



OHIO DEPARTMENT OF HEALTH

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To: Health Care Providers and Facilities

From: William A. Tiedemann, MSW
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Subject: Notice to Health Care Providers and Facilities of Changes in Ohio's HIV Testing Laws

Amended by 128th General Assembly, House Bill 1 (H.B.1) made changes to the HIV testing process in the State of Ohio. As of October 2009, Section 3701.242 of the Revised Code became effective:

- (A) An HIV test may be performed by or on the order of a health care provider who, in the exercise of the provider's professional judgment, determines the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or the individual's parent or guardian has given consent to the provider for medical or other health care treatment. The health care provider shall inform the individual of the individual's right under division (D) of this section to an anonymous test.
- (B) A minor may consent to be given an HIV test. The consent is not subject to disaffirmance because of minority. The parents or guardian of a minor giving consent under this division are not liable for payment and shall not be charged for an HIV test given to the minor without the consent of a parent or the guardian.
- (C) The health care provider ordering an HIV test shall provide post-test counseling for an individual who receives an HIV-positive test result. The public health council may adopt rules, pursuant to recommendations from the director of health and in accordance with Chapter 119. of the Revised Code, specifying the information to be provided in post-test counseling.
- (D) An individual shall have the right to an anonymous test. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where it is available.

As of October 31, 2010, the Ohio Administrative Code (3701-3-11) became effective:

- (A) A human immunodeficiency virus (HIV) test may be performed by or on the order of a health care provider who, in the exercise of the provider's professional judgment and within the provider's scope of practice, determines the test to be necessary for providing diagnosis and treatment to the individual to be tested if the individual or the individual's parent or guardian has given consent. Prior to performing or ordering an HIV test, the health care provider shall

inform the individual to be tested of the individual's right to an anonymous test as set forth in section 3701.242 and paragraph (C) of this rule.

- (B) Pursuant to section 3701.242 of the Revised Code, a minor may consent to be given an HIV test. The consent is not subject to disaffirmance because of minority. The parents or guardian of a minor giving consent under this paragraph are not responsible for payments for an HIV test given to the minor without the consent of a parent or the guardian.
- (C) Any individual seeking an HIV test shall have the right, on the individual's request, to an anonymous test. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where an anonymous testing is available.
- (D) If an individual tests positive for HIV, the health care provider who performed or ordered the test shall provide post-test counseling. Post-test counseling is suggested for all individuals seeking testing. Post-test counseling may be verbal or in writing and shall include, but is not limited to, the following:
 - (1) An explanation of the HIV test result. If the positive result is from an HIV screening test, the healthcare provider must explain the steps needed to confirm the test result,
 - (2) The nature of HIV disease;
 - (3) A list of resources for medical treatment, social services and, when necessary, referral for further counseling to help that individual cope with the emotional consequences of learning of the test result.
 - (4) The individual shall be provided information about the importance of following safer sex practices to protect themselves from sexually transmitted diseases, as well as how to protect others from being infected; and
 - (5) The individual shall be provided information about Ohio's HIV disclosure laws.
- (E) The requirements of paragraphs (B) to (D) of this rule do not apply to the performance of an HIV test in any of the following circumstances:
 - (1) When the test is performed in a medical emergency by a nurse or physician and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual. Post-test counseling shall be given to the individual if the individual received an HIV positive test result as soon as possible after the emergency is over;
 - (2) When the test is performed for the purpose of research if the researcher does not know and cannot determine the identity of the individual tested;
 - (3) When the test is performed by a person who procures, processes, distributes, or uses a human body part from a deceased person donated for a purpose specified in Chapter 2108. of the Revised Code, if the test is medically necessary to ensure that the body part is acceptable for its intended purpose;
 - (4) When the test is performed on a person incarcerated in a penal institution if the head of the institution has determined, based on good cause, that a test is necessary;

(5) When the test is performed on an individual after the infection control committee of a health care facility, or other body of a health care facility performing a similar function determines that a health care provider, emergency medical services worker, or peace officer, while rendering health or emergency care to an individual, has sustained significant exposure to the body fluids that are known to transmit HIV of that individual, and the individual has refused to give consent for testing.

(F) The consent of the individual to be tested is not required, and the individual or guardian may not elect to have an anonymous test, when the test is ordered by a court in connection with a criminal investigation.

In summary, in Ohio, as of October 2010:

1. State law no longer requires a separate informed consent. Consent for HIV screening can be combined into one general consent form.
2. All individuals consenting for an HIV test must be offered the option of an anonymous test. (*To locate an anonymous testing site in your area, please call your local health department to be linked to a local testing site that offers anonymous testing.*)
3. A minor can consent for an HIV test.
4. Pre-test counseling is no longer required in Ohio. Post-test counseling is only required when an individual tests positive for HIV. During the post-test counseling session, the health care provider must include all items outlined in section D. of the OAC 3701-3-11.

NOTE: Although the Centers for Disease Control and Prevention (CDC) have issued guidelines on HIV testing in health care settings (<http://www.cdc.gov/hiv/topics/testing/index.htm>), CDC recommendations do not supersede Ohio law and regulations. If there is any incongruence between CDC's recommendations and Ohio law, State law must be followed.

For additional questions about HIV counseling, testing and referral, please call the Ohio HIV Prevention Program at (614) 644-1838 or send an email to HIVSTDPrevent@odh.ohio.gov.

Frequently Asked Questions:

Q1. A staff person is exposed to a potentially infectious bodily fluid from a patient with an unknown HIV status. Does the patient need to sign a separate informed consent to be tested for HIV?

A1. No, under Ohio HIV testing law only one consent form is required. However, the institution may have a specific policy addressing this issue.

Q2. Using Q1 as the example, does the anonymous testing requirement within the law and rule apply?

A2. No, the anonymous testing requirement does not apply in this situation, Q1 is considered an emergency, see section E.

Q3. It has been indicated that an HIV test is diagnostically necessary for a patient within a clinical setting. Does the patient still need to be informed that they have the right to an anonymous test?

A3. Yes, since the HIV test has been indicated as diagnostically necessary, the attending doctor or nurse can explain to the patient the need to have a confidential test for diagnosis and treatment. If the patient still requests an anonymous test, the provider must refer the client to an appropriate testing site.

Q4. We would like to offer HIV testing to all the in-patients within our hospital system; however, we have no way to offer an anonymous test to our in-patients; can we still provide this service?

A4. Yes, if the hospital has a policy to routinely offer patients an HIV test, and the HIV test is not medically or diagnostically necessary, the hospital staff would be required to inform the patient of their right to an anonymous test. If the patient chooses not to test confidentially you can offer the patient a list of testing sites where s/he can test anonymously after release from the hospital. Anonymous testing sites are strategically placed throughout the state; you may call your local health district or the HIV Prevention Program at (614) 644-1838 or send an email to HIVSTDPrevent@odh.ohio.gov to receive a comprehensive list.

Q5. Our clinical setting would like to begin routinely offering HIV testing to all our patients, we have no idea how to begin; how much we can charge for the test, which insurance companies pay for the test, and what policies and procedures must our clinical staff follow?

A4. The Ohio Department of Health's HIV Prevention Program can offer technical assistance and guidance to your organization. The HIV Prevention Program can be reached at (614) 644-1838 or send an email to HIVSTDPrevent@odh.ohio.gov. In addition to the HIV Prevention Program, the AIDS Education and Training Center (AETC), located in Columbus and Cincinnati, can also assist your organization with implementing routine HIV testing. The AETC has created a tool kit to build the capacity of organizations who wish to offer HIV testing to their patients. The AETC can be reached at (513) 584-7535 or at (614) 293-6722. Additional information about HIV testing can be found at the following websites:

- Health Research Educational Trust in partnership with the American Academy of Medicine at www.hret.org/hiv-cost
- American Academy of HIV Medicine at www.AAHIVM.org