

## The Law

The Pennsylvania Confidentiality of HIV-Related Information Act has various purposes. The purpose of this brochure is to acquaint readers with three of the basic concerns addressed in the law:

Voluntary HIV Testing  
Involuntary HIV Testing  
Confidentiality

The law acknowledges the importance of encouraging persons to be tested, and of the importance of ensuring that sensitive patient information not be improperly disclosed.

In 2006, the Centers for Disease Control and Prevention published recommendations to encourage routine HIV testing in healthcare settings. In 2011, Pennsylvania passed amendments to make it easier for HIV testing to take place by eliminating three prior statutory requirements that were perceived as barriers to more frequent HIV testing:

1. Comprehensive pre-test counseling
2. Specific signed written consent
3. Mandatory post-test counseling for persons who test negatively



## Disclosure:

This information is only a general summary of the law, and is not legal advice. Particular and specific questions should be addressed to an attorney with experience in such matters.



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# Pennsylvania's Confidentiality of HIV - Related Information Act

Act 148 of 1990  
as amended by  
Act 59 of 2011





## Voluntary Testing

### Consent

*"... no HIV-related test shall be performed without first obtaining the informed documented consent of the subject:"* 35 P.S. Sec. 7605 (a) (1)

Since the 2011 amendments, a patient's signature on a consent to be tested for HIV is no longer required, but the patient's consent must be "documented."

Although the amendments also eliminated the prior, more comprehensive pre-test counseling, they still mandate certain explanations to be given to the patient before a patient can agree to be tested.

*"Any consent shall be preceded by an explanation of the test, including its purpose, potential uses, limitations and the meaning of its results:"* 35 P.S. Sec. 7605 (a) (1)

### Documentation

Documentation that the explanations were provided and whether the patient consented or declined testing is mandated.

Explaining the window period (the time period between infection and when an infected person tests positively) is imperative so patients know that the testing might not detect recent infection.

## Involuntary Testing

There are two general provisions for involuntary HIV testing, specifically: occupational exposure situations and issuance of a court order

**These provisions have mandatory conditions.**

### 1. Occupational Exposure

The law provides for streamlined procedures for involuntary testing of a source patient following a significant exposure to a healthcare worker or first responder.

- It does not apply to other persons who might have an exposure.
- It does not provide for the involuntary taking of a sample, but only for the involuntary testing of an already obtained sample.

All of the following conditions must be met and documented before such involuntary testing:

- Having the occupational exposure certified as a *"significant exposure"* by a physician
- The exposed individual being tested and testing negative
- The attempt to obtain consent from the source patient
- The existence of *"available blood"*

### 2. Court Ordered Testing

Where there is a compelling need, a court, after a hearing (usually not open to the public to maintain privacy and using pseudonyms), may order involuntary HIV testing and/or disclosure.

Unlike the procedure for an occupational exposure situation, the court can order that a sample be obtained involuntarily.

If the court finds that there is a compelling need for testing or disclosure it will also order measures to be taken to maintain confidentiality and privacy.

## Confidentiality and Privacy

The statutes provide that HIV information obtained by medical and social service providers is both confidential and privileged. Some particular requirements that are important are:

A general consent or authorization to release medical information is insufficient for HIV-related information. A special authorization is required.

Any disclosures must include a statement advising recipients that further disclosure may be unlawful.

It is not required that HIV information must be segregated from the patient's other medical records.

Physicians, and only physicians, under certain specific conditions, may partially disclose HIV information to contacts (sexual or needle sharing partners of HIV positive patients) that they are at risk. Involuntary disclosure of the identity of the source patient without the source patient's written consent is specifically prohibited.