

# Wisconsin makes significant changes to HIV consent and disclosure requirements

Lora L. Zimmer, JD

Is it time to recycle your HIV consent forms? On May 6, 2010, Wisconsin laws related to consent for HIV testing and disclosure of results significantly changed, eliminating the need for a separate written consent for HIV testing.<sup>1</sup> Under the new law, physicians and other health care providers may conduct HIV testing after giving a patient the opportunity to opt out, but no written consent is required. A number of other changes to the law related to HIV testing and disclosure of test results have also been made.

## History

The new law was a result of a bipartisan effort to bring Wisconsin law in line with current recommendations from the Centers for Disease Control and Prevention (CDC) designed to remove barriers to testing and promote earlier diagnoses. In 2006, the CDC began recommending that health care providers exercise “opt-out screenings,” in which an HIV test is performed after notifying the patient that it will be performed unless he or she elects to decline or defer the testing.<sup>2</sup> In this type of opt-out screening, assent is inferred unless the patient specifically declines testing, and no specific written consent is needed.

Lora L. Zimmer, JD, is a partner at Hinshaw & Culbertson LLP and practices out of its Appleton, Wis office.

According to testimony given in support of the new law, by January 2010, 42 states had adopted laws allowing for this informed consent procedure, with Wisconsin being 1 of the 8 exceptions.<sup>3</sup> The new law brings Wisconsin in line with the majority of states in the country and with CDC recommendations.

## Procedure for Obtaining Consent

While written consent for HIV testing is no longer required, health care providers (as well as blood banks, blood centers or plasma centers) must ensure that certain requirements are met. First, patients must be notified that the test will be performed and that they may decline it.<sup>4</sup>

Second, the provider must offer the patient 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 result, and services provided by AIDS service organizations and other community-based organizations for persons who have a positive HIV test result.<sup>5</sup> While this seems like a great deal of information to provide, the law also requires that the Wisconsin Department of Health Services make materials available to providers that include this required information.<sup>6</sup>

Third, if the patient declines the test, the provider may not use that

fact as a basis for denying services or treatment to the patient.<sup>7</sup>

Fourth, the provider must give the patient an opportunity to ask questions and to decline the test.<sup>8</sup>

Finally, the provider must verify that the patient understands an HIV test will be performed and must verify that the patient’s decision regarding whether to have the test is not coerced or involuntary.<sup>9</sup>

## Significant Exposure and Testing Without Consent

The new law has also changed the rules on “significant exposure” testing—circumstances under which HIV testing may be performed without the consent of the individual being tested, for the benefit of a person who has been significantly exposed to the individual’s bodily fluids.

Wisconsin law already had allowed for involuntary HIV testing and disclosure of results under certain circumstances, including when health care providers have a significant exposure to the bodily fluids of an individual under circumstances that might allow for HIV transmission. This area of law has now been expanded to include so-called “Good Samaritans” who assist an individual at the scene of an emergency or accident. Now, if a Good Samaritan has significant exposure to bodily fluids while rendering assistance to an individual, he or she may request that the individual be tested for HIV, regardless of that

person's consent, and the results of the testing may be disclosed to the Good Samaritan.<sup>10</sup>

Further, state law previously required that individuals tested for HIV in a significant exposure scenario be given the choice of whether to be informed of the test results. Under the new law, however, individuals tested in this situation can be informed of the results, regardless of whether they want to know.<sup>11</sup>

The new law also allows for physician assistants to certify that a significant exposure has occurred.<sup>12</sup> This authority had previously been limited to physicians and advance practice nurse prescribers. Physician assistants also now have the authority to disclose significant exposure information to the state epidemiologist, to administer court-ordered HIV tests, and to receive certain HIV results.<sup>13</sup>

### Consent by Minors

The new law also gives greater control to minors over their own HIV testing and the disclosure of those results. Minors who are at least 14 years old now have authority to consent to or decline an HIV test and to authorize disclosure of their HIV test results, regardless of their parents' or guardians' wishes.<sup>14</sup> This authority previously had been in the hands of parents and guardians.

### Disclosure of Test Results

New procedures are now in place for disclosing HIV test results, as well. Authorizations for disclosure of HIV test results must contain the name of the patient, the exact information that may be disclosed, the name of the person authorized to make the disclosure, the name of the person to whom the disclosure is authorized, the dated signature of the patient (or the authorized representative), and the time period

during which the disclosure is permitted.<sup>15</sup> Health care providers should review their authorization forms and ensure that all of this information is requested.

Further, the mode of HIV transmission must now be provided to the state epidemiologist when reporting a positive HIV test result.<sup>16</sup>

### Increased Penalties for Improper Disclosure

Finally, the new law has increased the criminal fine and civil damages amounts for violating prohibitions against disclosing HIV test results without consent and for violating consent requirements for HIV testing.<sup>17</sup>

### Conclusion

The new law is designed to streamline HIV testing and make the informed consent procedure less burdensome for physicians and other health care providers while encouraging more patients to be tested. According to the Wisconsin Department of Health Services, HIV infection remains a significant public health problem in Wisconsin. In 2009, new cases of HIV infection in Wisconsin increased by 11% compared to 2008 and have increased by 32% since 2001.<sup>18</sup> It is hoped that these changes to the law will help combat that trend.

### References

1. 2009 WISCONSIN ACT 209. <http://www.legis.state.wi.us/2009/data/acts/09Act209.pdf>. Accessed May 10, 2010.
2. Bernard M. Branson, MD, et al. "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings." September 22, 2006 / 55(RR14);1-17. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>. Accessed May 10, 2010.

3. Jennifer Shilling (D-La Crosse) "Testimony in Support of Assembly Bill 659 HIV Testing Modernization Bill." Representative. January 27, 2010.
4. Wis. Stat. § 252.15(2m)(a)1 (2010).
5. Wis. Stat. § 252.15(2m)(a)2 (2010).
6. Wis. Stat. § 252.15(7r) (2010).
7. Wis. Stat. § 252.15(2m)(a)3 (2010).
8. Wis. Stat. § 252.15(2m)(a)4 (2010).
9. Wis. Stat. § 252.15(2m)(a)5 (2010).
10. Wis. Stat. § 252.15(5g)(a)6 (2010).
11. Wis. Stat. § 252.15(5g)(g)2 (2010).
12. Wis. Stat. § 252.15 (5g)(c) (2010).
13. Wis. Stats. §§ 252.15(3m)(f), 252.15(3m)(e), 252.15(3m)(d)11(b), 252.15(5m)(d)2, 252.15(5m)(e), 252.15(7m) (2010).
14. Wis. Stat. § 252.15(2m)(c) (2010).
15. Wis. Stat. § 252.15(3m)(b) (2010).
16. Wis. Stat. § 252.15(7)(b)5m (2010).
17. Wis. Stats. §§ 252.14(4), 252.15(8)(a), 252.15(9) (2010).
18. New Law Makes HIV Testing Easier [new release]. Madison, WI: Wisconsin Department of Health Services; April 21, 2010. <http://dhs.wisconsin.gov/News/PressReleases/2010/042110hiv.htm>. Accessed May 10, 2010.

advancing the art & science of medicine in the midwest

**WMJ**

*WMJ* (ISSN 1098-1861) is published through a collaboration between The Medical College of Wisconsin and The University of Wisconsin School of Medicine and Public Health. The mission of *WMJ* is to provide an opportunity to publish original research, case reports, review articles, and essays about current medical and public health issues.

© 2010 Board of Regents of the University of Wisconsin System and The Medical College of Wisconsin, Inc.

**Visit [www.wmjonline.org](http://www.wmjonline.org) to learn more.**