

## What You Need to Know about Michigan's New HIV Testing Law

### Michigan Department of Community Health Division on Health, Wellness and Disease Control January 2011

A new law that changes Michigan's HIV testing procedures became effective January 1, 2011. Specifically, Section 5133 (MCL 333.5133) of Michigan's Public Health Code, which addresses consent for HIV testing, has been amended. The changes to the law are intended to streamline HIV testing while making sure that it remains voluntary and is not coercive.

The changes to Michigan's Public Health Code are substantially responsive to recommendations made by the US Centers for Disease Control and Prevention (CDC). In its 2006 *Revised Recommendations for HIV Testing of Adults, Adolescents and Pregnant Women in Health Care Settings*, the CDC recommends all individuals' between 13-64 years of age be tested at least once for HIV as part of routine health care.

Current pre-test counseling and consent requirements have been identified as a potential barrier to HIV testing. By removing an important barrier to HIV testing the Michigan Department of Community Health anticipates that many more Michigan residents will learn their HIV status and if found to be HIV positive benefit from medical treatment that will help them stay healthy.

**Informed Consent:** Michigan requires that providers obtain consent prior to administering an HIV test.

- Informed consent can be written or verbal. It is not a requirement that consent for HIV testing be obtained in writing and on a separate form.
- A physician or physician designee must document in the patient's medical record the provision of informed consent, including pre-test information, described below, or whether the patient declined the offer of HIV testing.
- Consent for HIV testing may be included on the same form as consent for general medical care, other tests or other medical procedures so long as it is clear that the individual consents to general medical care, other tests or procedures without being required to consent to HIV testing.

**Pre-Test Information:** Michigan requires providers give information to patients prior to administering an HIV test. Required elements of pre-test information include:

- An explanation of the test including its purpose, uses, limitations and meaning of results.
- An explanation of how HIV is transmitted and can be prevented.
- The voluntary nature of the test and the right to withdraw consent any time before the administration of test.
- The right to confidentiality under the Public Health Code and Under the Health Insurance Portability and Accountability Act of 1996.
- The right to have an HIV test performed on an anonymous basis. If anonymous testing is not available on-site, patients can be referred to another site. The Michigan HIV/AIDS Hotline at 1-800-872-2437 can provide information about where to obtain a free, anonymous HIV test.
- The person or class of persons to who test results can be disclosed.

- The Michigan Department of Community Health encourages health care providers to give patients the opportunity to ask questions about the test and HIV/AIDS before the test is administered.
- Health care providers may use the pamphlet *What You Need to Know About HIV Testing* produced by the Michigan Department of Community Health to provide required pre-test information. The pamphlet is available free of charge and can be obtained by contacting the Division of Health, Wellness and Disease Control at (517) 241-5900. The pamphlet can also be downloaded from [www.michigan.gov/hivstd](http://www.michigan.gov/hivstd). The pamphlet is available in English, Spanish and Arabic.

**Post-Test Information – Patients with HIV Negative Test Results:** Michigan requires that providers inform patients of negative test results. Providers may give HIV test results to patients with negative results through normal health care provider procedures which include patient visits, mail and telephone communication.

**Post-Test Information – Patients with HIV Positive Test Results:** Michigan requires that providers inform patients of positive test results and provide the patient with counseling regarding HIV and AIDS. Information about and assistance in accessing prevention counseling, partner services, referrals to medical specialty and other support services is available by contacting the Michigan HIV/AIDS Hotline at 1-800-872-2437.

**Michigan Department of Community Health HIV Prevention Grantees:** For community-based organizations and local health departments supported by the Michigan Department of Community Health for provision of highly targeted HIV counseling and testing, this law does not change program standards associated with HIV counseling and testing or contractual requirements:

- Providers must obtain from clients written consent for HIV testing. Signed consent forms are to be retained, pursuant to current program standards, in client files.
- HIV prevention counseling, appropriate to client risk, must be provided in conjunction with HIV testing.
- HIV test results (negative and positive) must be provided face-to-face and be accompanied by appropriate prevention counseling and referrals.
- Clients found to be HIV-infected must receive referrals to prevention services (e.g., STD screening), partner services, medical specialty and other support services.