



Maryland Department of Health and Mental Hygiene

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To: Counseling, Testing, and Referral Sites
Health Care Providers and Facilities

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Subject: Practice Advisory for the HIV Testing Process in Maryland

The Department of Health and Mental Hygiene – AIDS Administration (AIDS Administration) has developed this Practice Advisory to present best practices for the HIV testing process in the areas of:

- Obtaining Informed Consent for an HIV test;
- Providing Pre-Test Counseling;
- Providing Test Results and Referrals (Post-Test Session);
- Notifying Sexual and Needle Sharing Partners; and
- Working with Pregnant Women.

The Maryland AIDS Administration recommends that practitioners in all health care settings (e.g. hospitals, urgent care or emergency departments, inpatient services, community health centers and clinics, correctional healthcare facilities, and primary care settings) offer diagnostic HIV testing and HIV screening as part of routine clinical care for individuals ages 13 – 64.

Effective July 1, 2008, Maryland law has modified the documentation of informed consent in healthcare settings, modified the pre-test counseling process requirements, modified the referral requirements, and modified the offering of HIV testing for pregnant women. Maryland law maintains the individual's right to provide informed consent without impacting the provision of health care.

In non health care settings (e.g. community-based organizations, outreach settings, or mobile vans) Maryland will continue targeted HIV testing and Maryland law continues current practices for documentation of informed consent.

- **Diagnostic testing:** Performing an HIV test for persons with clinical signs or symptoms consistent with HIV infection.
 - Should be conducted when an individual exhibits symptoms commonly associated with HIV infection or one of the opportunistic infections associated with HIV.

- **Screening:** Performing an HIV test for all persons in a defined population.
 - Screening should be performed routinely for all individuals aged 13 - 64 years at least one time in his or her lifetime unless prevalence of undiagnosed HIV infection in the patient population has been documented to be <0.1%.
 - If an individual is known to be at high risk for HIV he or she should be tested at least annually. Examples of individuals who may be at high risk include: injection-drug users, persons who exchange sex for money/drugs, men who have sex with men, persons who themselves or whose partners have had more than one sex partner since their most recent HIV test, sex/needle sharing partners of HIV-infected persons.
- **Targeted testing:** Performing an HIV test for subpopulations of persons based on risk, typically defined on the basis of behavior, clinical, or demographic characteristics.
 - Targeted testing should be conducted in settings where risk-based HIV testing is more cost effective and where individuals with positive results are more likely to be identified (e.g., non-clinical settings like community-based organizations, outreach settings, or mobile vans).

PROVIDING PRE-TEST COUNSELING

The purpose of the pre-test counseling session is to provide the individual with adequate information so that an informed decision can be made about having an HIV test.

Maryland State law specifies:

- Pre-test counseling can be provided in writing, verbally, or by video based on the information needs and testing history of the person to be tested.

Pre-test counseling should include:

- Information that the individual will be tested for human immunodeficiency virus (HIV) infection.
- An explanation that the results of this test, like all medical records, are confidential, which means an individual's information will only be available to those authorized to have access.
- A description of how HIV is transmitted, including the following:
 - Unprotected sexual contact with an infected partner, if body fluids are exchanged (e.g., vaginal, oral or anal sex);
 - Blood to blood contact with infected blood (e.g., sharing needles or other injection drug equipment, transplant recipients, blood transfusions, etc.), and
 - From an infected mother to her baby during pregnancy, delivery or breastfeeding.
- A brief explanation of the potential results for the test being provided, including the following:
 - Possible Results for Conventional Blood Drawn Tests:
 - A negative test result means that HIV infection has not been found at the time of the test.
 - A positive HIV test result means that a person is infected with HIV, but DOES NOT mean a diagnosis of AIDS. Other tests will be needed to make that determination.
 - An indeterminate test result means that the test is inconclusive and further testing will need to be conducted.
 - Possible Results for Rapid Tests:
 - A negative test result means that HIV infection has not been found at the time of the test.
 - A preliminary positive result means that in all probability the individual is infected with HIV. Further tests will be needed to confirm this test result.
 - An invalid test result means that the test device has failed and another test should be conducted.
- A description of what will happen if the test result is positive, including the following information:
 - Services or referrals for appropriate treatment and support will be provided, including services for pregnant women to reduce the risk of transmission to the fetus or newborn;
 - The individual will be offered assistance in notifying and referring partners for services.

OBTAINING INFORMED CONSENT

Informed consent is a legal condition whereby a person can be said to have given consent based upon an understanding of the facts and implications of an action. The individual needs to be in possession of relevant facts and also be capable of providing informed consent, e.g. without an impairment of judgment at the time of consenting.

Maryland State law specifies:

- A person must provide informed consent before a test for the presence of HIV can be conducted.
- Informed consent must include information that the individual can refuse the HIV test without penalty.
- Informed consent must be documented in the medical record, however, in health care settings, a separate written form is not required.

All providers should:

- Provide pre-test counseling (see above for details) to the individual prior to obtaining informed consent.
- Determine whether or not the individual is capable of consenting to the test.
- Tell the individual that they have the right to refuse this test without jeopardizing their medical care.

In health care settings, healthcare providers should:

- Document in the individual's medical record (i.e. medical chart) that the individual received pretest counseling and provided informed consent. Individuals do not need to sign a separate written form.
- Document consent on the provider's or facility's General Consent to health care, on a separate written form, or in the medical record progress notes.

In non-health care settings, HIV counselors/providers should:

- Continue using the uniform HIV informed consent form developed and provided by the Department.
- Ensure the uniform HIV informed consent form is distinct and separate from all other consent forms.

PROVIDING TEST RESULTS AND REFERRALS (POST-TEST SESSION)

The purpose of the post-test session is to provide the individual with test results and, when appropriate, connect the individual to treatment and supportive services.

Maryland State law specifies:

- The health care provider must notify an individual of the test result regardless of the result.
- When an individual receives a positive test result, a physician or physician's designee must refer the individual to treatment (i.e., HIV medical care) and supportive services (i.e., partner services and case management).
- Local Health Departments will make information available to health care providers on referral resources, including counseling, treatment, and support services for HIV positive individuals.

The provider should:

- Ensure that their facility has updated referral resources from the Local Health Department, including counseling, treatment, and support services for HIV positive individuals.
- Ensure the post-test session is conducted in a manner that protects the individual's confidentiality, including the verification of the individual's identity, either by telephone (for negative test results ONLY) or in person.

- Tell the individual the result and meaning of his or her HIV test and answer any questions the individual may have about the testing event.

Possible Results for Conventional Blood Drawn Tests:

- A negative test result means that HIV infection has not been found at the time of the test.
- A positive HIV test result means that a person is infected with HIV, but DOES NOT mean a diagnosis of AIDS. Other tests will be needed to make that determination.
- An indeterminate test result means that the test is inconclusive and further testing will need to be conducted.

Possible Results for Rapid Tests :

- A negative test result means that HIV infection has not been found at the time of the test.
- A preliminary positive result means that in all probability the individual is infected with HIV. Further tests will be needed to confirm this test result.
- An invalid test result means that the test device has failed and another test should be taken.

- For individuals who receive a positive HIV test result, healthcare providers should refer the individual to:
 - A specialized HIV/infectious disease practitioner;
 - HIV case management,
 - Partner services, and
 - Other supportive services as appropriate (i.e., substance abuse treatment, mental health services, STD screening, etc.).

NOTE: If the HIV positive individual is pregnant, refer to the section entitled, “The HIV Testing Process for Pregnant Women.”

- The provider should discuss precautions that may be taken to prevent infection, re-infection or transmission to others, including the following:
 - Abstinence or safer sex techniques and the use of condoms for all sexual encounters.
 - Never sharing needles or other injection equipment.
 - Never donate blood, plasma, tissue, organs or sperm.
 - Do not share items that could become contaminated with blood.
 - Pregnancy planning and prenatal care to reduce mother-to-child HIV transmission if the individual is of childbearing age.

NOTIFYING SEXUAL AND NEEDLE SHARING PARTNERS

Maryland State law specifies:

- If an individual’s test result is positive, the physician or physician's designee must counsel the individual to inform all sexual and needle-sharing partners that they may have been exposed to HIV.
- The physician or physician’s designee must offer to assist in notifying sexual and needle-sharing partners or refer the individual to the appropriate local health department for assistance.
- If acting in good faith, a provider will not be held liable for damages resulting from the notification of or failure to notify the sexual or needle-sharing partners of an HIV positive individual.

Providers should:

- Discuss the importance of partner notification with every HIV positive individual, and
 - Offer to assist the HIV positive individual in notifying and referring partners for services, or
 - Refer the individual to the local health officer to assist with partner notification by:
 - Contacting the local health department directly, or
 - Utilizing the Maryland Confidential Morbidity Report (DHMH 1140) form to indicate that the physician requests local health department assistance with partner services.
- Determine if the HIV positive individual is at risk for domestic violence and make appropriate referrals.
- Cooperate with the local health officer's designee if partner notification assistance is requested.
- Inform the local health officer if the individual refuses to notify his or her partners.

HIV TESTING PROCESS FOR PREGNANT INDIVIDUALS

Maryland State law specifies that providers:

- Notify the pregnant individual that an HIV test will be administered.
- Include information that the pregnant individual can refuse the HIV test without penalty.
- Deliver pre-test counseling in writing, verbally, or by video based on the needs and testing history of the pregnant individual.
- Obtain informed consent before a test for the presence of HIV is conducted.
- Document in the medical record the declination of an HIV test by the pregnant individual.
- Offer an HIV test in the third trimester to the pregnant individual.
- Explain the risk of fetal transmission and the effect of pharmaceuticals during pregnancy.
- In labor and delivery, offer:
 - A rapid test to a pregnant individual with unknown or undocumented HIV status, and
 - Antiretroviral prophylaxis prior to receiving the results of a confirmatory test if the rapid HIV test is preliminary positive.
- Notify a pregnant individual of the test result regardless of the result.
- Refer HIV positive pregnant individuals for treatment and supportive services, including case management.
- Counsel the HIV positive pregnant individual to notify all sexual and needle-sharing partners that they may have been exposed to HIV.
- Offer to assist in notifying sexual and needle-sharing partners or refer the individual to the appropriate local health department for assistance.

Providers should:

- Follow Maryland law as outlined above.
- Consult with an infectious disease specialist and/or an OB experienced in prenatal HIV management.
- Discuss actions recommended to prevent transmission to the fetus, including antiretroviral medication and delivery methods, and the risks of breast-feeding once the infant is born.

HIV REPORTING

Maryland State law specifies that:

- A physician caring for a patient that the physician knows is infected with HIV or is AIDS defined must report the individual to the to the health officer of the county where the physician provides care to the patient within 48 hours of diagnosis or of entry into their care.
- A physician shall report an infant born to a woman who tested positive for HIV to the Secretary of the Department of Health and Mental Hygiene within 48 hours of the infant's birth.

- The physician report must be on a form approved by the Secretary of the Department of Health and Mental Hygiene.
- The report shall identify the disease, state the name, race, sex, and residence address of the patient and be signed by the physician.
- A physician and healthcare facility reporting HIV/AIDS cases shall cooperate with staff of the Department of Health and Mental Hygiene in completing the case report.

Providers should:

- Not use electronic means (e.g., fax, e-mail, etc.) to submit HIV/AIDS reports.
- Complete all information on the Maryland Confidential Morbidity Report (DHMH 1140 at <http://edcp.org/html/reprtabl.html>) including the request for Partner Services.
- Maintain a policy that provides for records access by Department of Health and Mental Hygiene staff.

Questions and/or Technical Assistance

Contact the Maryland Department of Health and Mental Hygiene AIDS Administration with any questions or for technical assistance at 410-767-5227 or 1-800-358-9001.