

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
Division of Health, Wellness and Disease Control

**HIV Testing Guidance for Health and Life
Insurance Companies Licensed in Michigan
May 2008**

The following information pertains to health and life insurance companies licensed in Michigan to underwrite testing for the presence of Human Immunodeficiency Virus (HIV).

HIV Informed Consent

Public Act 488 of 1988, as amended by Act 200 of 1994, and Act 420 of 1994, requires written informed consent of the test subject prior to being tested for HIV, as well as presentation of certain information related to the test and the rights of the test subject. To comply with the law, the Michigan Department of Community Health (MDCH) has prepared a booklet entitled, "Important Health Information" (DCH-0675, formerly HP-143) for persons considering testing for HIV. This booklet **must** be presented to all persons undergoing HIV testing in Michigan. Copies of the booklet are available from the MDCH Division of Health, Wellness & Disease Control at the www.michigan.gov/hivstd website.

In order to comply with the law, written informed consent can be obtained by using the model consent form found in the booklet, or through the use of another form which contains all of the required information. The law does not exempt insurance companies from the presentation of this booklet to the test subject or from obtaining the written informed consent of the client in advance of HIV testing.

Confidentiality and Release of HIV Information

Public Act 488 of 1988, as amended, describes the limits of confidentiality citing several exceptions. Since these exceptions do not apply to health and life insurance testing, an insurance company may not release information regarding reports, records, and data pertaining to testing without the expressed authorization, in writing, of the individual being tested. Information, however, may be disclosed if expressly authorized in writing by the individual, provided that the written authorization is specific to HIV. Note that this exception does not apply to the requirement to report HIV positive test results to MDCH or the local health department.

Insurance companies must get written permission from the test subject to release even just the information that a test was conducted. It is recommended that the individual receiving the test specify to whom the information may be released, for what purpose, and for how long this permission to release information is valid.

Counseling

Public Act 488 of 1988, as amended, also requires mandatory counseling appropriate to the test subject, **both before and after** the test is administered. For insurance companies administering the test, at a minimum, the presentation of the booklet, "Important Health Information" may constitute pre-test counseling as long as the test subject has a physician, and that the physician receives all HIV-related test results for post-test counseling and follow-up. Positive test results must be provided to the test subject.

Reporting of HIV Positive Tests

Public Act 489 of 1988 (updated in December 2004 following passage of Public Act 514), requires that HIV positive test results be reported, by the person administering the test, to the state or local health department within 7 days. Insurance companies requiring HIV testing are considered to be “the person administering the test” and should arrange for direct reporting to the appropriate local health department or to MDCH. Copies of the report forms from the Centers for Disease Control and Prevention (CDC), DCH-1355 (formerly 50.42A) (Adult) or CDC 50.42B (Pediatric), and assistance in completing it, can be obtained by calling the Communicable Disease Division at (517) 335-8165. The forms can also be downloaded from www.michigan.gov/hivstd.

Local health departments specifically ask that the following information be provided on the form:

- 1) Identifying information of the test subject (Part II of the form);
- 2) A response, indicating that the test subject has or has not been notified of positive test results (Part XI);
- 3) An indication of whether the test subject needs assistance with partner notification (Part XI).

Valid Test for the Determination of HIV Infection

Public Act 258 of 1987 amended by Public Act 514 in 2004 defines HIV infection to be the status of an individual who has tested positive for HIV. Diagnostic test results primarily include positive HIV Western blot tests as well as detectable HIV viral load results. Laboratories in Michigan must report non-diagnostic test results within 30 days of testing. A non-diagnostic HIV test result is defined as “from a test subject who has already been diagnosed as HIV infected, a test result ordered to evaluate immune system status, to quantify HIV levels, or to diagnose acquired immunodeficiency syndrome” and primarily includes undetectable HIV viral loads and CD4 counts and percents. These include either a double positive enzyme-linked immunosorbent assay test combined with a confirmatory western blot assay test, or a positive result under an HIV test that is considered reliable by the CDC, and approved by the MDCH.