



## HIV/AIDS

(Prepared by the OSMA Legal Services Group)

*This memorandum was developed for general informational purposes only. It is not meant to be a comprehensive guide regarding HIV/AIDS, nor should it be construed as authoritative legal advice. The information in this memorandum is current as of November 2005. However, users should review the full text of the most current cited version of code sections.*

---

Ohio law requires informed consent to be obtained prior to testing for HIV. Ohio law also requires that HIV and AIDS status and diagnosis be kept confidential and prohibits inappropriate disclosure.

### **Informed Consent and HIV/AIDS Testing**

If the requirements for giving informed consent have been met, consent to be tested is to be presumed to be valid and effective, and no evidence is admissible in a civil lawsuit to impeach, modify, or limit the consent.

The following are Ohio guidelines for obtaining informed consent for HIV testing:

1. Must obtain **informed consent** prior to performing an HIV test;
2. Informed consent may be given **orally or in writing** after the person or agency ordering or performing the test has given the individual to be tested (or his guardian) the following information:
  1. An **oral or written explanation** of the test and testing procedures, including the purposes and limitations of the test and the meaning of its results; (may also use electronic means including videotape)
  2. An **oral or written** explanation that the test is voluntary, that consent to be tested may be withdrawn if the test is performed on an outpatient basis, at any time before the individual tested leaves the premises where blood is taken for the test, or if the test is performed on an inpatient basis, within one hour after the blood is taken for the test, and that the individual or guardian may elect to have an anonymous test;
  3. An **oral or written explanation** about behaviors known to pose risks for transmission of HIV infection.

### Additional Guidance

3. OAC '3701-3-11 specifically allows facilities or physicians to adopt a policy to offer routine and voluntary testing to all patients admitted to the facility or under the physician's care. However, the facility or physician must comply with all requirements for obtaining informed consent.
4. Obtaining a patient's signature on **the informed consent form** prepared by the Ohio Department of Health satisfies all the requirements for obtaining informed consent. (Use of form is not mandatory). Contact the Ohio Department of Health at 614-466-3543 to obtain copies of the form.
5. Minor may consent to an HIV test. Parents or guardian are not liable for payment unless they have consented.

See ORC '3701.242 and OAC '3701-3-11 for additional information.

### Ohio Law-Counseling

The law requires the person or governmental agency administering an HIV test to provide counseling for the individual tested at the time the individual is told the result of the test or informed of a diagnosis of AIDS or of an AIDS-related condition.

If the test is performed on the order of the individual tested, the person or government agency that performed the test is required to provide the following counseling:

1. An **oral or written explanation** of the nature of AIDS and AIDS-related condition and the relationship between the HIV test and those diseases; and
2. A list of resources for further counseling or support.
3. When necessary, the individual is to be referred for further counseling to help the individual cope with the emotional consequences of learning the test result.

### Right to an Anonymous Test

Individuals seeking an HIV test have the right, on his or her request, to an anonymous test. A health-care facility or health-care provider that does not provide anonymous testing is required to refer the individual requesting an anonymous test to a site where it is available.

### Exceptions to Informed Consent

The informed consent, explanation, and counseling requirements of ORC '3701.242 do not apply to the performance of an HIV test in any of the following circumstances:

1. When the test is performed by a physician or a registered nurse in a **medical emergency and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual**, except that counseling shall be given to the individual as soon as possible after the emergency is over;
2. When the test is performed for the purpose of **research** if the researcher does not know and cannot determine the identity of the individual tested;
3. When the test is performed by a person who procures, processes, distributes, or uses a human body part from a deceased person donated as an **organ donation**, if the test is medically necessary to ensure that the body

part is acceptable for its intended purpose;

4. When the test is performed on a **person incarcerated in a penal institution** under the Department of Rehabilitation and Correction if the head of the institution has determined, based on good cause, that a test is necessary;
5. When the test is performed by or **on the order of a physician who, in the exercise of his professional judgment, determines the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or his parent or guardian has given consent to the physician for medical treatment;**
6. When the test is performed on an individual after the infection control committee of a health-care facility or other body of a health-care facility performing a similar function determines that **a health-care provider, emergency medical services worker, or peace officer**, while rendering health or emergency care to an individual, has sustained a **significant exposure** to the body fluids of that individual, and the individual has refused to give consent for testing;
7. Consent of the individual to be tested is not required, and the individual or guardian may not elect to have an anonymous test, when the test is ordered by a court in connection with a **criminal investigation**.

### **Disclosure**

Ohio Revised Code '3701.243 limits access to records regarding HIV testing or an AIDS diagnosis. Anyone who, while providing health-care services, acquires knowledge of the identity of an individual who was tested for the HIV virus or diagnosed as having AIDS or an AIDS-related condition cannot disclose the identity of the individual tested or diagnosed. However, several statutory exceptions to this confidentiality provision allow the results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition to be disclosed only to the following:

1. The individual who was tested or his legal guardian, and his spouse or "any sexual partner."
2. A person to whom disclosure is authorized by a written release executed by the individual tested or by his legal guardian and specifying to whom disclosure of the test results or diagnosis is authorized and the time period during which the release is to be effective.
3. The individual's physician.
4. The Department of Health or a health commissioner to which reports are made.
5. A health-care facility or provider that procures, processes, distributes or uses a human body part from a deceased individual donated for organ donations, and that needs medical information about the deceased individual to ensure

that the body part is medically acceptable for its intended purposes.

6. Health-care facility staff committees or accreditation or oversight-review organizations that are conducting program monitoring, program evaluation or service reviews.
7. A health-care provider, emergency medical services worker or peace officer who sustained a significant exposure to the body fluids of another individual, if that individual was tested after the infection-control committee of a health-care facility or other body of a health-care facility performing a similar function determines that the health-care provider, emergency medical services worker or peace officer, while rendering health or emergency care to the individual, has sustained a significant exposure to the body fluids of that individual, and the individual has refused to give consent for testing, except that the identity of the individual tested shall not be revealed.
8. Law-enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, a prosecuting attorney, city director of law or similar chief legal officer of a municipal corporation, or village solicitor, in connection with a criminal investigation or prosecution.
9. A health-care provider, or an authorized agent or employee of a health-care facility or a health-care provider, if the provider, agent or employee has a medical need to know the information and is participating in the diagnosis, care or treatment of the individual on whom the test was performed or who has been diagnosed as having AIDS or an AIDS-related condition; and
10. The results of an HIV test or the identity of an individual on whom the test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed to a federal, state or local government agency or the official representative of such agency, for the purposes of the medical assistance program, the Medicare program or any other public assistance program.

Any disclosure made under this section must be made in writing and be accompanied by a written statement that includes the following or substantially similar language:

"This information has been disclosed to you from confidential records protected from disclosure by state law. You shall make no further disclosure of this information without the specific, written and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the purpose of the release of HIV test results or diagnoses."

ORC '3701.243