



University of Washington
Public Health Capacity Building Center

New York State Legislations on HIV Testing: policy change and its impact

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Last updated: 3/2/2015

HIV TESTING CONSENT

New York State Laws & CDC Recommendations

NY State Public Health Law

Article 27-F

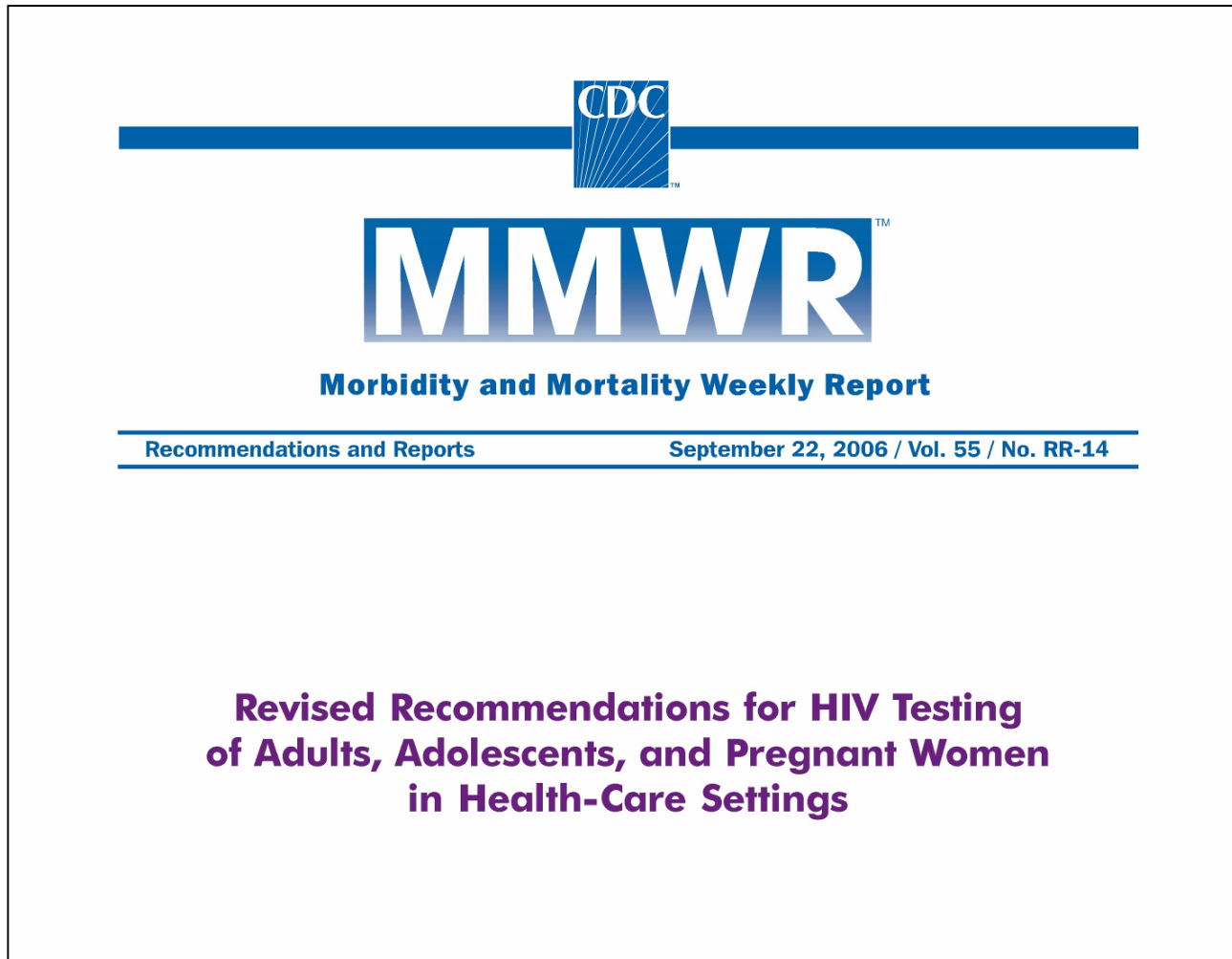
- Enacted in 1988 in New York State to regulate HIV testing
- HIV testing is voluntary
- Testing required written informed consent
- Certain information about HIV must be given to client prior to testing
- Required detailed face-to-face counseling

Public Health Law, Article 27-F

2005 Guidance

- Guidance issued to encourage HIV testing, remove/reduce barriers, and improve access
- Face-to-face counseling was no longer required
 - Other forms of counseling allowed, including use of print or audiovisual materials
- Streamlined counseling encouraged
- Simplified written informed consent implemented


Revised Recommendations for HIV Testing, 2006



Source: CDC. MMWR. September 22, 2006;55(RR14);1-17.



State HIV Testing Laws: Consent

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 Centers for Disease Control and Prevention
CDC 24/7: Saving Lives. Protecting People.™

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HIV/AIDS

HIV/AIDS

- HIV Basics
- Who's at Risk for HIV?
- HIV Testing
- Prevention Research
- Policies and Programs
- Affordable Care Act
- DHAP Annual Report
- DHAP Strategic Plan
- Evaluation
- Expanded Testing Initiative
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- High Impact Prevention
- HIV-Related Laws
- **State HIV Laws**
 - HIV Transmission Risk
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- Program Planning
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- Training and Conferences
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- Resource Library

HIV/AIDS > Policies and Programs > HIV-Related Laws

State HIV Testing Laws: Consent and Counseling Requirements

- HIV-Specific Criminal Laws
- HIV Testing Laws**
- Laboratory Reporting Laws

Human immunodeficiency virus (HIV) testing is essential for improving the health of people living with HIV and reducing new HIV infections: once diagnosed, persons with HIV can be linked to care and learn how to prevent transmission to others. Testing that occurs as part of an individual's routine healthcare visit is especially important because it creates the opportunity to diagnose infections in people who may not consider themselves at risk for HIV. Data indicate that, of the estimated 1.1 million adults and adolescents living with HIV in the United States at the end of 2009, 18% were unaware of their infection.¹ State laws that facilitate routine testing are vital to efforts to ensure all Americans know their status.

In 2006, CDC published its *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings* (found [here](#)). These recommendations support routine testing and differ from previous recommendations in ways that impacted state laws addressing HIV testing procedures in regards to informed consent and pre-test counseling. Specifically, these recommendations stated that:

- Separate written consent for HIV testing is not recommended. General informed consent for medical care that notifies the patient that an HIV test will be performed unless the patient declines (opt-out screening) should be considered sufficient to encompass informed consent for HIV testing.
- Prevention counseling—defined as an interactive process of assessing risk of infection, recognizing specific behaviors that increase this risk, and developing a plan to reduce risk—should not be required with HIV diagnostic testing or as part of HIV screening programs in health-care settings.

Currently, all but two states, Nebraska and New York, have laws that are consistent with CDC recommendations ([click here to find out about specific states](#)).


¹CDC. Monitoring selected national HIV prevention and care objectives by using HIV surveillance data—United States and 6 U.S. dependent areas—2010. HIV Surveillance Supplemental Report 2012;17(No. 3, part A). <http://www.cdc.gov/hiv/library/reports/surveillance/pastIssues.html>. Published June 2012 [p6]

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State HIV Testing Laws: Consent

The screenshot shows the CDC website page for "State HIV Testing Laws: Consent and Counseling Requirements". The page includes a navigation menu on the left with "HIV/AIDS" selected, a search bar at the top right, and a main content area with social media sharing options and a list of related topics. A red-bordered box highlights a key message about state laws. Below the main content, there is a sidebar with a table of contents and a "Get Tested" section with a map and search input.

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High Impact Prevention

HIV-Related Laws

► State HIV Laws

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Help Share

HIV TESTING CONSENT

The Road to Legislative Changes

Moving Toward More Responsive Statute

- In early 2006, Dr. Frieden (NYC health commissioner) had discussions with community members on changing requirements regarding informed consent with HIV testing
 - Some community members very vocally opposed to these efforts



BECAUSE FREEDOM

KEY ISSUES

ACTION

HOME › HIV / AIDS › HIV TESTING AND PRIVACY

HIV Activists Tell New York Department of Health to Stop Gutting Informed Consent Laws

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May 15, 2006

FOR IMMEDIATE RELEASE

CONTACT: media@aclu.org

Demand Takes Aim at Permanent Changes Advocated by NYC Health Commissioner Thomas Frieden

NEW YORK – HIV activists demanded today that the New York State Department of Health stop illegally collecting medical information on people with HIV and stop its illegal end run around New York law requiring informed consent for HIV testing.

Moving Toward More Responsive Statute

2006-2010

- During this period, 169 HIV-related bills were introduced in the state legislature
 - 12 specifically addressed consent for HIV testing
 - Separate written consent was one of the most contested elements of these bills
 - Bills were introduced that would allow for opt-out testing
 - Idea of mandatory offer was also introduced
- In 2010, NY finally adopted amendments to make HIV screening in medical settings more routine and to align consent policies more closely with CDC recommendations

NY STATE HIV TESTING LEGISLATION

Chapter 308 of the Laws of 2010

New Legislation on HIV Consent



Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

September 1, 2010

Dear Colleague:

On July 30, 2010, Governor David A. Paterson signed Chapter 308 of the Laws of 2010, authorizing significant changes in HIV testing in New York State. Statewide, approximately one-third of HIV-positive people go undiagnosed until they are at advanced stages of infection. The new law was enacted to increase HIV testing and help HIV-positive New Yorkers protect their own health and that of others. In keeping with recommendations issued by the Centers for Disease Control and Prevention in 2006, the new New York State law requires (with limited exceptions) the offer of an HIV test to patients between the ages of 13 and 64 in primary care settings, emergency departments and inpatient settings. If the test being ordered produces results in one hour or less, the patient can grant consent through a signed general consent for medical care or through a documented oral exchange. All provisions of the new law are effective as of September 1, 2010. Key changes to previous New York State law are listed below.

Key Provisions

- HIV testing must be offered to all patients
 - Aged 13-64 receiving hospital or primary care services with limited exceptions
- Consent for HIV testing
 - May be part of a general consent to medical care, with specific opt-out language included
 - Can be oral for rapid HIV testing (except in correctional facilities) and must be noted in the medical record
 - Can remain in effect for a period of time stipulated by the patient or until revoked by the patient

Mandated Evaluation by 2012

- The HIV testing law required NY State Department of Health to evaluate the impact of the statute with respect to
 - The number of persons tested for HIV infection
 - The number of confirmed HIV-positive persons entering into care and treatment following their HIV diagnosis

Chapter 308 of the Laws of 2010

Mandated Report, August 2012

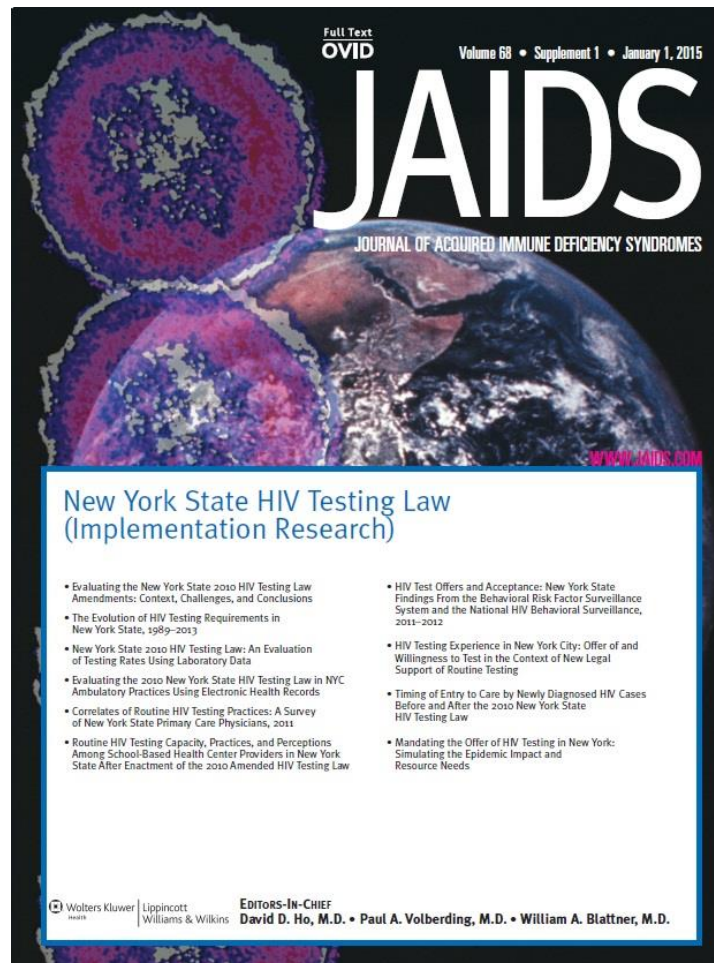
New York State Department of Health

**Chapter 308 of the Laws of 2010
HIV Testing Law
Mandated Report
August 2012**

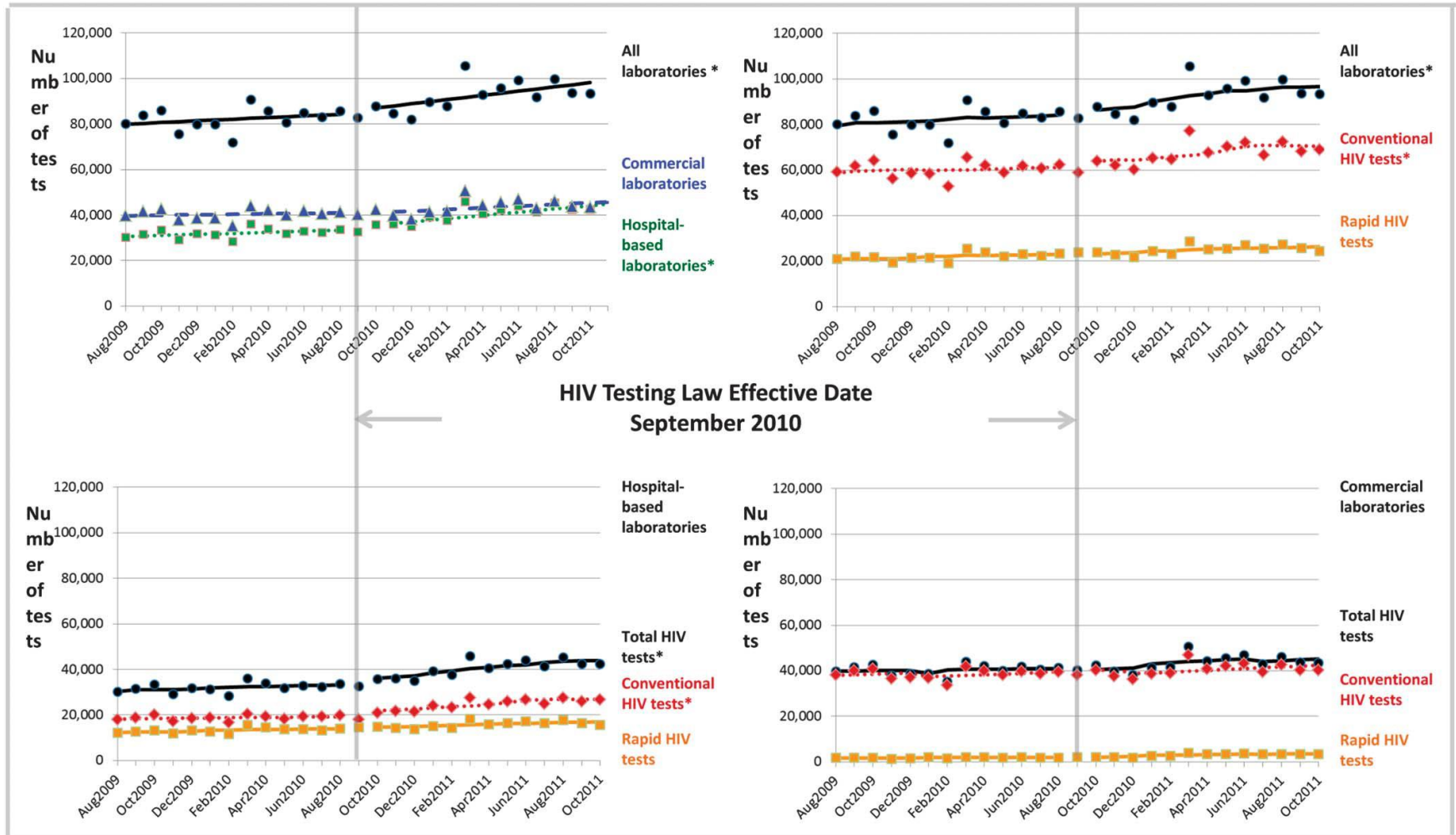


Prepared by:
New York State Department of Health
Corning Tower
Albany, New York 12237
August 20, 2012 **(Corrected)**

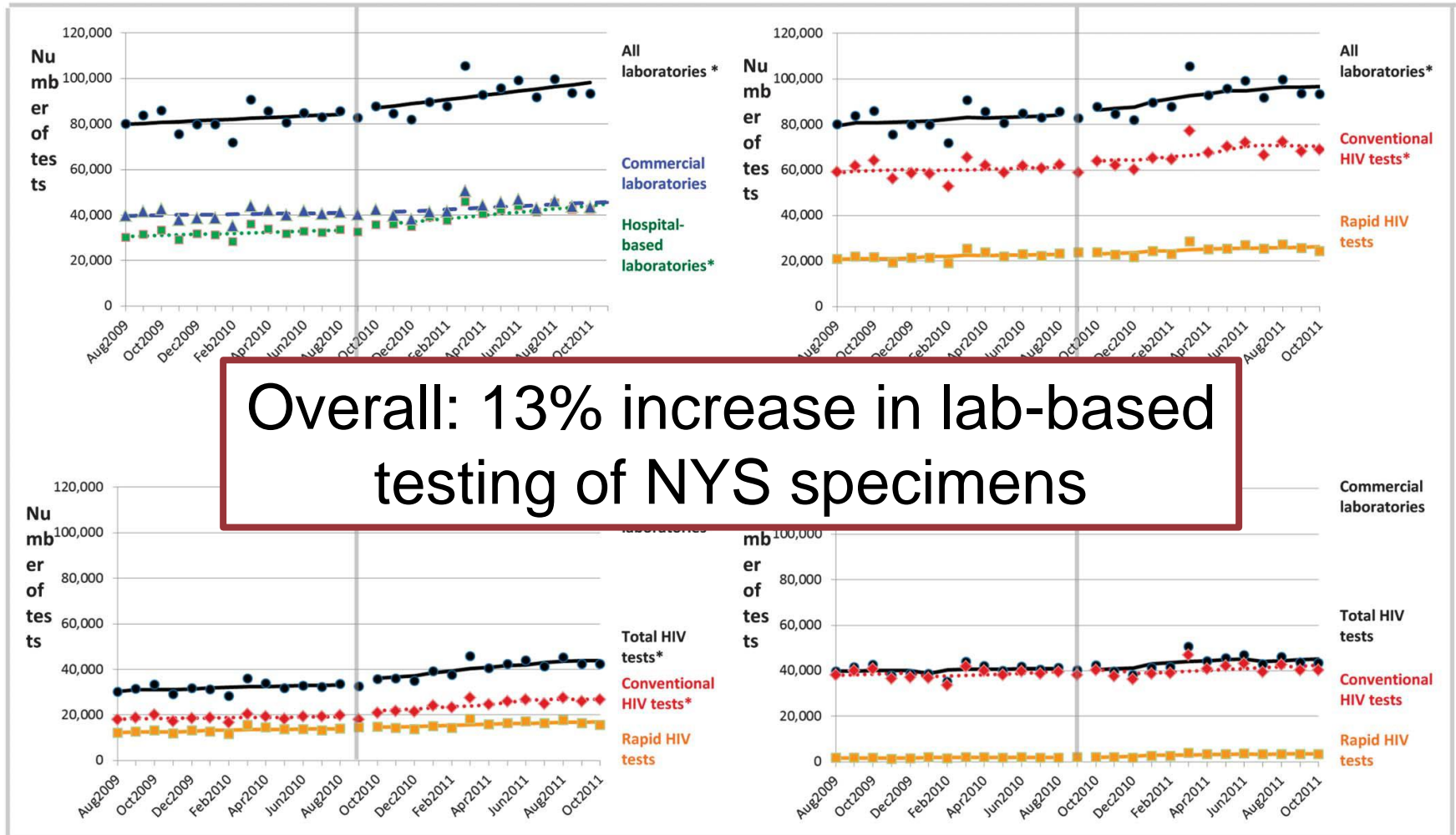
JAIDS Supplement, January 1, 2015



Evaluation of Testing Rates in NY State Using Laboratory Data



Evaluation of Testing Rates in NY State Using Laboratory Data

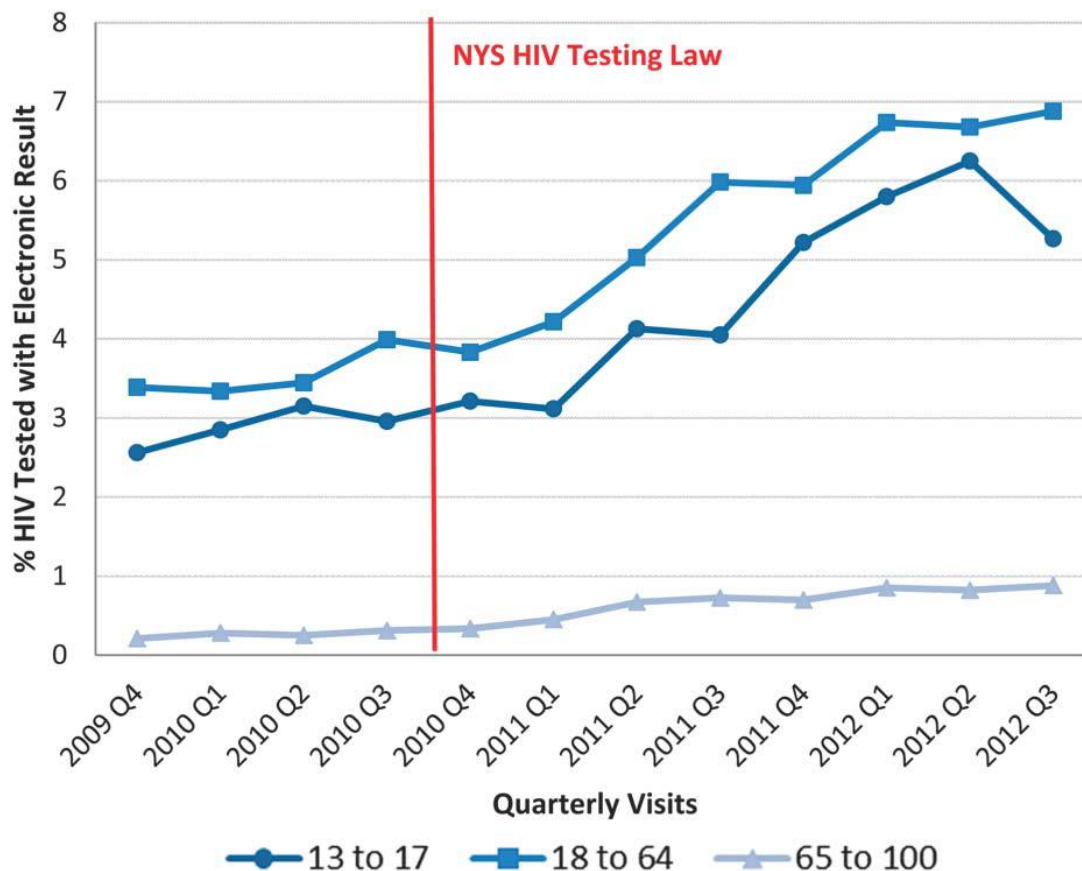


Evaluation Ambulatory Practices in NYC Using Electronic Health Records

- NYC health department (HD) works with healthcare providers and ambulatory care practices to use electronic health records to improve quality of care
 - NYC health department created a tool that allows it to query collaborating practices and receive automated counts of patients while not exchanging protected health information
- We queried 218 NYC ambulatory practices on testing

Ages Targeted by Law Saw More Improvement

Crude quarterly testing trends by age group, Q4 2009 to Q3 2012



NY STATE LEGISLATION ON HIV TESTING

The Next Chapter

2014 Legislative Changes

Amendments to Public Health Law § 2781

- In 2014, further amendments made to NY Public Health Law
 - Written consent is no longer required for HIV testing

LEGISLATIVE AND POLICY CHANGES

Lessons Learned

Lessons Learned

- Legislative change is possible, but it requires
 - Time
 - Political capital
 - Incremental changes
- Legislative change may require some barriers, but not all barriers
- Change in legislation is a start, but public health and community support and follow-through is required for its implementation
- Legislative change is a tool in Prevention toolbox