

# MidAtlantic AIDS Education and Training Center

## Guide to Legal and Policy Issues: HIV Screening in Routine Healthcare

### Background

In September 2006, the Centers for Disease Control and Prevention (CDC) announced recommendations for routine HIV screening in healthcare settings of persons between the ages of 13 and 64. The United States Preventive Services Task Force (USPSTF), announced similar recommendations in 2013. These recommendations have ramifications for healthcare providers in their clinical practice and care of patients. However, they do not affect state laws related to informed consent. The CDC and USPSTF recommendations do not pre-empt or overrule state laws.

Many states have modified their laws in light of these recommendations. The laws vary from jurisdiction to jurisdiction and may still conflict in some ways with the recommendations. It is critical that health care professionals become knowledgeable about the specifics of state laws in which they practice, and are compliant with their states' legal requirements.

The purpose of this guide is to provide a general resource to the laws pertaining to HIV testing in the following jurisdictions: DC, DE, MD, PA, VA, and WV.

### Resources/Statutes

The CDC's 2006 Recommendations may be found here:

<https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

The USPSTF 2013 Grade A Recommendations may be found here:

<https://www.uspreventiveservicestaskforce.org/Page/Document/RecommendationStatementFinal/human-immunodeficiency-virus-hiv-infection-screening>

### Basic Outline of CDC and USPSTF's Recommendations

Everyone between the ages of 13 and 65 should be offered HIV testing at least once in their lifetimes. Persons considered at risk should be offered testing at least once a year.

Testing should only be conducted with the consent of the patient following the patient being offered the test, along with a brief explanation of the proposed test (how it will be conducted, its purpose, its limitations, and its benefits). Testing may be offered as an "opt-out" test. For example:

*"I recommend and offer HIV testing to all my patients between the ages of 13 and 65. Unless you decline, we'll order HIV tests along with the other standard tests. Let me tell you a little more about the test and why it is important to be tested."*





### **DELAWARE :**

Title 16, Chapter 7, Section 715



### **DISTRICT OF COLUMBIA :**

No specific statutes pertaining to testing.



**MARYLAND :** MD. HEALTH-GENERAL  
Code Ann. § 18-336



**PENNSYLVANIA :** 35 P.S. § 7601



**VIRGINIA :** Code of Virginia: 32.1-37.2



**WEST VIRGINIA :**  
West Virginia Code: 16-3C-2

The MAAETC, through its regional partners in DC, DE, MD, PA, VA and WV provides training, technical assistance, and educational clinical consultation to health care professionals through various programs and modalities.

### **Selected Similarities Among Jurisdictions**

- Encourage routine testing as screening for HIV.
- In the absence of unusual and exigent circumstances, require a patient's consent to be tested.
- An "opt-out" protocol is lawful as long as the patient is advised about the test, and has the opportunity to decline.
- Laws provide "a floor, not a ceiling," in terms of patient care. The statutory provisions set a minimum standard of care for the patient.
- Best practices may suggest that more services be provided to patients than mandated by the statutes.

### **Important Differences Among the Jurisdictions**

- Require specific information to be disclosed or explained to a patient before a patient can consent to testing.
- Have different requirements for documenting consent or declination of being tested.
- Have different requirements for testing depending on the venue or type of testing site.

#### **DISCLOSURE:**

This brochure is providing general state law information, and is not intended as a substitute for advice from an attorney in your respective jurisdiction with experience in such matters. The laws and regulations pertaining to HIV testing change periodically.



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Please refer to the most recent guidelines.

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