MEMORANDUM

To: All Laboratories Approved to Perform HIV-Related Testing

From: Training and Evaluation Section
WV Office of Laboratory Services

Date: June 15, 2011

Re: Senate Bill No. 488 – Amendment to AIDS-Related Medical Testing and Confidentiality Law

The 2011 West Virginia Legislature passed Senate Bill No. 488 on March 12, 2011 went into effect June 12, 2011, ninety days from passage. WV Senate Bill No 488 entitled AIDS Related Medical Testing and Records Confidentiality Act is an amendment and revision to the former WV AIDS Related Medical Testing Confidentiality Law. This revision to the law reflects changes that follow the current Centers for Disease Control and Prevention recommendation that HIV testing should be treated as any other routine laboratory test. This memorandum is to notify currently approved HIV testing laboratories of changes in the WV mandated code that will impact HIV laboratory testing policies.

Section 16-3C-2, Testing, references that HIV–related testing should be conducted on a voluntary basis and recommended by any healthcare provider as part of a routine screening for:

- treatable conditions
- routine prenatal and perinatal care
- high risk behavior
- information on a source patient’s HIV status when a significant blood or body fluid exposure occurs to a healthcare worker
- testing to provide information to the general care of a patient.
In order for the patient to voluntarily consent to such testing, the patient must be informed either orally or in writing that HIV-related testing will be performed as part of patient care. The patient is informed that the general consent for medical care includes consent for HIV testing. A separate consent for HIV related testing is no longer required by law. An oral, written or electronic request for HIV laboratory testing by the healthcare provider is considered to be a valid and informed consent in compliance with the law. Specific HIV counseling requirements as outlined in the original law are now at the independent discretion of the healthcare provider or program. While counseling should be provided to the patient regarding the interpretation of results, the mandatory counseling guidelines spelled out in the language of the original law were removed.

If a patient refuses to consent for HIV testing as part of the general test consent, the patient can opt-out and the healthcare provider may recommend that HIV-related testing be obtained anonymously through a local or county health department. Without this opt-out provision, the HIV testing results will be made part of the patient’s medical records as any other routine laboratory test.

Section 16-3C-3, Confidentiality of Records, states that “no person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test”. This maintains that the test results must still be treated confidentially as in any other medical record. The requirement to add the “HIV protected by state law statement” on all charted HIV test results has been removed from the law. The former statement read “This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose”. All HIV laboratory test reports must exclude the above statement from the released test report.

As far as the Reportable Disease surveillance associated with HIV testing, that part will of the law will not change for HIV related testing approved laboratories. Laboratories are to report HIV related test numbers and positive test results on rapid tests, EIA, Western blot as well as HIV antigen, CD4 counts associated with HIV and viral loads on the forms provided by the WVDHHR, AIDS Prevention Program. Senate Bill 488 includes references within the law for compliance with the WV Reportable Disease Rule.
While Senate Bill No 488 was passed and is now in effect, the rule revision reflecting the changes in the law has not been completed. The revised Rule will not go into effect until after 2012 WV legislative session. For now, your laboratory can make the above changes to your HIV laboratory testing policies. A copy of the complete bill can be found on the West Virginia Legislature 2011 website www.legis.state.wv.us/. Click on bill status and type in 488 in the box. Select the final version. It is also available as a link on the WV Office of Laboratory Services website at www.wvdhhr.org/labservices on the home page and the HIV Laboratory Approval page.

If you have any questions regarding this memo, please contact Sharon Cibrik at 304-558-3530 ext. 2107 or email at sharon.l.cibrik@wv.gov.

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