

§19203-A. Voluntary informed consent required

1. Individual tested. Except as provided in this section and section 19203, subsections 4 and 5, an HIV test must be voluntary and undertaken only with a patient's knowledge and understanding that an HIV test is planned. A patient must be informed orally or in writing that an HIV test will be performed unless the patient declines. Oral or written information required to be given to a patient under this subsection must include an explanation of what an HIV infection involves and the meaning of positive and negative test results. A patient must be provided the opportunity to ask questions, either orally or in writing. Informed consent is not required for repeated HIV testing by health care providers to monitor the course of established infection.

[PL 2007, c. 93, §1 (AMD).]

2. Insurers. Persons required to take an HIV test by an insurer, nonprofit hospital or medical service organization or nonprofit health care plan must provide their written informed consent on forms approved by the Superintendent of Insurance. If the test is positive, post-test counseling must be provided by the person or organization requesting the test. The Superintendent of Insurance may adopt rules to define language requirements of the form.

[PL 2007, c. 93, §1 (AMD).]

3. Access to medical care. A health care provider may not deny any person medical treatment or care solely for refusal to give consent for an HIV test. A health care provider may not request a person's written consent to an HIV test as a precondition to the provision of health care. All written consent to testing must be in accordance with section 19201, subsection 5-A. This section does not prohibit a health care provider from recommending an HIV test for diagnostic or treatment purposes. A physician or other health care provider is not civilly liable for failing to have an HIV test performed for diagnostic or treatment purposes if the test was recommended and refused in writing by the patient.

[PL 2007, c. 93, §1 (AMD).]

4. Occupational exposure. Consent need not be obtained when a bona fide occupational exposure creates a significant risk of infection if a court order has been obtained under section 19203-C. The fact that an HIV test was given as a result of an occupational exposure and the results of that test may not appear in any records of the person whose blood or body fluid is the source of the exposure. If the test is positive, post-test counseling must be offered. The subject of the test may choose not to be informed about the result of the test.

[PL 2007, c. 93, §1 (AMD).]

4-A. Occupational exposure in health care setting. When a bona fide occupational exposure occurs in a health care setting, authorization to test the source patient for HIV must be obtained from that patient if the patient is present or can be contacted at the time of exposure and is capable of providing consent. At the time of exposure, if the source patient is not present and can not be contacted or is incapacitated, then any reasonably available member of the following classes of individuals, in descending order of priority, may authorize an HIV test on a blood or tissue sample from the source patient:

- A. The patient's legal guardian; [PL 1999, c. 429, §3 (NEW).]
- B. An individual known to have power of attorney for health care for the patient; [PL 1999, c. 429, §3 (NEW).]
- C. An adult relative, by blood, marriage or adoption; [PL 1999, c. 429, §3 (NEW).]
- D. An adult with whom the patient has a meaningful social and emotional relationship; and [PL 1999, c. 429, §3 (NEW).]
- E. A physician who is familiar with occupational exposures to HIV. [PL 1999, c. 429, §3 (NEW).]

The individual authorizing the HIV test must be informed of the nature, reliability and significance of the HIV test and the confidential nature of the test.

If the person contacted for authorization refuses to authorize the test, the test may not be conducted unless consent is obtained from the source patient or from the court pursuant to section 19203-C.

This subsection does not authorize a person described in paragraphs A to D to receive the test result. Test results must be given to the exposed person, to a personal physician if designated by the exposed person and to either the physician who authorizes the test or the health care provider who manages the occupational exposure.

The patient may choose not to be informed about the result of the HIV test. Without express patient authorization, the results of the HIV test and the fact that an HIV test was done as a result of an occupational exposure in a health care setting may not appear in the patient's health care records. The exposed individual's occupational health care record may include documentation of the occupational exposure and, if the record does not reveal the source patient's identity, the results of the source patient's HIV test.

[PL 1999, c. 429, §3 (NEW).]

5. Exposure from sexual crime. Consent need not be obtained when a court order has been issued under section 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test unless the court has ordered that the convicted offender be informed of the result.

[PL 1995, c. 319, §2 (AMD).]

6. Protection of newborn infants. Subject to the consent and procedure requirements of subsection 1, a health care provider who is providing care for a pregnant woman shall include an HIV test in a standard set of medical tests performed on the woman. A health care provider who is providing care for a newborn infant shall test the infant for HIV and ensure that the results are available within 12 hours of birth of the infant if the health care provider does not know the HIV status of the mother or the health care provider believes that HIV testing is medically necessary unless a parent objects to the test on the grounds that it conflicts with the sincere religious or conscientious beliefs and practices of the parent. If a woman declines to be tested for HIV pursuant to this subsection and subsection 1, the health care provider shall document the woman's decision in the woman's medical record.

[PL 2011, c. 229, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 443, §2 (NEW). PL 1987, c. 539 (RPR). PL 1987, c. 811, §§4,5 (AMD). PL 1991, c. 803, §2 (AMD). PL 1995, c. 319, §2 (AMD). PL 1995, c. 404, §§5,6 (AMD). PL 1999, c. 429, §3 (AMD). PL 2007, c. 93, §1 (AMD). PL 2011, c. 229, §1 (AMD).

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