

2010 Revision to Wisconsin HIV Statutes Related to Act 209

On April 21, 2010, 2009 Wisconsin Act 209 was signed into law. Act 209 updated Wisconsin statutes related to HIV and AIDS and, among other things, eliminated the requirement for written informed consent for HIV testing by replacing it with a verbal consent process, as recommended by the Centers for Disease Control and Prevention (CDC). This change will reduce the time and paperwork formerly associated with HIV testing and will encourage health care providers to routinely test in a variety of medical settings.

Act 209 also modernizes Wisconsin statutes by revising laws related to disclosure of test results, discrimination, significant exposure, and HIV case reporting. It also clarifies and simplifies statutory language to be more accessible to the public. The following is a summary of the legislative changes.

Informed Consent for HIV Testing

A Wisconsin health care provider no longer needs to obtain written informed consent before testing a patient for HIV infection. Wisconsin statutes now allow verbal informed consent, which enables a health care provider to test a patient unless they decline. Wisconsin statute 252.15 (2m) (a)* describes this process in the following manner:

1. The health care provider, blood bank, blood center, or plasma center notifies the person or the person's authorized representative that the person will be subjected to an HIV test unless the person or the person's authorized representative declines the test.
2. The health care provider, blood bank, blood center, or plasma center offers the person or the person's authorized representative a brief oral or written explanation or description of HIV infection; HIV test results; requirements under subs. (7) (b) and (7m) for reporting HIV test results; treatment options for a person who has a positive HIV test result; and services provided by AIDS service organizations, as defined in s. 252.12 (1) (b), and other community-based organizations for persons who have a positive HIV test result.
3. If a health care provider offers to perform an HIV test, the health care provider notifies the person or the person's authorized representative that the person or the person's authorized representative may decline the test and that if the person or the person's authorized representative declines the HIV test, the health care provider may not use the fact that the person declined an HIV test as a basis for denying services or treatment, other than an HIV test, to the person.
4. The health care provider, blood bank, blood center, or plasma center provides the person or the person's authorized representative an opportunity to ask questions and to decline the HIV test.

* *Newly created statute*

5. After complying with applicable conditions under subs. 1. to 4., the health care provider, blood bank, blood center, or plasma center verifies that the person or the person's authorized representative understands that an HIV test will be performed on the person and that the decision of the person or the person's authorized representative regarding whether to have an HIV test performed is not coerced or involuntary.

In addition, the statute requires under 252.15 (4) (b) that a record of whether the person or his or her authorized representative consented to or declined the HIV test shall be maintained in the person's health care record.

The Wisconsin Division of Public Health has developed an HIV testing fact sheet that can be given to, or discussed with, patients to satisfy the requirements identified under item 2 of 252.15 (2m)(a)*, above. The fact sheet can be downloaded from the website of the Wisconsin AIDS/HIV Program, within the [Resources for Clinicians](#) web page.

Rationale:

The Centers of Disease Control and Prevention (CDC) recommended in their "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings" (MMWR, September 22, 2006) that patients 13-64 years of age should be routinely screened for HIV in all health care settings. To promote this goal, CDC recommended that state statutes should no longer require that patients sign a written consent form, for the purpose of streamlining the consent process.

Disclosure of HIV Test Results

Wisconsin statutes retain provisions requiring written authorization for disclosure of test results to ensure that patient privacy is upheld. Prior to the 2010 revisions, Wisconsin statutes required that written informed consent for HIV testing and consent for disclosure of test results exist on the same form. The revisions now separate the process of consenting for an HIV test from authorizing disclosure of the test results. The consent for disclosure would only be used at the time that the patient wishes to release their test results to a person or organization that does not have access as identified in s.252.15(3m)[‡]. The elements of the disclosure form would be similar to that of a standard medical record release form.

The listing of persons who have access to HIV test results without patient consent – identified in s.252.15(3m) - remains the same, except that under 252.15(3m)(d)(6) the local health officer is included as having access to HIV test results for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

In addition to the above change, penalties for inappropriate disclosure listed in 252.15(8)(a) and 252.15(9) are doubled from \$1,000 to \$2,000 for a negligent violation, from \$25,000 to \$50,000

* *Newly created statute*

‡ *Newly numbered statute – corresponds to former statute number 252.15(5)*

for an intentional violation, and from \$100,000 to \$200,000 for an intentional violation for the purpose of financial gain. The local health officer has also been added to the list of entities that have legal access to HIV test results for public health purposes.

Rationale:

- To ensure patients' privacy concerns, current restrictions on access to test results and written consent for disclosure should be maintained.
- Similarly, protections must exist in the statutes to prevent inappropriate disclosure. To create a stronger disincentive for the inappropriate release of test results, penalties should be doubled from the current amounts.
- However, allowing the local health officer access to HIV test results for the purpose of protecting the public health makes HIV statutes consistent with those for other communicable diseases.

Discrimination Against Persons with HIV Infection

Statutes related to discrimination against people with HIV or AIDS are described in 252.14. Anyone who discriminates against someone with HIV infection, as defined in this statute, is liable to the patient for actual damages and costs, plus exemplary damages for intentional violation. The statute revision increases the exemplary damages from a maximum of \$5,000 to up to \$10,000.

Rationale:

Similar to the rationale for illegal disclosure of HIV test results, this statute change balances the benefits of streamlining the testing process with increasing protections against discrimination of individuals with HIV.

HIV Case Reporting

Wisconsin statute 252.15(7) now requires that "mode of transmission" be recorded on HIV Case Reports, in addition to AIDS Case Reports. This revision closes a gap that limited the epidemiological data that could be obtained to effectively track the HIV epidemic in Wisconsin.

Rationale:

Data on how HIV is transmitted in Wisconsin is essential to understanding the epidemiology of the disease in this state and to develop strategies to prevent it. In addition:

- Since AIDS is a progression of HIV – and not a separate disease – it makes the case reports consistent with one another.
- The majority of states identify risk or mode of transmission on their HIV case report forms.

Significant Exposure

"Significant exposure" is a type of contact which carries a potential for transmission of HIV, and is explicitly defined in 252.15(1)em. Specific occupations, such as health care workers; EMTs;

firefighters; police officers; and correctional officers are more at risk for a significant exposure. For this reason, Wisconsin statutes identify specific provisions for HIV testing regarding significant exposure and these occupations. The 2010 statute revision adds “Good Samaritan” (which is defined in s.895.48 as any person who renders emergency care in good faith at the scene of any emergency or accident), as covered under the significant exposure provisions along with the identified occupations.

If a Good Samaritan or a person in one of the identified occupations is significantly exposed, the statutes allow that person to know the HIV test result of the person to whom they were exposed, i.e. the source person. If certain conditions are met, the source person may be tested for HIV without having consented. The revisions change some of these conditions as described below:

1. Previously, the statutes required that the exposed person must have used standard precautions at the time of the significant exposure. The revision changes this to require that the entity that employed the exposed person at the time the exposure occurred required the use of standard precautions as a general policy.
2. Previously, the law required that the test results of the source person could only be disclosed to the exposed person. The revision allows the test results of the source person to be disclosed to the exposed person’s health care provider for the purpose of informing the exposed person of those results.
3. Previously, if the source person did not consent to be HIV tested, the person would not be allowed to receive their test result. The revision allows the source person to receive their HIV test result even if that person did not consent.

Rationale:

Wisconsin statutes must balance the competing needs of limiting HIV transmission in the community with protecting the privacy of the HIV-infected individual. These revisions allow those who are serving society through their work or through assisting someone at the scene of an accident or emergency, to more easily obtain needed information about the source patient that will guide their care and prophylaxis.

Simplifying the Definition of the HIV Test

Previously, an HIV test was referred to as “a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.” The revised statutes replace this phrase with “a positive HIV test” and bases it on the following definition: “HIV test means a test for the presence of HIV or an antibody to HIV.”

Rationale:

The revised language increases the clarity and conciseness of the statutes, which promotes the intent of the law and its implementation.