



# CHAIRMAN'S MEMORANDUM

## NO. 02-2011

### June 15, 2011

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TO: SHERIFFS, CHIEF ADMINISTRATIVE OFFICERS, COMMISSIONERS OF CORRECTION, AND HEALTH SERVICES ADMINISTRATORS

RE: HEALTH ADVISORY: SIGNIFICANT CHANGES TO HIV TESTING PRACTICES IN NEW YORK STATE

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On July 30, 2010, Governor David A. Paterson signed Chapter 308 of the Laws of 2010 authorizing significant changes in HIV testing in New York State. This law was enacted to increase HIV testing in the State and promote HIV-positive persons entering into treatment. Implementing this legislation is critical, since approximately 20% of HIV-positive New Yorkers are unaware of their infection status and 33% of persons newly identified with HIV are diagnosed with AIDS within one year.

#### **What is the implementation date?**

September 1, 2010

#### **What are the key provisions of the legislation?**

- HIV testing must be offered to all persons between the ages of 13 and 64 receiving hospital or primary care services, with limited exceptions noted in the law. The offering must be made to inpatients; persons seeking services in emergency departments; persons receiving primary care as an outpatient at a clinic; or from a physician, physician assistant, nurse practitioner or midwife.
- Standardized model forms for obtaining informed consent and providing for disclosure will be developed by the NYS Department of Health (Department) and posted on the Department website (see below).
- Consent for HIV testing can be part of a general durable consent to medical care, though specific opt out language for HIV testing must be included;
- Consent for rapid HIV testing in correctional facilities is required to be in writing regardless of test technology.

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New York State Commission of Correction  
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Albany, New York 12205  
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Thomas A. Beilein, Chairman  
Phyllis Harrison-Ross, M.D., Commissioner

- Prior to being asked to consent to HIV testing, patients must be provided the seven points of information about HIV required by the Public Health Law.
- Health care and other HIV test providers authorizing HIV testing must arrange an appointment for medical care for persons confirmed positive.
- HIV test requisition forms submitted to laboratories will be simplified.
- Deceased, comatose or persons otherwise incapable of providing consent, and who are the source of an occupational exposure, may now be tested for HIV in certain circumstances without consent.
- Confidential HIV information may be released without a written statement prohibiting re-disclosure when routine disclosures are made to treating providers or to health insurers to obtain payment.

### **Why is this important to jails?**

Literature demonstrates that individuals entering correctional systems have a higher prevalence of HIV-related risk factors. Inmates are considered a high-risk group because they are likely to be risk takers and thus engage in behaviors associated with HIV transmission, including drug use and sexual activity.

### **How does this impact jails?**

Public Health Law (PHL) §2781 –a(2) defines “primary care” as “the medical fields of family medicine, general pediatrics, primary care, internal medicine, primary care obstetrics, or primary care gynecology without regard to board certification” and applies to patients who receive health services from a physician, physician assistant, or nurse practitioner providing primary care. A physician, physician assistant, or nurse practitioner providing medical services to patients at a jail are considered a primary care provider.

Primary care providers in jails will need to offer and provide HIV testing to prisoners between the ages of 16-64. Testing needs to be offered at least once and should be offered annually or more frequently for prisoners, as determined by the primary care provider, who engage in high risk behaviors (IV drug use). Written consent will be required even for rapid testing in a correctional facility. If a prisoner tests positive, an appointment must be made for follow-up HIV care.

### **Where would I find more information?**

The following materials may be found at [www.nyhealth.gov](http://www.nyhealth.gov):

- Letter to Providers
- Letter to New York City Providers
- Model for General Consent that Includes Written Consent for HIV Testing (English and Spanish)

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- HIV Testing Law Frequently Asked Questions
- AIDS Institute Brief Update of the Testing Legislation
- Legislation and Memo
- Implementation Outline

Amended HIV Testing Law webinar is available for viewing at:  
<http://www.ceitraining.org/resources/audio-video/testing-update/>

If you have any questions, please send them to [hivtestlaw@health.state.ny.us](mailto:hivtestlaw@health.state.ny.us).

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Thomas A. Beilein, Chairman

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