



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 209**  
[2009 Assembly Bill 659]

**HIV Testing**

2009 Wisconsin Act 209 makes several changes in the statutes dealing with testing for human immunodeficiency virus (HIV). Those changes are described in the remainder of this memorandum.

### *Consent for HIV Testing*

The law prior to Act 209 stated that no health care provider, blood bank, blood center, or plasma center may subject a person to an HIV test unless the test subject first provides informed consent, with certain exceptions specified in the statutes.

Act 209 repeals the consent requirement and replaces it with a provision stating that none of those persons or entities may subject a person to an HIV test unless all of the following conditions are satisfied:

- The person or entity must notify the prospective test subject that he or she will be subjected to an HIV test unless he or she declines the test.
- The person or entity must offer the prospective test subject a brief oral or written explanation or description of HIV infection; HIV test results; requirements for reporting HIV test results; treatment options for a person who has a positive HIV test result; and services provided by acquired immunodeficiency syndrome (AIDS) service organizations and other community-based organizations for persons who have a positive HIV test result. [The Department of Health Services (DHS) is required to provide those persons and entities with a brief explanation or description of these items that they may provide to prospective test subjects. DHS is also required to designate AIDS service organizations and specify the geographical area of the state in which they are designated to provide services.]
- If a health care provider offers to perform an HIV test, the health care provider must notify the prospective test subject that if he or she declines an HIV test, the provider may not use

---

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

the fact that the person declined an HIV test as a basis for denying services or treatment, other than an HIV test, to the prospective test subject.

- The person or entity must provide the prospective test subject an opportunity to ask questions and to decline the HIV test.
- After complying with the above four requirements, the person or entity must verify that the prospective test subject understands that an HIV test will be performed and that the decision of the prospective test subject is not coerced or involuntary.

The above provisions relating to prospective test subjects also applies to their authorized representatives. The term “authorized representative” is defined as a health care agent under a power of attorney for health care, a court-appointed guardian, a parent or legal custodian of a person who is under 14 years of age, or, for a person who is unable to communicate due to a medical condition, the person’s closest living relative or another individual with whom the person has a meaningful social and emotional relationship.

If the subject of an HIV test is a minor who is 14 years of age or older, a health care provider, blood bank, blood center, or plasma center must provide the notifications and information under the first four bullet points above to the minor or his or her authorized representative, and only the minor or his or her authorized representative may consent to or decline an HIV test. In addition, with regard to such a minor, only the minor or his or her authorized representative may exercise the test subject’s authority to disclose the HIV test results.

### **Other Changes Regarding HIV Testing and Disclosure of Test Results**

Act 209 makes the following additional changes with respect to testing for HIV and disclosure of HIV test results:

- Prior law required that a test subject, in a case involving significant exposure of another specified type of person, give consent in order for the results of the HIV test to be disclosed to the test subject. Act 209 allows the test results to be disclosed to the test subject without his or her consent.
- Act 209 specifies the elements that must be included in a signed authorization to disclose HIV test results: (1) the test subject’s name; (2) the information that may be disclosed; (3) the name of the person authorized to make the disclosure; (4) the name of the person to whom the disclosure is authorized; (5) the signature of the test subject or his or her authorized representative; (6) the date the authorization is signed; and (7) the time period during which the authorization is effective.
- HIV statutes that relate to activities that may be undertaken by a physician or an advanced practice nurse prescriber (or other types of specified nurses) are amended to include physician assistants.
- If a person declines to be subjected to an HIV test, a health care provider may not use this as a basis for denying services or treatment, other than an HIV test, to the person. In addition, a health care provider may not require a person to authorize disclosure of HIV test results as a condition of administering an HIV test to the person.

- A health care professional who performs an HIV test on behalf of a person who has contact with body fluids of the test subject that constitutes a significant exposure must disclose the HIV test results to the person and the person's physician, physician assistant, or nurse.
- The statute that provides for disclosure of HIV test results to the State Epidemiologist or his or her designee for the purpose of epidemiologic surveillance or investigation or control of communicable disease is amended to also include disclosure to a local health officer or his or her designee.
- The statutes that allow for testing in instances of significant exposure are amended to cover persons who render emergency care at the scene of an emergency or accident if the person is immune from civil liability for rendering the care under the Good Samaritan statute or the statute related to hazardous substances.
- The statute that requires that certain information about positive, validated HIV tests be reported to the State Epidemiologist is modified to also include the mode of transmission of HIV to the test subject. This provision of Act 209 applies to records of test results reported to the State Epidemiologist on or after September 1, 2010.
- Under the statutes prior to Act 209, a person engaging in certain discriminatory acts against persons who have AIDS or who are HIV-positive are liable to the patient for actual damages and costs, plus exemplary damages of up to \$5,000 for an intentional violation; Act 209 increases the exemplary damages to a maximum of \$10,000. In addition, the statute that allows a test subject to recover actual damages, costs, and reasonable attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and \$25,000 for an intentional violation of statutes related to HIV testing and confidentiality of test results is amended by Act 209. Under Act 209, the exemplary damages may be up to \$2,000 for a negligent violation and up to \$50,000 for an intentional violation.

In addition, statutes prior to Act 209 provide that: (1) whoever intentionally discloses the results of an HIV test in violation of the law and thereby causes bodily harm or psychological harm to the test subject may be fined not more than \$25,000, imprisoned not more than nine months, or both; (2) whoever negligently discloses the results is subject to a forfeiture of not more than \$1,000; and (3) whoever intentionally discloses the results knowing that the information is confidential, and discloses the information for pecuniary gain, may be fined not more than \$100,000 or imprisoned not more than three years and six months, or both. Act 209 doubles all of these dollar amounts.

***Effective date:*** Act 209 takes effect on May 6, 2010.

***Prepared by:*** Richard Sweet, Senior Staff Attorney

April 29, 2010

RNS:jal