

THE PENNSYLVANIA CONFIDENTIALITY OF HIV-RELATED INFORMATION ACT (Act 148)¹, as amended

In 1988, the Pennsylvania legislature passed the Confidentiality of HIV-Related Information Act, (otherwise known as Act 148) to prevent unauthorized HIV testing and disclosure of HIV-related information without the individual's consent. In 2006, the Centers for Disease Control and Prevention (CDC) issued HIV testing recommendations designed to increase testing. Not all of the recommendations were permissible under then-existing Pennsylvania law. In July 2011, Act 148 was amended to allow the CDC recommendations to be legally implemented in Pennsylvania.

The amendments, which affect only the Consent to Testing section, include new provisions and revisions to the original law.

I. LEGISLATIVE INTENT

- A. Testing/Counseling Reduces HIV Transmission
- B. Confidentiality Standard Encourages Testing/Counseling
- C. HIV testing should be a routine part of general medical care

II. INFORMED CONSENT FOR HIV-RELATED TEST

- A. For all HIV-related testing
- B. Informed documented consent
- C. Confirmatory test of positive results, if required by generally accepted medical standards
- D. In-person (face to face) post-test counseling for positive results, which should include counseling about the benefits of contact tracing
- E. Good faith effort to inform subject of results
- F. Exceptions allowed in a medical emergency if subject of test is unable to give consent

III. HIV TESTING IN INSURANCE APPLICATIONS

- A. Insurance Companies cannot test a person without consent
- B. May require a person to be tested before issuing a policy
- C. May refuse to issue policy to an HIV-positive applicant
- D. Before testing, insurer must provide written information about effect of test results on application, description of insurer's confidentiality standards and information on counseling and alternative test sites

¹ 35 Pa.C.S.A. Sec. 7601, et seq.

- E. Insurer shall not disclose positive test result to applicant. Instead, insurer shall require applicant to identify physician or department of health to inform positive test result to subject

IV. CONFIDENTIALITY OF RECORDS

- A. Applies to all health care and social services providers and anyone who receives HIV-related information from written consent form
- B. Requires written consent before disclosure of HIV-related information
- C. Consent form must comply with requirements of Act 148
- D. Subsequent disclosure is prohibited
- E. Exceptions for disclosure without consent to:
 - i) Medical care providers for purposes of diagnosis and medical care
 - ii) Peer review committee
 - iii) Health care providers if necessary to provide emergency care
 - iv) Local health department pursuant to Vital Statistics law
 - v) Employees of county mental health/mental retardation agencies; county children and youth agencies; county juvenile probation departments; county of state facilities for delinquent youth and contracted residential providers of the above name entities, who are:
 - a) authorized to receive medical information;
 - b) responsible to ensure subject gets medical treatment;
 - c) have a need to know to ensure medical treatment is provided

V. PERMISSIBLE DISCLOSURE BY PHYSICIAN

- A. Allows a physician to disclose (or decide not to disclose) to a known future contact at risk of exposure to HIV
- B. Protects physician from civil liability whether or not disclosure is made
- C. Physician must have reasonable belief of significant risk of future exposure
- D. Physician must counsel patient regarding need to notify contact
- E. Patient must be afforded opportunity to disclose voluntarily
- F. Physician must inform source patient of decision to disclose
- G. Physician cannot disclose identify of source patient
- H. Disclosure to a known future contact may be made only by physician

VI. CERTIFICATION OF SIGNIFICANT EXPOSURE & TESTING PROCEDURES

- A. For health care provider or first responder in the course of rendering aid who has experienced significant exposure of body fluids capable of transmitting HIV
- B. Permits HIV testing of available blood of source patient without consent
- C. Must seek evaluation of whether incident involves significant exposure within 72 hours of incident
- D. Within 72 hours of request, physician must determine if exposure is significant
- E. Requires opportunity for source patient to consent to HIV test
- F. Person seeking test must test negative for HIV antibodies

VII. COURT ORDERED TESTING AND PROCEDURE

- A. Disclosure may be ordered if compelling need
- B. Court can order test and/or disclosure if:
 - i) subject is afforded opportunity to consent
 - ii) applicant demonstrates significant risk of exposure of HIV infection, supported by scientific data
- C. Court will weigh need for disclosure against privacy interest of source and public interests harmed by disclosure

VIII. SEX ASSAULT²

- A. Victims of rape and other sex crimes can request HIV test of defendant
- B. Defendant must have been convicted, adjudicated delinquent or pleaded guilty
- C. Victim must make request within six weeks of disposition.
- D. Department of Health shall conduct test; provide Act 148 counseling to defendant, provide Act 148 counseling to victim with referral to health care and support services
- E. Test results given to victim and defendant

IX. CIVIL CAUSE OF ACTION

- A. Any one aggrieved by a violation of this act has a civil cause of action
- B. Compensatory damages are available
- C. Each unauthorized disclosure of HIV-related information; and each HIV-related test is separate for purposes of civil liability.

X. WORK PLACE SAFETY STANDARDS

Extends OSHA Standards to Work Places Not Already Covered by OSHA Universal Precaution Standards

(Oct. 16, 2015)