

## HIV Testing State Laws and CDC Guideline Compatibility

(Information based on NCCC Compendium <http://www.nccc.ucsf.edu/StateLaws/Index.html>)

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State	Compatible with CDC guidelines Yes or No	Area not compatible with CDC guidelines	Opt - out: Yes, No, or Not Specified	Consent: General informed (written or oral), Specific written (signed), or not specified	Counseling: Pre-test prevention counseling not required or pre-test prevention counseling required.
Alabama	Yes		Not specified	General informed written or oral	Face-to-face post-test prevention counseling for HIV+
Alaska	Yes		Not specified	Not specified	Post-test testing "instruction" regarding preventing transmission and treatment required (provision for "contagious disease," not HIV-specific)
Arizona	Yes		Yes	General informed written or oral (written in hospital settings)	Pre-test explanation required
Arkansas	Yes		Yes	General informed written or oral	Not specified
California	Yes		Yes	Written or oral (w/ doc)	Post-test counseling must be offered for HIV+ and their contacts; pre-test testing explanation for consent (not required if pt. independently requests test or if pt. at publicly funded test site has been tested before and is not high-risk/uses proper risk)
Colorado	Yes		Not specified	Informed oral or written	Post-test counseling for HIV+ (in general);
Connecticut	No	Consent	Not specified	Specific informed written or oral	Post-test counseling or referral required (provisions do not seem HIV(-)-relevant); pre-test "explanation" (pre-test testing counseling) required
DC	Yes		Not specified	Not specified	Not specified
Delaware	Yes		Yes	Informed written or oral	Pre-test explanation (testing counseling) a part of req. informed consent; post-test counseling must be provided (req. info seems amenable to written form; no provisions against)

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State	Compatible	Area not compatible	Opt - out:	Consent:	Counseling:
Florida	Yes		Yes	Informed written or oral (w/ doc)	Counseling must be offered; required information pre-test for informed consent
Georgia	Yes		Not specified	Not specified	Pre-test testing counseling and medically appropriate post-test counseling (with last confirmatory test) required
Hawaii	No	Consent	Not specified	Specific informed written (signed)	Pre- and post-test counseling must be afforded (to remove pre-test counseling)
Idaho	Yes		Not specified	Not specified	Not specified
Illinois	Yes		Yes	General informed written or oral (w/ doc)	Removal of pre-test counseling (Summer 07); Changed to pre-test information (w/doc) and availability for referrals for additional information/counseling required (Summer 07)
Indiana	Yes		Not specified	Written or oral (w/ doc)	Not specified
Iowa	Yes		Not specified	General written or oral	Streamlined pre-test education (Summer 07); pre-test information and means of obtaining add'l info must be available; post-test HIV+ counseling
Kansas	Yes		Not specified	Not specified	Not specified
Kentucky	Yes		Not specified	General informed written or oral (signed)	Removal of pre-test counseling (Summer 07); Post-test counseling or referral if HIV+
Louisiana	Yes		Yes	General informed written or oral	Pre-test explanation required as part of consent
Maine	Yes		Yes	Informed written or oral	Removal of pre-test counseling (Summer 07); Must offer post-test counseling (w/doc) + written information for HIV+ (signed waiver if declined); pre-test information may be given orally, written, by video (July 2008)
Maryland	Yes		Yes	General informed written or oral	Removal of specific pre-test counseling requirements (= Department regulations); pre-test counseling may be written, oral, by video; changed to post-test counseling required if HIV+ (Summer 08)
Massachusetts	No	Opt-out Consent	No	Specific informed written (signed)	Counseling for HIV/AIDS cases
Michigan	No	Consent	Yes	Specific informed written (signed)	Pre- (w/ doc) and post-test counseling as appropriate to test subject required; no preventative provisions; must give req. pamphlet to all test subjects (w/signed doc in file)
Minnesota	Yes		Not specified	Not specified	Not specified

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State	Compatible	Area not compatible	Opt - out:	Consent:	Counseling:
Mississippi	Yes		Not specified	Not specified	Appropriate post-test counseling required
Missouri	Yes		Not specified	Informed written or oral	Counseling as necessary by physician; required pre-and post-test client-centered counseling by health care professionals other than physicians
Montana	Yes		Yes	General specific written or oral (w/ doc if refused)	Pre-test counseling as a part of informed consent (may be written materials); Pre- and post-test counseling required (may be written materials); no preventive provisions
Nebraska	No	Consent	Not specified	Specific informed written (signed)	pre-test explanation as part of informed consent required; no preventive provisions
Nevada	Yes		Not specified	Not specified	New legislation for post-test counseling if HIV+ (Summer 2007)
New Hampshire	Yes		Yes	General informed oral or written	Post-test counseling as appropriate
New Jersey	Yes		Not specified	Not specified	Not specified
New Mexico	Yes		Not specified	General informed written or oral (w/ doc)	Post-test for HIV+; pre-test counseling not required for routine medical care but explanation req. w/ informed consent
New York	No	Consent	Yes	Specific informed written (signed)	Extensive provisions for pre-test testing counseling (explanation + info) req. for informed consent; extensive post-test testing counseling or referral req. (preventive provisions for HIV+); nothing prohibits written materials (to be req. referrals for counseling if HIV+).
North Carolina	Yes		Yes	General informed written or oral	Removal of pre- and post-test counseling reqs. (Fall 07); post-test preventive counseling if HIV+
North Dakota	Yes		Not specified	Informed written or oral	Not specified
Ohio	No	Consent	Not specified	Specific informed written or oral (signed)	Post-test counseling (oral or written) required, no preventative provisions; pre-and post-test explanation required
Oklahoma	Yes		Not specified	Not specified	Post-test for HIV+ (for STDs)
Oregon	Yes		Not specified	General informed	Explanation for informed consent
Pennsylvania	No	Consent Counseling	Yes	Informed written	Pre-test testing counseling and opportunity for post-test <b>face-to-face</b> counseling must be <b>afforded</b> (post-test counseling provisions are more detailed than Recs outline)

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State	Compatible	Area not compatible	Opt - out:	Consent:	Counseling:
Rhode Island	No	Consent	Yes	Specific informed written	Pre-test information and counseling (prevention counseling outlined, client-tailored to streamline; <b>risk assessment and personalized plan as appropriate</b> , but not explicitly req.) <b>must be offered</b> and post-test testing counseling <b>in person</b> is req. (more pt.specific post-test counseling if HIV+)
South Carolina	Yes		Not specified	Not specified	Not specified
South Dakota	Yes		Not specified	Not specified	Not specified
Tennessee	Yes		Not specified	Not specified	Not specified
Texas	Yes		Not specified	General informed written or oral	Face-to-face post-test counseling must be offered if HIV+
Utah	Yes		Not specified	Not specified	Not specified
Vermont	Yes		Not specified	Not specified	Not specified
Virginia	Yes		Yes	General informed written or oral	Changed to required face-to-face disclosure and offering of post-test counseling if HIV+ only (Summer 08)
Washington	No	Counseling	Not specified	Informed written or oral (w/ doc)	Must provide a brief pre-test evaluation of risk factors; must offer pre-test if requested or deemed high risk; must provide or ensure completion of post-test counseling for HIV+
West Virginia	Yes		Not specified	Informed written or oral	Post-test counseling must be provided (may be fulfilled w/ brochure); pre-test explanation (written, verbal, or by video) necessary
Wisconsin	No	Consent	Yes	Specific informed written (signed)	Must provide counseling; no prevention provisions
Wyoming	Yes		Not specified	Not specified	Counseling may be offered if HIV+

**HIV Prevention Counseling** – Refers to an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV and developing a plan to take specific steps to reduce risks.

**Pre-test counseling** can include: (1) discussing HIV, risk factors and prevention methods; (2) explaining the meaning of positive and negative test results and their implications; (3) assessing the patient’s personal and social supports; (4) determining the patient’s readiness to cope with test results; (5) discussing disclosure of test results to others; and (6) advising the patient if reporting positive test results to health authorities is required.

**Post-test counseling** can include: (1) informing the patient of the results and meaning of the test results; (2) providing education about avoiding risks of sexual and injection drug exposures; and, for patients who test positive, (3) assessing the impact of test results for the patient and family; (3) explaining treatment options; (4) discussing partner counseling and disclosure of test results to others; and (5) initiating a support and treatment plan.

Continued.

**General Consent** – Consent for HIV screening is included in the general medical consent.

**Informed Consent** – A process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions.

**Specific Consent** – Consent for the HIV screening is separate from the general medical consent.

**Opt-in** – Patients typically are provided pre-HIV test counseling and must consent specifically to an HIV-antibody test, either orally or in writing.

**Opt-out** – Performing HIV screening after notifying the patient that: the test will be performed; and the patient may elect to decline or defer testing. Assent is inferred unless the patient declines testing.