

Obtaining Consent for HIV Testing

- Testing is voluntary and all HIV test results are confidential (private).
- You may withdraw your consent at any time- either verbally or in writing.
- It is illegal to discriminate against anyone because of his or her HIV status.
- If you test positive, you can get treatment for HIV/AIDS to help you stay healthy and live longer.
- HIV, the virus that causes AIDS, can be spread through unprotected sex, sharing needles, childbirth or by breastfeeding.
- Anonymous HIV testing (without giving your name) is available at certain public testing sites.
- People living with HIV/AIDS can use safe practices to protect others from becoming infected.

Who can provide consent for HIV testing?

In New York State, the capacity to consent to an HIV test is determined without regard to age. Providers offering HIV testing must make a determination as to the patient's capacity to consent. If a practitioner determines a person does not have the capacity to consent, the offer of testing should be made to a person authorized to provide consent, as noted in the Family Health Care Decisions Act. Otherwise, the offer would be made directly to the patient

What is the consent process?

Written consent is no longer a requirement for HIV testing. The person ordering the test or a person's representative shall orally notify the subject of the test that an HIV related test will be conducted at such time, and will document the notification in the patient's record. When the subject lacks capacity to consent, a person authorized pursuant to law may consent to health care for the individual, Notification must be provided each time an HIV-related test is being performed.

The law requires there be documentation that the patient was advised that an HIV test is being performed.

An example of sufficient documentation that could be used is: "Patient notified an HIV test is being performed."

Another option would be to have a drop down box in an electronic medical record where the provider could choose "Patient notified an HIV test is being performed" or choose "Patient declined HIV testing".