

**Department of Legislative Services**  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

**Revised**

Senate Bill 746

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

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**Human Immunodeficiency Virus - Test Counseling and Informed Consent -  
Review**

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This bill requires the AIDS Administration to convene a workgroup to review and make recommendations regarding the Centers for Disease Control and Prevention (CDC) guidelines regarding HIV/AIDS, including pre- and post-test counseling and written informed consent. The workgroup must also review and consider best practices and research and data regarding treatment for HIV/AIDS.

The workgroup must report on any recommendations by January 1, 2008

The bill takes effect June 1, 2007.

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**Fiscal Summary**

**State Effect:** The bill's requirements could be handled with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Prior to testing for HIV, a health care provider must: (1) obtain written informed consent from the individual on a uniform HIV informed consent form; and (2) provide the individual with pretest counseling, including education about HIV infection and methods for preventing transmission; information about a physician's duty

to warn; and assistance in accessing health care available to an individual who tests positive for the HIV infection. The informed consent document must be distinct and separate from all other consent forms. A patient identifying number obtained from an anonymous and confidential test site approved by DHMH may be evidence of a patient's informed consent in lieu of a patient's signature.

**Background:** In September 2006, CDC issued revised recommendations for HIV testing in health care settings. Routine HIV screening is recommended for patients in all health care settings after the patient is notified that testing will be performed unless the patient declines ("opt-out screening"). Persons at high risk for HIV infection should be screened for HIV at least annually. Separate written consent for HIV testing should not be required. General consent for medical care should be considered sufficient to encompass consent for HIV testing. Prevention counseling should not be required with HIV diagnostic testing or as part of HIV screening programs. Furthermore, HIV screening should be included in the routine panel of prenatal screening tests for all pregnant women, with repeat screening in the third trimester in certain jurisdictions with elevated rates of HIV infection among pregnant women.

According to CDC, each year approximately 16 to 22 million people in the United States are tested for HIV. By 2002, an estimated 38% to 44% of all adults had been tested for HIV. However, at the end of 2003, approximately 25% of HIV-positive people do not know their status.

Informed consent is 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. Informed consent typically includes 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. As of September 2004, 31 states and the District of Columbia required informed consent, typically written, before HIV testing. This may change as a result of the 2006 CDC guidelines.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 781 (Delegate Hubbard) – Health and Government Operations.

**Information Source(s):** *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings*, Centers for Disease Control

and Prevention (September 22, 2006); Department of Health and Mental Hygiene;  
Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2007  
ncs/jr Revised - Senate Third Reader - April 3, 2007

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510