

# GOVERNOR PATRICK SIGNS BILL TO INCREASE ACCESS TO HIV SCREENING IN MASSACHUSETTS

<http://www.mass.gov/governor/pressoffice/pressreleases/2012/2012427-increase-access-to-hiv-screening.html>

BOSTON – Friday, April 27, 2012 – Governor Deval Patrick today signed S.2158, “An Act Increasing Screening For HIV,” which removes barriers for patients to get HIV screening, while maintaining all confidentiality protections.

“This bill will lead to more lives being saved,” said Governor Patrick. “By removing barriers to screening, we will continue to decrease rates of HIV in our communities.”

S.2158 removes the requirement that patients give written consent for HIV tests, and instead requires only verbal consent. This will result in more instances of HIV being screened and detected early enough for life saving treatments to be provided.

The product of several years of work amongst the HIV advocacy community, clinicians, service providers and others, this bill removes what physicians describe as a barrier to HIV screening: written consent. Removing this requirement puts Massachusetts in line with the majority of other jurisdictions.

“This is an important step forward in getting more people tested for HIV in the Commonwealth, which is critical to stopping the spread of HIV,” said Rebecca Haag, President & CEO of AIDS Action Committee of Massachusetts. “We thank Senate President Therese Murray, House Speaker Robert DeLeo and Governor Patrick for their leadership and support on this issue. There are an estimated 25,000 to 27,000 people living with HIV/AIDS in Massachusetts, but approximately 21 percent of them are unaware that they are HIV positive according to estimates by the U.S. Centers for Disease Control. The first step is learning your status. The next steps are getting connected with care and treatment, fighting the stigma that is still attached to HIV/AIDS in many communities; and shoring up resources for those infected, affected, and at risk for HIV.”

“The March of Dimes is pleased that the Commonwealth has taken an important step to making HIV testing a more routine part of medical care,” said Ed Doherty, the Massachusetts State

Director of March of Dimes. “Given the advances in HIV prevention for pregnant women and newborns, early identification and individualized treatment of HIV-positive pregnant women is the best way to prevent pediatric HIV disease and maximize maternal health.”

The bill will allow more comprehensive and accurate information to reach the Massachusetts Department of Public Health, improving its ability to survey and address HIV cases in Massachusetts. These changes do not affect any of the confidentiality protections surrounding HIV testing and diagnosis.

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# **An Act Increasing Screening for HIV**

<http://www.mass.gov/eohhs/provider/licensing/occupational/nursing/alerts/an-act-increasing-screening-for-hiv.html>

August 2, 2012

To: Massachusetts Nursing and Professional Healthcare Organizations

From: Laurie Talarico, MS, RN, NP  
Nursing Practice Coordinator

Re: An Act increasing screening for HIV

On April 27, 2012, Governor Deval Patrick signed into law the final version of SB 2158 – An Act increasing screening for HIV – which became Chapter 84 of the Acts of 2012

(<http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter84>).

This change in state law removes the requirement to obtain written informed consent prior to HIV testing. The bill now allows for verbal informed consent from the individual being tested. The confidentiality protections for disclosing the results of a person's HIV test or disclosing/releasing medical records containing such information remain the same, requiring written informed consent. The law took effect on July 26, 2012.

The Department's CLINICAL ADVISORY: ROUTINE HIV SCREENING IN MASSACHUSETTS has been updated to include this legal change.

The updated ADVISORY can be found at <http://www.mass.gov/eohhs/provider/guidelines-resources/clinical-treatment/diseases-conditions/hiv-aids/clin-adv/clinical-advisory-routine-hiv-screening-in.html> or by clicking the following link: [Routine HIV Screening and Changes to Massachusetts Law Governing Consent - July 2012](#)

The ADVISORY also includes an updated FAQ (Frequently Asked Questions) on M.G.L. c. 111, §70F, the law that governs consent for HIV testing and consent for releasing HIV test results, beginning on page 6 of the ADVISORY.

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# AIDS ACTION COMMITTEE APPLAUDS GOVERNOR AND STATE LAWMAKERS FOR PASSAGE OF HIV SCREENING BILL

<http://www.aac.org/media/releases/aac-applauds-hiv-bill.html>

Last Updated: April 26, 2012

**Media Contact:** Keith Orr – [korr@aac.org](mailto:korr@aac.org) | 617.450.1210

BOSTON, April 25, 2012—Tomorrow, Governor Deval Patrick will sign “An Act To Increase Routine Screening of HIV.” This bill will modernize the Commonwealth’s HIV testing laws by replacing the need for written consent before an HIV test can be administered with verbal consent. AIDS Action Committee President and CEO Rebecca Haag issued the following statement in response:

“AIDS Action Committee has long supported expanded HIV testing in Massachusetts, and this bill will help make that happen. There are an estimated 25,000 to 27,000 people living with HIV/AIDS in Massachusetts, but approximately 21% of them are unaware that they are HIV positive according to estimates by the U.S. Centers for Disease Control. We cannot end the AIDS epidemic in Massachusetts if those who are HIV positive are unaware of their status. Increased HIV testing will help get those infected into care and treatment earlier and will result in better health outcomes and lower health care costs for those who are living with HIV.

“Massachusetts has long been a national leader in the fight against AIDS. New diagnoses of HIV have declined by 54% since 1999 which will result in \$2B savings in health care costs. However, many challenges remain. Too many people aren’t engaging in care and treatment until late in their disease state; stigma attached to HIV/AIDS status remains strong in many communities; and fewer resources are available to those infected, affected, and at risk for HIV. The AIDS Action Committee is committed to working with clinicians, patients, families, and advocates to reduce other barriers that stand in the way of ending this epidemic. Today is a huge step forward in achieving our goals.”

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# NEW HIV TESTING LAW TO TAKE EFFECT JULY 26, 2012

**GOVERNOR, SENATE PRESIDENT, HOUSE SPEAKER AND LAWMAKERS PRAISE NEW LAW—WHICH IS EXPECTED TO MAKE IMPACT IN REDUCING HIV TRANSMISSION AND IMPROVING HEALTH OUTCOMES**

<http://www.aac.org/media/releases/new-hiv-testing-law-to-take-effect-july-26-2012.html>

Last Updated: July 19, 2012

**Media Contact:** Keith Orr – [korr@aac.org](mailto:korr@aac.org) | 617.450.1210

**BOSTON July 19, 2012**—On Thursday, July 26, 2012, the state’s new HIV testing law will take effect. The law will modernize the Commonwealth’s HIV testing laws by replacing the need for written consent before an HIV test can be administered with verbal consent.

“This new law will lead to more lives being saved,” said Gov. Deval Patrick, who signed the bill into law April 27 in a ceremony attended by administration officials, lawmakers, and HIV advocates. “By removing barriers to screening, we will continue to decrease rates of HIV in our communities.”

“While we have made great progress reducing the HIV infection rate in Massachusetts, it is important that we continue to take action to reverse the spread of the HIV virus,” Senate President Therese Murray said. “There are thousands of Massachusetts residents who are unaware that they are living with HIV and by providing increased access to routine screening, more patients will be encouraged to seek care and stop further transmission.”

“This common-sense improvement shows that the Commonwealth is a national leader in making health care more accessible,” said House Speaker Robert DeLeo. “As we continue to combat HIV transmission and the spread of other diseases, this new law is yet another step towards improving care quality and efficiency in health care in the Commonwealth.”

“AIDS Action Committee has long supported expanded HIV testing in Massachusetts, and this bill will help make that happen. We cannot end the AIDS epidemic in Massachusetts if those who are HIV positive are unaware of their status,” said Rebecca Haag, President & CEO of AIDS Action Committee. “Increased HIV testing will help get those infected into care and treatment earlier and will result in better health outcomes and lower health care costs for those who are living with HIV.”

“This new law balances privacy concerns with the need to streamline the testing process in an effort to get more people tested,” state Senator Patricia Jehlen said. “I am very grateful to all of the advocates and doctors who came together to work hard on forging a bill that have enabled us to remove the requirement for written consent for an HIV test.”

“I am happy that this law is going into effect because it will allow great accessibility to HIV testing for Massachusetts residents,” said Representative Carl Sciortino. “The HIV/AIDS crisis is not over and while we in Massachusetts have been successful in keeping our infection levels down recently compared to other places, our work is not over and we still need to give providers the means to test and combat HIV.”

“Although investments in HIV/AIDS prevention and treatment services have achieved a 54 percent reduction in new HIV infections since 1999, there are still people whose care may be delayed because they are unaware of their status,” said Representative Jeffrey Sánchez, co-chair of the Joint Committee on Public Health. “The modernization of this 26 year-old law removes barriers to testing and treats HIV/AIDS like other infectious diseases by allowing patients to provide verbal consent for testing.”

There are an estimated 26,000 to 28,000 people living with HIV/AIDS in Massachusetts, but approximately 21% of them are unaware that they are HIV positive, according to the US Centers for Disease Control.

Increased HIV testing will help get those who are HIV positive into care and treatment earlier and will result in better health outcomes and lower health care treatment costs. Earlier testing for HIV will also help prevent the spread of new infections since those who know their status and are in treatment are much less likely to transmit the virus to others.

Massachusetts has long been a national leader in the fight against AIDS. New diagnoses of HIV have declined by 54% since 1999 which will result in \$2B savings in health care costs.

“Now that the challenge of expanding HIV testing is behind us, we need to work together with the medical and public health communities to find a way to reduce ongoing stigma related to HIV and AIDS,” said Haag. “We also need to ensure that all relevant medical information is securely in the hands of physicians who need it. And as we continue to move toward universal electronic medical records, we need to find ways to address patient concerns about confidentiality and ensure their full participation in the process.”

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# Changes to MA HIV Policies

Mar 22, 2012

<http://www.healthmap.org/news/changes-ma-hiv-policies>

By *Jane Huston*

A bill recently passed by the Massachusetts Senate and awaiting approval in the House would take steps at bringing HIV testing policy in Massachusetts into the 21st century. Currently, Massachusetts is one of only two states that have not adopted the 2006 recommendations for HIV testing released by the Centers for Disease Control and Prevention (CDC).

## **Testing Policy in Massachusetts**

Testing for HIV is regulated by a law written in 1986 and requires separate written informed consent to perform an HIV test. However, this policy is viewed by many as a barrier to testing and results in fewer HIV tests. Connected to the lack of testing, health experts in the state estimate that 20 percent of those infected with HIV are unaware of their infection status.

The primary goal of Bill S2158 is to eliminate the need for written consent and instead ask for a verbal consent. This policy paves the way for opt-out screening, as endorsed by the CDC. A physician notifies the patient that an HIV test will be performed and that the patient may decline, or “opt-out.” Unless the patient specifically refuses, the test will be administered. The bill maintains the requirement for written consent to share information about testing or results with other healthcare providers.

## **Increased Testing vs. Privacy Concerns**

Opt-out screening and reduced regulation around HIV testing has been championed by many physicians, public health professionals, and HIV/AIDS organizations. The benefits of such a policy are many: HIV testing becomes more normalized in healthcare, more patients are screened, and more HIV positive patients are identified and can receive life-saving care.

The main concerns of opponents revolve around issues of privacy and confidentiality. Because stigma and discrimination towards those with HIV/AIDS remains present, some AIDS advocates are worried about maintaining privacy around testing and results.

Conversely, many voices from the medical field critique that the bill does not go far enough in updating HIV testing policy. The current wording on the bill means the fact that an HIV test was

ordered cannot be entered in a medical record that can be viewed by other healthcare professionals. The Massachusetts Medical Society released a [statement](#) that this policy will interfere with sound medical care. It also questioned how these regulations could be applied to electronic medical records, an emerging technology. The MMS calls for legislators to treat HIV like any other disease, subject to the same privacy laws.

### **Routine Testing Saves Lives**

There are many good reasons to integrate HIV testing into routine healthcare. Early initiation of treatment, with its improved outcomes and reduced transmission, provides the strongest support for routine testing.

For people living with HIV, current [drug regimens](#) can transform it into a manageable chronic condition. Highly active antiretroviral therapy (HAART) adds years of healthy life, especially when treatment is begun before the disease progresses to AIDS. But to start treatment early, a patient must know they are infected. More opportunities to receive an HIV test increase the number of patients identified and receiving care.

Improved quality and length of life are not the only benefits of early treatment. Treatment lowers the amount of virus present in the bloodstream, which makes the virus less [transmissible](#) to others. Furthermore, [studies](#) suggest that people are likely to adopt behaviors to protect others, such as increased condom use, after learning they are HIV positive.

Concerns about privacy are unpersuasive because HIV tests, results, and treatment records are medical information. They are protected under the HIPAA privacy rule, which strictly prohibits release of medical records without patient consent. The original legislation was created when people living with HIV were subject to real discrimination. However, HIV/AIDS is now included as a protected class in the Americans with Disabilities Act. No one may be denied housing, employment, government services, etc. due to their HIV status. These developments make it “totally unnecessary” to require a second consent from patients with HIV, as argued in activist Ed Perlmutter’s [blog](#).

### **Conclusion: It’s Time for Change**

HIV/AIDS is certainly not a simple disease; it has a complicated social history. Current legislation rightly reflects that history. But times have changed and Massachusetts laws need to change too. It’s time to start treating people living with HIV/AIDS like those living with any other disease.

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# **New Mass. law aims to expand HIV testing**

April 27, 2012

[http://www.boston.com/news/local/massachusetts/articles/2012/04/27/new\\_mass\\_law\\_aims\\_to\\_expand\\_hiv\\_testing/](http://www.boston.com/news/local/massachusetts/articles/2012/04/27/new_mass_law_aims_to_expand_hiv_testing/)

BOSTON—Gov. Deval Patrick has signed a bill that backers hope will increase testing for HIV in Massachusetts.

The new law removes a requirement that patients give written consent for HIV testing, replacing it with verbal consent.

Massachusetts was one of only two states that had mandated written consent, which many physicians believed posed a barrier to testing.

Patrick, who signed the bill on Friday, said it would save lives. Early detection of HIV, the virus that causes AIDS, can result in life-saving drug treatments and help prevent those with the disease from unknowingly spreading it to others.

The governor says the new law keeps in place a requirement that patients give written consent before the results of HIV screening can be shared with other health care providers.

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# **HIV screening could get boost from Senate bill**

Source: [dailynewstranscript.com](http://dailynewstranscript.com)

Thousands of Massachusetts residents unaware that they are HIV positive would face fewer barriers to testing for the virus under a bill that could clear the state Senate this week, advocates said Monday, contending that the legislation would help reduce transmission from mothers to children and encourage ill residents to seek life-extending treatment.

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# MMS Testimony In Opposition to H 2906 and Senate 1108 An Act to Increase Routine Screening for HIV

[http://www.massmed.org/AM/Template.cfm?Section=MMS\\_Advocacy&CONTENTID=52364&TEMPLATE=/CM/ContentDisplay.cfm](http://www.massmed.org/AM/Template.cfm?Section=MMS_Advocacy&CONTENTID=52364&TEMPLATE=/CM/ContentDisplay.cfm)

## Before the Joint Committee on Public Health

*April 5, 2010*

The Massachusetts Medical Society (MMS) is here today to ask the Massachusetts legislature to support the Centers for Disease Control and Prevention's recommendations on HIV testing for patients in all health-care settings. They are simple and should be the guidelines you use in evaluating any proposed legislation before you.

Here are the basic premises on how HIV testing should be conducted. An endnote gives a link to the source.

“For patients in all health-care settings

- HIV screening is recommended for patients in all health-care settings after the patient is notified that testing will be performed **unless the patient declines** (opt-out screening).
- Persons at high risk for HIV infection should be screened for HIV at least annually.
- Separate written consent for HIV testing should not be required; **general consent for medical care should be considered sufficient to encompass consent for HIV testing.**
- **Prevention counseling should not be required with HIV diagnostic testing or as part of HIV screening programs in health-care settings.”**<sup>i</sup>

Here is the CDC's information on opt-out screening.

- “What is opt-out screening?”
- Opt-out screening is defined as performing HIV testing after notifying the patient that the test will be performed, and although the patient may decline or defer testing, it is strongly recommended. Assent is inferred unless the patient declines testing.”<sup>ii</sup>

The legislation before you today conflicts with the CDC's clinical recommendations by treating HIV testing with several specific requirements.

Similar legislation was filed last session, S 883. The MMS raised several objections to the legislation regarding its impact on medical practice and its conflicts with the CDC's recommendations but the legislation is back again this session.

So what does this year's version of this bill do to spark such interest? It has been put forward as an improvement in that it **removes written consent for HIV testing**. However, it does require contemporaneous documentation of informed consent or refusal in the medical record. This is most easily met by the creation of a written consent form.

The bill is supposed to facilitate broader testing, a key clinical approach when significant percentages of infected individuals may not know of their infection.

The bill does not simplify testing, but in fact:

- Maintains all existing prohibitions and penalties for sharing of test results without written informed consent except for reporting to the DPH as mandated by regulations. This prevents or impedes disclosure of medically necessary information.
- It mandates that acceptance or refusal to test must be documented within the medical record. This mitigates the value of waiving written consent prior to testing and raises the problem that now no one may see the medical record containing that protected information without written informed consent each time.
- It defines test acceptance or refusal as protected information.
- It expands the definition of HIV test and also protects HIV related medical information such as an AIDS diagnosis or treatment indicating such a diagnosis from disclosure. Will this be a retroactive requirement, changing the status of all existing medical records? Are existing medical records of AIDS patients now legally different should this bill pass?
- It continues to prohibit disclosure of the medical record or other HIV information without specific written informed consent each time. A completely unrealistic position in the medical world which leaves providers without a consistent approach to medical information.
- Mandates provision of written information to patients at the time of ordering a test. The DPH will mandate the content. No mention is made of the clinical elements of the content, the frequency of its revisions, the funding for its distribution or the options for not providing the information to patients for whom it is incorrect.
- The bill also mandates that providers give "a connection to HIV-related medical care and counseling". It is unclear what this means and how the requirement is to be met.
- Repeated testing for monitoring the course of an established infection does not require consent. Repeated testing for those at risk, still requires consent and the results of repeated testing would still be protected information.
- The bill mandates offering testing to adolescents and adults every visit by primary care, infectious disease and emergency providers unless there is evidence of testing having been done. (Note the new provider couldn't see such testing information without the patient's written informed consent.)
- The DPH will establish frequency of offering testing by health care providers. What control does the provider have over the frequency of a patient's return? What is the penalty for not meeting the frequency standard?
- Written consent for release of any protected information must state the purpose and be specific. No routine consent is acceptable. Consider this in light of the medical records requirements and how many health care providers, labs, pharmacies etc receive such information in the treatment of every HIV positive patient.

- 93A penalties still apply as in the old law, but to a much broader list of mandates and requirements. This means that violations of any of these provisions lead to triple damages plus attorney's fees.
- Insurance coverage for tests is mandated. It isn't clear how the state would fund testing for MassHealth recipients or how Medicare patients would be covered.

This legislation does not address a critical request of the MMS. Can HIV testing information be included in the patient's medical record if the patient consents to testing and is informed that his or her consent, lack of consent and test results will be included in the medical record? Medical records are subject to HIPPA protections. Medical records, particularly electronic medical records, are designed to provide comprehensive clinical information to a patient's health care providers. The legislature needs to clarify that HIV testing information belongs in the record and that written informed consent is not necessary for every individual who needs access to a patient's medical record in the course of treatment.

Do current electronic medical records, built for national markets, have the capacity to comply with the legislation before you today? This question needs to be answered.

The MMS is strongly supportive of patient confidentiality and stands opposed to discrimination against patients in any form. However, we ask you as legislators to ask who benefits from this legislation and does that benefit merit the significant potential clinical harm caused by non-communication of test results? Will all patients be better served if all health care providers in Massachusetts adopt a different clinical standard and a different medical records standard from their peers throughout the world?

We urge you to oppose this legislation.

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# Physicians Lining Up to Oppose New Mass. HIV Legislation

<http://www.massmed.org/AM/PrinterTemplate.cfm?Section=Home6&TEMPLATE=%2FCM%2FContentDisplay.cfm&CONTENTID=58313#2>

Proposed state legislation to change the consent regulations for HIV testing has sparked protests from a growing number of practicing physicians who argue that the bill is not practical and not in agreement with standing federal policy.

Amended versions of the bill were recently reported out by the Joint Committee on Public Health and Committee on Health Care Financing. The latter committee sent the bill out after only having it for a few weeks with little opportunity for public comment. The bill now can be acted on by the House and Senate with no further public hearings.

Today, in a post on the Journal Watch blog, Dr. Paul Sax wrote, “I’m not aware of a single ID or HIV clinician who supports it. ... Most of the people dedicating their careers to HIV care don’t like it.” The blog post articulately and efficiently summarizes the issues.

This past spring, the MMS testified against an earlier version of the bill that contained many of the same provisions that are included in the current version. The MMS supported testing guidelines that are the recommendations of the Centers for Disease Control and Prevention. The clinical goal of reforming HIV confidentiality laws is to make testing routine. This legislation, H 3594, impedes this goal.

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