

History

In September of 2006, the Centers for Disease Control (CDC) announced its new guidelines calling for routine HIV screening for all adults in the USA between the ages of 13 and 64.

The guidelines are a recommendation by the CDC, but they do not pre-empt or overrule state law.

Many states have pre-existing statutes or case laws with which practitioners must still comply regardless of these new CDC guidelines.

This guide is an attempt to highlight those areas of conflict. Trainings will be available for health care providers so that the CDC's goals of routine testing can be maximized while ensuring compliance with state laws.

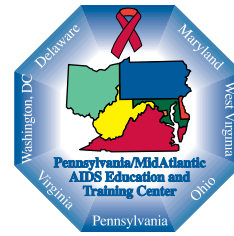
In general, there are three areas in the CDC's recommendations that potentially conflict with many states' laws:

- a) the recommendation that, in general, there be no pretest counseling or risk assessment prior to testing
- b) that testing be "opt-out" (meaning that testing for HIV will be presumed unless the patient states he/she does not want to be tested), and that consent to be tested can be oral and not written
- c) that post-test counseling be required only for persons who test positively.

The complete recommendations can be found in MMWR, Vol. 55, No. RR-14 (22 Sept. 2006) or on the Web at <http://www.cdc.gov/hiv/topics/testing/healthcare/index.htm#guidelines>.



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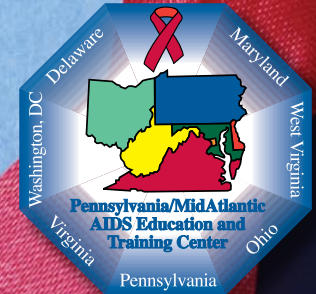
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Routine HIV Testing in Healthcare Settings

A Guide to Reconciliation of the CDC's Revised Testing Guidelines of September 2006 and State Law

This guide is applicable for the following jurisdictions, all of which are served by the Pennsylvania/MidAtlantic AIDS Education and Training Center through its local performance sites: Delaware, District of Columbia, Maryland, Pennsylvania, Ohio, Virginia and West Virginia

The pre-existing laws of the jurisdictions:

Delaware

Law is primarily found in Chapter 12 of the Health and Safety Code (Title 16):

- a) Pretest counseling is required, consisting of explanation of the test, including its limitations (“window period”) and the nature of HIV/AIDS and risk behaviors
- b) Consent must be in writing (no specific statutory language provided)
- c) Post-test counseling is required regardless of test result to explain meaning of test results, risk factors, secondary prevention and voluntary partner notification.

District of Columbia

No laws pertaining to HIV counseling and testing in health care settings, although the district’s Department of Health has promulgated its own rules for its counseling and testing programs.

Maryland

Law is primarily found in Title 18, Health-General Code:

- a) Pretest counseling is required, consisting of explanation of the test, including its limitations (“window period”) and the nature of HIV/AIDS and risk behaviors
- b) Consent must be in writing with specific language set by the Department of Health
- c) Post-test counseling is mandatory only for those persons testing positively.

Ohio

Law is primarily found in Title XXXVII, Health, Health-Safety-Morals, Chapter 3701, Sections 3701.24 et. seq:

- a) Pretest counseling is required, consisting of explanation of the test, including its limitations (“window period”) and the nature of HIV/AIDS and risk behaviors. Statute specifically states that counseling may be by providing written information.
- b) Consent must be in writing (with specific statutory language provided)
- c) Post-test counseling is required regardless of test result to explain meaning of test results, risk factors, secondary prevention and voluntary partner notification. Statute specifically states that counseling may be by providing written information.

Pennsylvania

Law is primarily found in Title 35, Health and Safety, Chapter 45, Sections 7601, et. seq:

- a) Pretest counseling is required, consisting of explanation of the test, including its limitations (“window period”) and the nature of HIV/AIDS and risk behaviors
- b) Consent must be in writing
- c) Post-test counseling is required regardless of test result to explain meaning of test results, risk factors, secondary prevention and voluntary partner notification.

Virginia

Law is primarily found in Title 32.1, Health, Section 32.1-37.2:

- a) Pretest counseling is required (whether oral or written), but there are no statutory requirements as to the content of the counseling except to explain “the meaning of the test.”
- b) Informed consent need not be in writing
- c) Post-test counseling must be offered regardless of test result to explain meaning of test results, risk factors, secondary prevention and voluntary partner notification.

West Virginia

Law is primarily found in Chapter 16, Health, Section 16-3C-2:

- a) Pretest counseling is required, consisting of explanation of the test, including its limitations (“window period”) and the nature of HIV/AIDS and risk behaviors. Counseling must be in writing (unless patient is unable to read) and must have specific information directed by the Department of Health.
- b) Consent may be oral or in writing (with no specific statutory language required)
- c) Post-test counseling is required regardless of test result to explain meaning of test results, risk factors, secondary prevention and voluntary partner notification. The statute specifically provides that this can be satisfied by a “brochure.”

The Mission of the Pennsylvania/MidAtlantic AIDS Education and Training Center

The network of AIDS Education and Training Centers (AETC) is funded by the Health Resources and Services Administration, a part of the U.S. Department of Health and Human Services. The mission of the AETC is to provide free state-of-the-art training to medical providers of services to persons affected by HIV.

To that end, each local performance site will be offering state-specific training as to how health care practitioners can reconcile the CDC recommendations pertaining to routine HIV testing in health care settings with their individual state laws. For more information, please contact us by telephone (412-624-1895) or visit our Web site: <http://www.pamaaetc.org>.