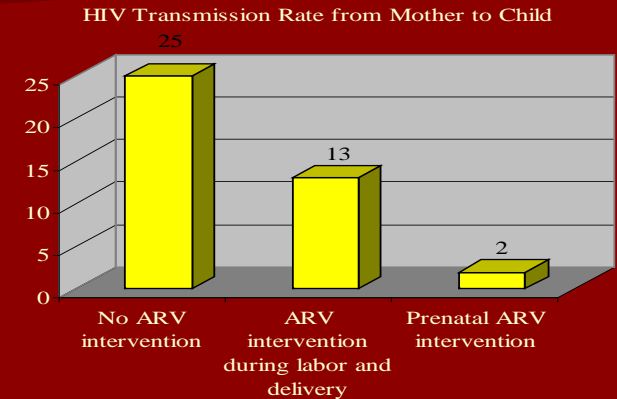


# CDC's Opt-Out Approach to Increase HIV Testing for Pregnant Women and the Conflict in Massachusetts

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Perinatal HIV transmission, which is passing the virus to a child during pregnancy, delivery, or breastfeeding, accounts for 91% of U.S. pediatric AIDS cases. An estimated 40% of mothers of HIV infected infants were not diagnosed prior to delivery.<sup>[1]</sup> Current testing allows women with unknown HIV status during prenatal care to learn their status quickly and obtain treatment. Treatment with short-course antiretroviral (ARV) prophylaxis can reduce the risk of HIV transmission to less than 2%.<sup>[2]</sup>



## Massachusetts General Law Chapter 111: Section 70F states in relevant parts:

Section 70F. No health care facility, as defined in section seventy E, and no physician or health care provider shall (1) **test any person for the presence of the HTLV-III antibody or antigen without first obtaining his written informed consent**; (2) disclose the results of such test to any person other than the subject thereof without first obtaining the subject's written informed consent; or (3) identify the subject of such tests to any person without first obtaining the subject's written informed consent. For the purpose of this section "**written informed consent**" shall mean a **written consent form** for each requested release of the results of an individual's HTLV-III antibody or antigen test, or for the release of medical records containing such information. **Such written consent form shall state the purpose for which the information is being requested and shall be distinguished from written consent for the release of any other medical information**, and for the purpose of this section "HTLV-III test" shall mean a licensed screening antibody test for the human T-cell lymphotropic virus type III.

Continued perinatal transmission illustrates the need to improve strategies for HIV testing and treatment. In an effort to do so, the CDC endorses the "Opt-Out" approach, in which pregnant women are notified that an HIV test will be routinely included in a standard battery of prenatal tests, with the option to refuse testing.<sup>[3]</sup>

Upon conducting a legal analysis, implementing the CDC's "Opt-Out" approach in Massachusetts appears difficult because the existing law on informed consent for HIV testing is a barrier to the recommended policy. Massachusetts General Law Chapter 111: Section 70F states testing cannot be done without first obtaining and agreeing to a written informed consent form and should be distinguished from written consent for the release of any other medical information.<sup>[4]</sup>

HIV testing on pregnant women is a highly salient topic with significant public health and legal implications. A proposed solution would modify the Massachusetts law to adopt the "opt-out" approach, but require pre-test HIV counseling by a physician. This would increase the rate of HIV testing, leading to treatment, as well as maintaining the spirit of the informed consent doctrine.

[1] Office of the Inspector General. Reducing obstetrician barriers to offering HIV testing. 2002.

[2] Rapid HIV-1 Antibody Testing during Labor and Delivery for Women of Unknown HIV Status: A Practical Guide and Model Protocol. CDC; January 2004.

[3] Revised recommendations for HIV screening of pregnant women. *MMWR Recomm Rep* 2001;50(RR-19).

[4] MGL Chapter 111, Section 70F.