

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

**FISCAL AND POLICY NOTE**

Senate Bill 819 (Senator Britt)  
Education, Health, and Environmental Affairs

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**HIV and AIDS - Consent for Testing and Guidelines**

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This bill repeals the requirement that consent for an HIV test be written informed consent on a uniform HIV informed consent form that is separate and distinct from all other consent forms. The bill also repeals language authorizing a patient identifying number to be used as evidence of a patient's informed consent in lieu of a patient's signature.

Uncodified language requires the AIDS Administration to convene a workgroup to review Centers for Disease Control and Prevention (CDC) guidelines relating to HIV and AIDS and report by December 1, 2007 on changes made to HIV and AIDS related laws and regulations.

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. An institution or laboratory may not deny services or treatment to an individual solely because of the individual's refusal to consent to HIV testing or a positive test result. If the individual is unable to give informed consent, substitute consent may be given by certain surrogate decision makers. 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 the Department of Health and Mental Hygiene 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:** None.

**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  
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