

## Chapter 111, Section 70F, of the Massachusetts General Laws

### Frequently Asked Questions

In September 2006, the Centers for Disease Control and Prevention (CDC) issued recommendations regarding routine testing for HIV in health care settings. The Massachusetts Department of Public Health (MDPH) endorses these recommendations. The rationale for routine testing for HIV in health care settings is that often people infected with HIV visit health care settings long before they are diagnosed with HIV infection, but are never tested for HIV. According to the CDC, if health care facilities routinely offer voluntary HIV screening as a regular part of medical practice, more people will know their HIV status sooner, and enter care earlier.

M.G.L. chapter 111, section 70F is sometimes viewed as a barrier to instituting routine testing, but this should not be the case. Section 70F ensures that the individual is adequately informed of the test and agrees in writing to be tested, and it should not interfere with the implementation of a routine testing program.

Without obtaining an individual's written informed consent, Section 70F prohibits health care providers and facilities from:

- Testing a person for HIV;
- Disclosing the results of the person's HIV test; and
- Identifying the person as the subject of an HIV test.

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It is important to maintain existing protections related to HIV testing; however, complying with 70F need not be burdensome. The following are frequently asked questions about the applicability of 70F:

**Q.** Does the consent signed by the patient have to be lengthy in order to meet the "written informed consent" requirement?

**A. No.** The law is silent on the issue of what the consent must look like. A simple statement indicating that the patient understands what s/he is being tested for and agrees to be tested is sufficient. (See attached model consent form.)

**Q.** Does 70F require a pre-test counseling session before an HIV test is administered?

**A. No.** Section 70F does not mention counseling.

**Q.** Does the law specify that the signed consent must "follow" the patient through the health care facility (e.g., from the ordering physician to the laboratory to follow-up care)?

**A. No.** As long as the patient has been informed about the test and has signed a consent, the consent itself need not be held or viewed by other staff involved in the testing or follow-up process. The signature of the ordering physician on the test request form will serve as notice that the patient has provided written informed consent.

**Q.** Does the law specify who may obtain consent from a patient or who may conduct specimen procurement, interpretation of results, or delivery of results to patients?

**A. No.** The law is silent on this point. Anyone who is authorized by the state to conduct HIV testing, including rapid testing and collection of oral mucosal samples, may obtain consent and participate in all other ways in the testing and follow-up procedures. Authorized individuals may include HIV testing counselors, physicians, nurses, nurse practitioners, physician assistants, and other health care professionals.

**Q.** May an HIV test consent be included among other consents and legal documents at intake? For instance, may the consent for HIV testing be part of a general consent to care developed by individual sites?

**A. Yes.** The consent may be part of a general consent to care form as long as the language pertaining to the HIV test is distinct from the rest of the consent. Provided that the person consenting to the HIV test is informed about the test and understands what it is, there is nothing in 70F that prohibits health care providers from including the consent with other materials and from obtaining the consent at intake. If the consent to HIV testing is temporally separate from the test itself, the provider should let the individual know when the test is actually performed.

**Q.** Does the law specify how the signed consent needs to be stored?

**A. No.** Section 70F does not mention storage of consent forms. Existing rules and regulations regarding confidential storage of medical records apply to consent forms for HIV testing.

**Q.** Does the law require a time-limit on the consent?

**A. No,** the law does not. The MDPH recommends that consent expire after no more than one year.