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## MEMORANDUM

**TO:** Senate Public Health and Welfare Committee

**FROM:** Andy Hoover, Legislative Director  
American Civil Liberties Union of Pennsylvania

**DATE:** April 5, 2011

### RE: OPPOSITION TO SENATE BILL 260

On Wednesday, the Senate Public Health and Welfare Committee is scheduled to consider Senate Bill 260. This legislation will permit healthcare providers to offer opt out HIV testing and will eliminate the requirement of pretest counseling and permit documented, rather than written, informed consent before the administration of an HIV test. SB 260 will erode patients' privacy rights and instill distrust between patients and their providers. The American Civil Liberties Union of Pennsylvania opposes SB 260, and on behalf of the 17,000 members of the ACLU of Pennsylvania, I urge you to please vote "no" on SB 260.

Opt out HIV testing causes patients to feel pressure to consent to the test and to distrust their healthcare providers. Studies have demonstrated that opt out HIV testing causes patients to feel uncomfortable and forced into submitting to the test. A 2004 study in Michigan showed that the state's attempt to start an opt-out regime for pregnant women left many women feeling uncomfortable and forced into the test. Fewer than half of the women in the study felt very comfortable refusing the testing and one in five did not feel at all comfortable refusing. Women who were younger, unemployed, and who did not have a regular healthcare provider were more likely to feel uncomfortable opting out of the HIV test.

Furthermore, patients are occasionally tested without even being aware of such. In Arkansas, where pregnant women must opt out of HIV testing, 16 percent of women did not even know that they had been tested for HIV, according to a 2002 report by the Centers for Disease Control and Prevention. It is essential that HIV-AIDS patients trust their healthcare providers since the disease requires lifelong treatment.

Pre-test counseling and written informed consent is imperative to ensure that patients fully understand the testing process. Pre-test counseling facilitates more patients to provide their written consent to HIV testing because such counseling provides patients with the appropriate information to make the determination of whether or not to get tested. It is essential for quality patient education and care that the pre-test counseling currently in law but eliminated by SB 260 remains in place.

Regrettably, a societal stigma still exists for persons with HIV-AIDS. A 2009 report by the Kaiser Family Foundation found that, while many Americans are increasingly accepting of those with HIV-AIDS, a significant percentage of people still harbor ill feelings about the disease. The study results indicated that 23 percent of those surveyed would be uncomfortable with an HIV-positive co-worker and 35 percent of parents surveyed would be uncomfortable with an HIV-positive teacher. In addition, 42 percent of people surveyed would be uncomfortable with an HIV-positive roommate, and a majority, 51 percent, feel uncomfortable with food being prepared by someone who is HIV positive. Clearly, our country still has a long way to go in treating people with this disease fairly and with dignity.

Written, rather than documented, informed consent will confirm that patients are the individuals who are consenting to the HIV test. Documented informed consent presents the risk that patients may not truly be asked for their consent. In addition, it opens the door for healthcare providers to consent on their patients' behalf. Healthcare providers should not be encouraged and enabled to provide paternalistic healthcare.

The ACLU of Pennsylvania agrees with the intention of this bill to pursue universal testing. We support increased HIV testing and care for persons who are HIV-positive but not aware of their infection. However, the state legislature must find alternatives to implement a universal testing system while preserving patients' rights. SB 260 isn't the answer. Please vote "no" on SB 260.