



2008 HIV/AIDS Counseling and Testing Process Laws

Article - Health - General § 18-336.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “HIV” means the human immunodeficiency virus that causes acquired immune deficiency syndrome.
 - (3) “Health care facility” has the same meaning stated in § 18–338.2 of this subtitle.
 - (4) “Health care provider” means a physician, nurse, or designee of a health care facility.
- (b) Except as provided in Title 11, Subtitle 1, Part II of the Criminal Procedure Article or § 18–338.3 of this subtitle, before obtaining a fluid or tissue sample from the body of an individual for the purpose of testing the fluid or tissue for the presence of HIV infection, a health care provider shall:
- (1) Obtain informed consent from the individual after:
 - (i) Informing the individual that an HIV test will be administered; and
 - (ii) Advising the individual of the right to refuse the HIV test without penalty;
 - (2) Document in the medical record the provision of informed consent; and
 - (3) Provide the individual with pretest counseling as provided in regulations adopted by the Department.
- (c) Pretest counseling may be provided in writing, verbally, by video, or a combination of these strategies as appropriate based on the individual’s informational needs and testing history.
- (d) (1) If the HIV test is ordered at a location that is not a health care facility, informed consent shall be in writing and signed by the individual on an informed consent for HIV testing document that is approved by the Department.
- (2) The informed consent for HIV testing document shall be distinct and separate from all other consent forms.
 - (3) A patient identifying number obtained from an anonymous and confidential test site which is approved by the Department may be evidence of a patient’s informed consent in lieu of a patient’s signature.
- (e) Refusal to consent to the HIV antibody test or a positive test result may not be used as the sole basis by an institution or laboratory to deny services or treatment.
- (f) If the individual is unable to give informed consent, substitute consent may be given under § 5–605 of this article.
- (g) A physician or physician’s designee who obtains a result from an HIV antibody test conducted in accordance with the provisions of subsection (b) of this section shall:
- (1) Notify the individual from whom the fluid or tissue sample was obtained of the result; and
 - (2) If the test is positive:
 - (i) Provide a referral for treatment and supportive services;
 - (ii) Counsel the individual to inform all sexual and needle-sharing partners of the individual’s positive HIV status;
 - (iii) Offer to assist in notifying the individual’s sexual and needle-sharing partners or refer the individual to the local health officer to assist the individual with notifying the individual’s sexual and needle-sharing partners; and
 - (iv) If necessary, take action appropriate to comply with § 18–337 of this subtitle.
- (h) Local health officers shall make available to health care providers in their jurisdiction information on referral resources for an individual with an HIV positive status, including counseling, testing, needs assessment, treatment, and support services.

Article - Health - General § 18-338.2.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Health care facility” means a facility or office where health or medical care is provided to patients by a health care provider, including:
- (i) A hospital as defined in § 19–301 of this article;
 - (ii) A facility operated by the Department or a health officer; and
 - (iii) The office of a health care provider.
- (3) “Health care provider” means a physician, nurse, or designee of a health care facility.
- (4) “HIV” means the human immunodeficiency virus that causes acquired immune deficiency syndrome (AIDS).
- (5) “Prenatal care” means obstetric and gynecologic service performed as part of a prenatal care program, including:
- (i) Screening;
 - (ii) Physical examination;
 - (iii) Laboratory and diagnostic testing procedures and interpretation; and
 - (iv) Counseling.
- (b) A health care provider who provides prenatal medical care shall:
- (1) Notify each pregnant patient that she will be tested for HIV infection as part of the routine prenatal blood tests;
 - (2) Advise the pregnant patient that she has the right to refuse the test for HIV infection without penalty;
 - (3) Obtain informed consent from the pregnant patient to test her for HIV infection;
 - (4) Test the patient, unless the patient declines the test;
 - (5) Document in the medical record if the patient declines the test;
 - (6) Offer an HIV test in the third trimester to a pregnant woman who was not tested earlier in her pregnancy;
 - (7) Consider routinely offering a repeat HIV test in the third trimester to all pregnant women:
 - (i) At health care facilities in areas of high rates of HIV prevalence; and
 - (ii) Who are at a high risk of acquiring HIV; and
 - (8) Provide a referral for treatment and supportive services, including case management services.
- (c) A health care provider who provides labor and delivery services to pregnant women shall offer:
- (1) A rapid HIV test to pregnant women with unknown or undocumented HIV status during labor and delivery; and
 - (2) Antiretroviral prophylaxis prior to receiving the results of the confirmatory test if a rapid HIV test during labor and delivery is positive.
- (d) (1) As part of a health care provider’s patient acceptance procedures or protocol, a health care provider shall provide a pregnant woman with counseling concerning being tested for the presence of HIV as part of the woman’s prenatal care program.
- (2) The counseling shall include:
- (i) Information required for pretest counseling under § 18–336 of this article; and
 - (ii) Education on:

1. The effect of a positive HIV test result on the pregnant woman and the fetus concerning the risk of transmission of HIV to the fetus; and
2. Recognized methods of reducing that risk, including the use of pharmaceuticals during pregnancy known to reduce the risk of transmission of HIV to the fetus.

(e) (1) Except as otherwise provided in paragraph (2) of this subsection, the record of an HIV test performed under this section is confidential and not discoverable or admissible in evidence in any criminal, civil, or administrative action.

(2) Provided that the identity or any other information that could readily be associated with the identity of the pregnant woman is not disclosed, the results of an HIV test performed under this section may be introduced into evidence in any criminal, civil, or administrative action, including the adjudication of a workers' compensation claim.

(f) A health care provider, including a health care facility, acting in good faith to provide the counseling required under subsection (d) of this section may not be held liable in any cause of action related to a woman's decision to consent or not to consent to have an HIV test.

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