



The Debate Over HIV Counseling and Testing Law Heats Up

For the third session in a row, debate over proposed changes to New York State's HIV counseling and testing law is a hot issue in Albany. Recently, State Senate Health Committee Chairman Thomas Duane and Assembly Health Committee Chairman Richard Gottfried reintroduced legislation that would revise the state's HIV counseling and testing law.

This bill, which the pair first proposed a year ago, also has the full support of Health Commissioner Richard Daines, just as it did in the last session. The bill has divided HIV advocates and providers, raising the prospect that once again this important issue may fall by the wayside in coming weeks as the Legislature moves toward adjournment.

While opponents are divided on their reasons for opposing the Duane-Gottfried legislation, another core group of HIV organizations have come out publicly in support of the bill. They include the New York City-based

Village Care of New York, GMHC, Legal Action Center, AIDS Service Center NYC, and the Brooklyn AIDS Task Force, as well as two Long Island groups - Economic Opportunity Council of Suffolk and Long Island Association for AIDS Care.

Much has changed in HIV since the passage of legislation that established New York State's HIV counseling and testing law in 1988, including new therapies that have effectively turned HIV from a devastating disease to a condition that for many can be managed indefinitely through effective treatment. Additionally, the expansion of HIV into communities of color and disenfranchised populations has posed considerable, and serious, challenges. Far too many individuals learn of their HIV status concurrently with an AIDS diagnosis, and far too many persons are HIV infected and not aware of their status. There is a general consensus that new, more aggressive efforts should be made to expand HIV testing, including making testing a

routine part of medical care. The question of how to achieve this goal, however, is where considerable disagreement occurs.

Current New York State HIV Law

Current law, originally passed in 1988, requires separate, written informed consent to an HIV test. It also requires that patients be provided with pre- and post-test counseling information about HIV and what a positive or negative HIV test result means (and doesn't mean). Individuals must read and sign a separate two page, double sided form that explicitly states the patient is consenting to an HIV test.

What would the Duane/Gottfried Bill Do?

The Duane/Gottfried bill, which is also a NYS Department of Health departmental bill (meaning DOH formally requested this bill be introduced), makes several changes to current law. It would:



- Allow the consent to an HIV test to be incorporated into a general consent for medical care, with a clearly marked place adjacent to signature where a patient may decline an HIV test. This consent would be durable and remain in effect until revoked or expires, but oral consent must be provided before each HIV test is administered. This would eliminate the need for a separate, written informed consent to an HIV test.
- Amend the pre- and post-test counseling requirements and update the counseling language. Individuals would still need to be counseled prior to an HIV test on using safe sex and their rights under the law (DOH regulations state that this counseling may be done by inserting language into a signed consent form). The bill also provides that in the case of a positive test for HIV infection, the person ordering the test must provide or arrange for follow-up medical care if the patient consents.
- Require all licensed Article 28 facilities to offer an HIV test to all patients between the ages of 18 and 64 as a routine part of medical care. This includes in emergency rooms, except in cases where the patient is unable to consent. The system of doing risk assessment and then only offering a test to those individuals deemed “at risk” would end, in favor of offering everyone an HIV test.
- Authorize an HIV test in instances involving occupational exposure where the patient cannot consent to an HIV test (they are dead or unconscious) and certain health care workers (e.g., doctors, nurses) and emergency service workers (e.g., law enforcement, firefighters, ambulance workers) who may have been exposed to HIV. The purpose of this would be to determine if the health care or emergency service worker needs to go on post-exposure HIV medications. An example of this would be where an ambulance worker pricked themselves with a needle used on an unconscious patient.
- Allow the sharing of aggregate, non-patient identifiable information between state and local public health departments to further understand what other co-morbidities exist among people living with HIV, such as Hepatitis C and other sexually transmitted diseases.
- Allow estate executors or administrators to have access to the confidential HIV information of a deceased person as needed to fulfill their responsibilities/duties.

Who is Opposed and Why

There are basically two main factions opposing the Duane/Gottfried bill, each for very different reasons.

On one side is Harlem United, the Latino Commission on AIDS and the National Black Leadership Commission on AIDS (among several others) opposing the bill as “half-measures” that do not go far enough to eliminate what they perceive as barriers to testing and al-

low for the full routinization of HIV testing. This legislation, by containing a separate line for persons to opt-out of HIV testing continues to highlight and segregate HIV testing – thereby makes it less routine, these opponents argue. This group also believes that by incorporating the consent for an HIV testing into a general consent for medical care, the bill does not provide enough flexibility to allow for the different types venues that may perform HIV testing (not all facilities have a general consent form). In addition, private physician offices are not mandated to offer an HIV test and the bill further excludes persons aged 13-17, which these opponents see as significant shortcomings. They argue it would be preferable that the mandated offering encompass all persons aged 13-64, as per the Centers for Disease Control and Prevention guidelines instead of those 18-64, as the Duane-Gottfried bill would require. Finally, a big point of concern is that the bill still contains requirements for post-testing counseling for persons who test negative. They believe that data proves this counseling is not effective and may pose a barrier for some facilities to offer HIV testing.

On the other side of this issue are Housing Works, the New York Civil Liberties Union and the HIV Law Project, which also oppose the bill, but for virtually the opposite reason. They contend that any consent to an HIV test must be an “opt-in” process. Persons must knowingly consent to an HIV test, these groups maintain, in order to avoid the possibility of being tested without their knowledge. Their fear is that patients,

when faced with a lengthy general consent to medical care form, will quickly glance at the form and sign it, and be unaware they have also consented to an HIV test. They advocate that after the signature, two separate lines (or check boxes) should be required whereby the person would affirmatively accept or decline an HIV test.

Support for this Legislation

Organizations favoring these changes to the state's HIV counseling and testing law say it's a movement in the right direction to eliminating some of the perceived barriers, such as requiring separate written consent. Proponents of the legislation believe that the real barriers to the expansion of HIV testing in most medical settings are outdated perceptions of the requirements to conduct an HIV test and the reluctance of physicians who may be uncomfortable in discussing discuss issues related to risk behaviors. Mandating routine offering of an HIV test and streamlining the consent form

should prove instrumental in making HIV testing a routine part of medical care in Article 28 facilities, including ERs.

In a meeting on Tuesday, April 21, with Assemblyman Gottfried and Senator Duane's staff, Village Care, GMHC and the Legal Action Center all expressed interest in expanding the mandate for the routine offer of an HIV test to ages 13-64 and to encompass both Article 28 facilities and private physician offices.

What happens now?

On the Senate side, the bill has been voted out of the Health Committee and is awaiting action by the Codes Committee. There has been no action on the Assembly side, but Assemblyman Gottfried only just recently introduced his bill.

The real downside to all the varying degrees of opinion on the issue is that legislators in Albany are getting three divergent opinions from the

HIV community. There is not consensus from the HIV community on how to proceed, and a failure among the advocates and providers to reach agreement makes it extremely unlikely that legislative leaders will address or resolve this extremely important health matter impacting the lives of those living with HIV/AIDS. The end result may very well be stalemate and inaction.

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