless of HIV risk or reason for visit. All staff, particularly clinicians, are encouraged to take responsibility for reframing the message regarding HIV testing as a standard of service. It is the Department's position that HIV testing needs to be recommended to all patients with a right of refusal (not simply offered). HIV testing must be voluntary and free from coercion. Patients must not be tested without their knowledge.

Changes to your HIV testing policies and consent forms must be reviewed and approved by your legal counsel to ensure they comply with state law. The Department does not have the authority to enforce Act 148/Act 59, and so, the Department cannot provide a definitive legal interpretation of it or protect a provider from legal challenges under that the law.

The following technical assistance resources are available to provide capacity building for health care providers on integrating HIV testing into routine clinical care services:

1. The Pennsylvania Expanded HIV Testing Initiative (PEHTI) is a collaborative effort between the Department and Penn State College of Medicine for the integration of HIV testing into routine clinical care services with a focus on communities highly impacted by HIV, particularly among African Americans and Hispanics. The web site is : <http://pennstatehershey.org/sites/pehti/>.
2. The Philadelphia Department of Health and the Pennsylvania/MidAtlantic AIDS Education and Training Center at the Health Federation of Philadelphia manage a separate Expanded HIV Testing Initiative within the Philadelphia jurisdiction. The email contact is: HIVtest@healthfederation.org.
3. The Pennsylvania/MidAtlantic AIDS Education and Training Center, Center Headquarters, Graduate School of Public Health, Pittsburgh, provides statewide clinical provider capacity building and HIV professional development. The web site is www.pamaaetc.org and the phone number is : 412-624-1895

DISCLAIMER: This Advisory is not intended as legal advice. The Department does not have the authority to enforce or provide legal interpretation of Act 148/Act 59. Changes to your agency's HIV testing policies and consent forms must be reviewed and approved by your agency's legal counsel.

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Health Alert: conveys the highest level of importance; warrants immediate action or attention.

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This information is current as of July 20, 2011, but may be modified in the future. We will continue to post updated information regarding the most common questions about this subject.
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