

By Senator Burt

16-1231-98

1 A bill to be entitled
2 An act relating to human immunodeficiency virus
3 testing; amending s. 381.004, F.S.; providing
4 for disclosure of HIV test results to the
5 patient's health care providers; requiring HIV
6 testing of certain health care facility
7 patients; providing that health care providers
8 receiving HIV test results must maintain their
9 confidentiality; amending s. 395.3025, F.S.;
10 providing for inclusion of results of required
11 HIV tests in patient records; providing an
12 effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 381.004, Florida Statutes, is
17 amended to read:

18 381.004 Testing for human immunodeficiency virus.--

19 (1) LEGISLATIVE INTENT.--The Legislature finds that
20 the use of tests designed to reveal a condition indicative of
21 human immunodeficiency virus infection can be a valuable tool
22 in protecting the public health. The Legislature finds that
23 despite existing laws, regulations, and professional standards
24 which require or promote the informed, voluntary, and
25 confidential use of tests designed to reveal human
26 immunodeficiency virus infection, many members of the public
27 are deterred from seeking such testing because they
28 misunderstand the nature of the test or fear that test results
29 will be disclosed without their consent. The Legislature
30 finds that the public health will be served by facilitating

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1 informed, voluntary, and confidential use of tests designed to
2 detect human immunodeficiency virus infection.

3 (2) DEFINITIONS.--As used in this section:

4 (a) "HIV test" means a test ordered after July 6,
5 1988, to determine the presence of the antibody or antigen to
6 human immunodeficiency virus or the presence of human
7 immunodeficiency virus infection.

8 (b) "HIV test result" means a laboratory report of a
9 human immunodeficiency virus test result entered into a
10 medical record on or after July 6, 1988, or any report or
11 notation in a medical record of a laboratory report of a human
12 immunodeficiency virus test. As used in this section, the
13 term "HIV test result" does not include test results reported
14 to a health care provider by a patient.

15 (c) "Significant exposure" means:

16 1. Exposure to blood or body fluids through
17 needlestick, instruments, or sharps;

18 2. Exposure of mucous membranes to visible blood or
19 body fluids, to which universal precautions apply according to
20 the National Centers for Disease Control and Prevention,
21 including, without limitations, the following body fluids:

22 a. Blood.

23 b. Semen.

24 c. Vaginal secretions.

25 d. Cerebro-spinal fluid (CSF).

26 e. Synovial fluid.

27 f. Pleural fluid.

28 g. Peritoneal fluid.

29 h. Pericardial fluid.

30 i. Amniotic fluid.

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1 j. Laboratory specimens that contain HIV (e.g.,
2 suspensions of concentrated virus); or

3 3. Exposure of skin to visible blood or body fluids,
4 especially when the exposed skin is chapped, abraded, or
5 afflicted with dermatitis or the contact is prolonged or
6 involving an extensive area.

7 (d) "Test subject" or "subject of the test" means the
8 person upon whom an HIV test is performed, or the person who
9 has legal authority to make health care decisions for the test
10 subject.

11 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
12 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

13 (a) No person in this state shall perform a test
14 designed to identify the human immunodeficiency virus, or its
15 antigen or antibody, without first obtaining the informed
16 consent of the person upon whom the test is being performed,
17 except as specified in paragraph (i). Informed consent shall
18 be preceded by an explanation of the right to confidential
19 treatment of information identifying the subject of the test
20 and the results of the test to the extent provided by law.
21 Consent need not be in writing provided there is documentation
22 in the medical record that the test has been explained and the
23 consent has been obtained.

24 (b) Except as provided in paragraph (i), informed
25 consent must be obtained from a legal guardian or other person
26 authorized by law when the person:

27 1. Is not competent or is otherwise unable to make an
28 informed judgment; or

29 2. Has not reached the age of majority, except as
30 provided in s. 384.30.

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1 (c) Except as provided in paragraph (i), no person
2 shall order a test without making available to the person
3 tested, prior to the test, information regarding measures for
4 the prevention of, exposure to, and transmission of human
5 immunodeficiency virus. At the time an HIV test is ordered,
6 the person ordering the test shall schedule a return visit
7 with the test subject for the purpose of disclosing the test
8 results and conducting posttest counseling as described in
9 paragraph (e).

10 (d) No test result shall be determined as positive,
11 and no positive test result shall be revealed to any person,
12 without corroborating or confirmatory tests being conducted.
13 However, preliminary test results may be released to licensed
14 physicians or the medical personnel subject to the significant
15 exposure for purposes of subparagraphs (i)10. and 11. Except
16 as provided in this section, test results are confidential and
17 exempt from the provisions of s. 119.07(1).

18 (e) Except as otherwise provided, no test result shall
19 be revealed to the person upon whom the test was performed
20 without affording that person the immediate opportunity for
21 individual, face-to-face counseling about:

- 22 1. The meaning of the test results;
- 23 2. The possible need for additional testing;
- 24 3. Measures for the prevention of the transmission of
25 the human immunodeficiency virus infection;
- 26 4. The availability in the geographic area of any
27 appropriate health care services, including mental health
28 care, and appropriate social and support services;
- 29 5. The benefits of locating and counseling any
30 individual by whom the infected individual may have been
31 exposed to the human immunodeficiency virus infection and any

1 individual whom the infected individual may have exposed to
2 such human immunodeficiency virus infection; and

3 6. The availability, if any, of the services of public
4 health authorities with respect to locating and counseling any
5 individual described in subparagraph 5.

6
7 Telephonic posttest counseling shall be permitted when
8 reporting the HIV test results of a home access HIV test that
9 is approved by the United States Food and Drug Administration
10 and analyzed by a laboratory certified under the federal
11 Clinical Laboratory Improvement Amendments of 1988 or licensed
12 under part I of chapter 483.

13 (f) Except as provided in this section, the identity
14 of any person upon whom a test has been performed and test
15 results are confidential and exempt from the provisions of s.
16 119.07(1). No person who has obtained or has knowledge of a
17 test result pursuant to this section may disclose or be
18 compelled to disclose the identity of any person upon whom a
19 test is performed, or the results of such a test in a manner
20 which permits identification of the subject of the test,
21 except to the following persons:

22 1. The subject of the test or the subject's legally
23 authorized representative.

24 2. Any person, including third-party payors,
25 designated in a legally effective release of the test results
26 executed prior to or after the test by the subject of the test
27 or the subject's legally authorized representative. The test
28 subject may in writing authorize the disclosure of the test
29 subject's HIV test results to third party payors, who need not
30 be specifically identified, and to other persons to whom the
31 test subject subsequently issues a general release of medical

1 information. A general release without such prior written
2 authorization is not sufficient to release HIV test results.

3 3. An authorized agent or employee of a health
4 facility or health care provider if the health facility or
5 health care provider itself is authorized to obtain the test
6 results, the agent or employee participates in the
7 administration or provision of patient care or handles or
8 processes specimens of body fluids or tissues, and the agent
9 or employee has a need to know such information. The
10 department shall adopt a rule defining which persons have a
11 need to know pursuant to this subparagraph.

12 4. Health care providers consulting between themselves
13 or with health care facilities to determine diagnosis and
14 treatment. For purposes of this subparagraph, health care
15 providers shall include licensed health care professionals
16 employed by or associated with state, county, or municipal
17 detention facilities when such health care professionals are
18 acting exclusively for the purpose of providing diagnoses or
19 treatment of persons in the custody of such facilities.

20 5. The department, in accordance with rules for
21 reporting and controlling the spread of disease, as otherwise
22 provided by state law.

23 6. A health facility or health care provider which
24 procures, processes, distributes, or uses:

25 a. A human body part from a deceased person, with
26 respect to medical information regarding that person; or

27 b. Semen provided prior to July 6, 1988, for the
28 purpose of artificial insemination.

29 7. Health facility staff committees, for the purposes
30 of conducting program monitoring, program evaluation, or
31 service reviews pursuant to chapters 395 and 766.

1 8. Authorized medical or epidemiological researchers
2 who may not further disclose any identifying characteristics
3 or information.

4 9. A person allowed access by a court order which is
5 issued in compliance with the following provisions:

6 a. No court of this state shall issue such order
7 unless the court finds that the person seeking the test
8 results has demonstrated a compelling need for the test
9 results which cannot be accommodated by other means. In
10 assessing compelling need, the court shall weigh the need for
11 disclosure against the privacy interest of the test subject
12 and the public interest which may be disserved by disclosure
13 which deters blood, organ, and semen donation and future human
14 immunodeficiency virus-related testing or which may lead to
15 discrimination. This paragraph shall not apply to blood bank
16 donor records.

17 b. Pleadings pertaining to disclosure of test results
18 shall substitute a pseudonym for the true name of the subject
19 of the test. The disclosure to the parties of the subject's
20 true name shall be communicated confidentially in documents
21 not filed with the court.

22 c. Before granting any such order, the court shall
23 provide the individual whose test result is in question with
24 notice and a reasonable opportunity to participate in the
25 proceedings if he or she is not already a party.

26 d. Court proceedings as to disclosure of test results
27 shall be conducted in camera, unless the subject of the test
28 agrees to a hearing in open court or unless the court
29 determines that a public hearing is necessary to the public
30 interest and the proper administration of justice.

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1 e. Upon the issuance of an order to disclose test
2 results, the court shall impose appropriate safeguards against
3 unauthorized disclosure which shall specify the persons who
4 may have access to the information, the purposes for which the
5 information shall be used, and appropriate prohibitions on
6 future disclosure.

7 10. A person allowed access by order of a judge of
8 compensation claims of the Division of Workers' Compensation
9 of the Department of Labor and Employment Security. A judge
10 of compensation claims shall not issue such order unless he or
11 she finds that the person seeking the test results has
12 demonstrated a compelling need for the test results which
13 cannot be accommodated by other means.

14 11. Those employees of the department or of
15 child-placing or child-caring agencies or of family foster
16 homes, licensed pursuant to s. 409.175, who are directly
17 involved in the placement, care, control, or custody of such
18 test subject and who have a need to know such information;
19 adoptive parents of such test subject; or any adult custodian,
20 any adult relative, or any person responsible for the child's
21 welfare, if the test subject was not tested under subparagraph
22 (b)2. and if a reasonable attempt has been made to locate and
23 inform the legal guardian of a test result. The department
24 shall adopt a rule to implement this subparagraph.

25 12. Medical personnel who have been subject to a
26 significant exposure during the course of medical practice or
27 in the performance of professional duties, or individuals who
28 are the subject of the significant exposure as provided in
29 subparagraphs (i)10. and 11.

30 13. Health care providers involved in the patient's
31 care.

1 (g) Except as provided in this section, the identity
2 of a person upon whom a test has been performed is
3 confidential and exempt from the provisions of s. 119.07(1).
4 No person to whom the results of a test have been disclosed
5 may disclose the test results to another person except as
6 authorized by this subsection and by ss. 951.27 and 960.003.
7 Whenever disclosure is made pursuant to this subsection, it
8 shall be accompanied by a statement in writing which includes
9 the following or substantially similar language: "This
10 information has been disclosed to you from records whose
11 confidentiality is protected by state law. State law
12 prohibits you from making any further disclosure of such
13 information without the specific written consent of the person
14 to whom such information pertains, or as otherwise permitted
15 by state law. A general authorization for the release of
16 medical or other information is NOT sufficient for this
17 purpose." An oral disclosure shall be accompanied by oral
18 notice and followed by a written notice within 10 days, except
19 that this notice shall not be required for disclosures made
20 pursuant to subparagraphs (f)3. and 4.

21 (h) Human immunodeficiency virus test results
22 contained in the medical records of a hospital licensed under
23 chapter 395 may be released in accordance with s. 395.3025
24 without being subject to the requirements of subparagraph
25 (f)2., subparagraph (f)9., or paragraph (g); provided the
26 hospital has obtained written informed consent for the HIV
27 test in accordance with provisions of this section.

28 (i) Notwithstanding the provisions of paragraph (a),
29 informed consent is not required:
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1 1. When testing for sexually transmissible diseases is
2 required by state or federal law, or by rule including the
3 following situations:

4 a. HIV testing pursuant to s. 796.08 of persons
5 convicted of prostitution or of procuring another to commit
6 prostitution.

7 b. Testing for HIV by a medical examiner in accordance
8 with s. 406.11.

9 2. Those exceptions provided for blood, plasma,
10 organs, skin, semen, or other human tissue pursuant to s.
11 381.0041.

12 3. For the performance of an HIV-related test by
13 licensed medical personnel in bona fide medical emergencies
14 when the test results are necessary for medical diagnostic
15 purposes to provide appropriate emergency care or treatment to
16 the person being tested and the patient is unable to consent,
17 as supported by documentation in the medical record. Posttest
18 counseling is required.

19 4. For the performance of an HIV-related test by
20 licensed medical personnel for medical diagnosis of acute
21 illness where, in the opinion of the attending physician,
22 obtaining informed consent would be detrimental to the
23 patient, as supported by documentation in the medical record,
24 and the test results are necessary for medical diagnostic
25 purposes to provide appropriate care or treatment to the
26 person being tested. Posttest counseling is required if it
27 would not be detrimental to the patient. This subparagraph
28 does not authorize the routine testing of patients for HIV
29 infection without informed consent.

30 5. When HIV testing is performed as part of an autopsy
31 for which consent was obtained pursuant to s. 872.04.

1 6. For the performance of an HIV test upon a defendant
2 pursuant to the victim's request in a prosecution for any type
3 of sexual battery where a blood sample is taken from the
4 defendant voluntarily, pursuant to court order for any
5 purpose, or pursuant to the provisions of s. 775.0877, s.
6 951.27, or s. 960.003; however, the results of any HIV test
7 performed shall be disclosed solely to the victim and the
8 defendant, except as provided in ss. 775.0877, 951.27, and
9 960.003.

10 7. When an HIV test is mandated by court order.

11 8. For epidemiological research pursuant to s.
12 381.0032, for research consistent with institutional review
13 boards created by 45 C.F.R. part 46, or for the performance of
14 an HIV-related test for the purpose of research, if the
15 testing is performed in a manner by which the identity of the
16 test subject is not known and may not be retrieved by the
17 researcher.

18 9. When human tissue is collected lawfully without the
19 consent of the donor for corneal removal as authorized by s.
20 732.9185 or enucleation of the eyes as authorized by s.
21 732.919.

22 10. For the performance of an HIV test upon an
23 individual who comes into contact with medical personnel in
24 such a way that a significant exposure has occurred during the
25 course of employment or within the scope of practice and where
26 a blood sample is taken from that individual voluntarily by
27 medical personnel for other purposes. "Medical personnel"
28 includes a licensed or certified health care professional; an
29 employee of a health care professional, health care facility,
30 or blood bank; and a paramedic or emergency medical technician
31 as defined in s. 401.23.

1 a. Prior to performance of an HIV test on a
2 voluntarily obtained blood sample, the individual from whom
3 the blood was obtained shall be requested to consent to the
4 performance of the test and to the release of the results.
5 The individual's refusal to consent and all information
6 concerning the performance of an HIV test and any HIV test
7 result shall be documented only in the medical personnel's
8 record unless the individual gives written consent to entering
9 this information on the individual's medical record.

10 b. Reasonable attempts to locate the individual and to
11 obtain consent shall be made and all attempts must be
12 documented. If the individual cannot be found, an HIV test may
13 be conducted on the available blood sample. If the individual
14 does not voluntarily consent to the performance of an HIV
15 test, the individual shall be informed that an HIV test will
16 be performed, and counseling shall be furnished as provided in
17 this section. However, HIV testing shall be conducted only
18 after a licensed physician documents, in the medical record of
19 the medical personnel, that there has been a significant
20 exposure and that, in the physician's medical judgment, the
21 information is medically necessary to determine the course of
22 treatment for the medical personnel.

23 c. Costs of any HIV test of a blood sample performed
24 with or without the consent of the individual, as provided in
25 this subparagraph, shall be borne by the medical personnel or
26 the employer of the medical personnel. However, costs of
27 testing or treatment not directly related to the initial HIV
28 tests or costs of subsequent testing or treatment shall not be
29 borne by the medical personnel or the employer of the medical
30 personnel.

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1 d. In order to utilize the provisions of this
2 subparagraph, the medical personnel must either be tested for
3 HIV pursuant to this section or provide the results of an HIV
4 test taken within 6 months prior to the significant exposure
5 if such test results are negative.

6 e. A person who receives the results of an HIV test
7 pursuant to this subparagraph shall maintain the
8 confidentiality of the information received and of the persons
9 tested. Such confidential information is exempt from s.
10 119.07(1).

11 11. For the performance of an HIV test upon an
12 individual who comes into contact with medical personnel in
13 such a way that a significant exposure has occurred during the
14 course of employment or within the scope of practice of the
15 medical personnel while the medical personnel provides
16 emergency medical treatment to the individual; or who comes
17 into contact with nonmedical personnel in such a way that a
18 significant exposure has occurred while the nonmedical
19 personnel provides emergency medical assistance during a
20 medical emergency. For the purposes of this subparagraph, a
21 medical emergency means an emergency medical condition outside
22 of a hospital or health care facility that provides physician
23 care. The test may be performed only during the course of
24 treatment for the medical emergency.

25 a. An individual who is capable of providing consent
26 shall be requested to consent to an HIV test prior to the
27 testing. The individual's refusal to consent, and all
28 information concerning the performance of an HIV test and its
29 result, shall be documented only in the medical personnel's
30 record unless the individual gives written consent to entering
31 this information on the individual's medical record.

1 b. HIV testing shall be conducted only after a
2 licensed physician documents, in the medical record of the
3 medical personnel or nonmedical personnel, that there has been
4 a significant exposure and that, in the physician's medical
5 judgment, the information is medically necessary to determine
6 the course of treatment for the medical personnel or
7 nonmedical personnel.

8 c. Costs of any HIV test performed with or without the
9 consent of the individual, as provided in this subparagraph,
10 shall be borne by the medical personnel or the employer of the
11 medical personnel or nonmedical personnel. However, costs of
12 testing or treatment not directly related to the initial HIV
13 tests or costs of subsequent testing or treatment shall not be
14 borne by the medical personnel or the employer of the medical
15 personnel or nonmedical personnel.

16 d. In order to utilize the provisions of this
17 subparagraph, the medical personnel or nonmedical personnel
18 shall be tested for HIV pursuant to this section or shall
19 provide the results of an HIV test taken within 6 months prior
20 to the significant exposure if such test results are negative.

21 e. A person who receives the results of an HIV test
22 pursuant to this subparagraph shall maintain the
23 confidentiality of the information received and of the persons
24 tested. Such confidential information is exempt from s.
25 119.07(1).

26 12. For the performance of an HIV-related test
27 medically indicated by licensed medical personnel for medical
28 diagnosis of a hospitalized infant as necessary to provide
29 appropriate care and treatment of the infant when, after a
30 reasonable attempt, a parent cannot be contacted to provide
31 consent. The medical records of the infant shall reflect the

1 reason consent of the parent was not initially obtained. Test
2 results and posttest counseling shall be provided to the
3 parent when the parent is located.

4 13. For the performance of an HIV test on any patient
5 entering a health care facility licensed under chapter 395 for
6 treatment involving an invasive procedure, whether the
7 treatment is performed in an emergency room or on an
8 outpatient or inpatient basis. Each such patient shall be
9 tested for HIV, and the test results shall be made available
10 to the health care providers involved in the patient's care,
11 notwithstanding any other provision of this section. Each
12 person who receives the results of an HIV test performed under
13 this subparagraph shall maintain the confidentiality of the
14 information and the identity of the person tested. Such
15 confidential information is exempt from s. 119.07(1).

16 (4) COUNTY HEALTH DEPARTMENT NETWORK OF VOLUNTARY
17 HUMAN IMMUNODEFICIENCY VIRUS TESTING PROGRAMS.--

18 (a) The Department of Health shall establish a network
19 of voluntary human immunodeficiency virus testing programs in
20 every county in the state. These programs shall be conducted
21 in each county health department established under the
22 provisions of part I of chapter 154. Additional programs may
23 be contracted to other private providers to the extent that
24 finances permit and local circumstances dictate.

25 (b) Each county health department shall have the
26 ability to provide counseling and testing for human
27 immunodeficiency virus to each patient who receives services
28 and shall offer such testing on a voluntary basis to each
29 patient who presents himself or herself for services in a
30 public health program designated by the State Health Officer
31 by rule.

1 (c) Each county health department shall provide a
2 program of counseling and testing for human immunodeficiency
3 virus infection, on both an anonymous and confidential basis.
4 Counseling provided to a patient tested on both an anonymous
5 and confidential basis shall include informing the patient of
6 the availability of partner-notification services, the
7 benefits of such services, and the confidentiality protections
8 available as part of such services. The Department of Health
9 or its designated agent shall continue to provide for
10 anonymous testing through an alternative testing site program
11 with sites throughout all areas of the state. Each county
12 health department shall maintain a list of anonymous testing
13 sites. The list shall include the locations, phone numbers,
14 and hours of operation of the sites and shall be disseminated
15 to all persons and programs offering human immunodeficiency
16 virus testing within the service area of the county health
17 department, including physicians licensed under chapter 458 or
18 chapter 459. Except as provided in this section, the identity
19 of a person upon whom a test has been performed and test
20 results are confidential and exempt from the provisions of s.
21 119.07(1).

22 (d) The result of a serologic test conducted under the
23 auspices of the Department of Health shall not be used to
24 determine if a person may be insured for disability, health,
25 or life insurance or to screen or determine suitability for,
26 or to discharge a person from, employment. Any person who
27 violates the provisions of this subsection is guilty of a
28 misdemeanor of the first degree, punishable as provided in s.
29 775.082 or s. 775.083.

30 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
31 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM

1 REGISTRATION.--No county health department and no other person
2 in this state shall conduct or hold themselves out to the
3 public as conducting a testing program for acquired immune
4 deficiency syndrome, acquired immune deficiency syndrome
5 related complex, or human immunodeficiency virus status
6 without first registering with the Department of Health,
7 complying with all other applicable provisions of state law,
8 and meeting the following requirements:

9 (a) The program must be directed by a person with a
10 minimum number of contact hours of experience in the
11 counseling of persons with acquired immune deficiency
12 syndrome, acquired immune deficiency syndrome related complex,
13 or human immunodeficiency virus infection, as established by
14 the Department of Health by rule.

15 (b) The program must have all medical care supervised
16 by a physician licensed under the provisions of chapter 458 or
17 chapter 459.

18 (c) The program shall have all laboratory procedures
19 performed in a laboratory licensed under the provisions of
20 chapter 483.

21 (d) The program must meet all the informed consent
22 criteria contained in subsection (3).

23 (e) The program must provide pretest counseling on the
24 meaning of a test for human immunodeficiency virus, including
25 medical indications for the test; the possibility of false
26 positive or false negative results; the potential need for
27 confirmatory testing; the potential social, medical, and
28 economic consequences of a positive test result; and the need
29 to eliminate high-risk behavior.

30 (f) The program must provide supplemental
31 corroborative testing on all positive test results before the

1 results of any positive test are provided to the patient.
2 Except as provided in this section, the identity of any person
3 upon whom a test has been performed and test results are
4 confidential and exempt from the provisions of s. 119.07(1).

5 (g) The program must provide face-to-face posttest
6 counseling on the meaning of the test results; the possible
7 need for additional testing; the social, medical, and economic
8 consequences of a positive test result; and the need to
9 eliminate behavior which might spread the disease to others.

10 (h) Each person providing posttest counseling to a
11 patient with a positive test result shall receive specialized
12 training, to be specified by rule of the department, about the
13 special needs of persons with positive results, including
14 recognition of possible suicidal behavior, and shall refer the
15 patient for further health and social services as appropriate.

16 (i) When services are provided for a charge during
17 pretest counseling, testing, supplemental testing, and
18 posttest counseling, the program must provide a complete list
19 of all such charges to the patient and the Department of
20 Health.

21 (j) Nothing in this subsection shall be construed to
22 require a facility licensed under chapter 483 or a person
23 licensed under the provisions of chapter 457, chapter 458,
24 chapter 459, chapter 460, chapter 461, chapter 466, or chapter
25 467 to register with the Department of Health if he or she
26 does not advertise or hold himself or herself out to the
27 public as conducting testing programs for human
28 immunodeficiency virus infection or specializing in such
29 testing.

30 (6) PENALTIES.--

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1 (a) Any violation of this section by a facility or
2 licensed health care provider shall be a ground for
3 disciplinary action contained in the facility's or
4 professional's respective licensing chapter.

5 (b) Any person who violates the confidentiality
6 provisions of this section and s. 951.27 commits a misdemeanor
7 of the first degree, punishable as provided in s. 775.082 or
8 s. 775.083.

9 (7) EXEMPTIONS.--Except as provided in paragraph
10 (4)(d) and ss. 627.429 and 641.3007, insurers and others
11 participating in activities related to the insurance
12 application and underwriting process shall be exempt from this
13 section.

14 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR
15 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall
16 develop a model protocol consistent with the provisions of
17 this section for counseling and testing persons for the human
18 immunodeficiency virus.

19 (9) FEES.--

20 (a) Each person or private organization registered as
21 an AIDS or HIV testing site shall pay the department a fee
22 which shall be set by rule of the department.

23 (b) Fees established pursuant to paragraph (a) shall
24 be an amount sufficient to meet all costs incurred by the
25 department in carrying out its registration, data collection,
26 complaint monitoring, and administrative responsibilities
27 under this section, for all private AIDS or HIV testing sites,
28 but shall not exceed \$100.

29 (c) No other fees shall be charged by other
30 governmental agencies for these purposes.

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1 (10) RULES.--The Department of Health may adopt such
2 rules as are necessary to implement this section.

3 ~~(11) TESTING AS A CONDITION OF TREATMENT OR~~
4 ~~ADMISSION.--~~

5 ~~(a) It is unlawful for any facility the operation of~~
6 ~~which, or for any person engaged in an occupation the practice~~
7 ~~of which, requires a license by the Agency for Health Care~~
8 ~~Administration, the Department of Health, or the Department of~~
9 ~~Business and Professional Regulation, to require any person to~~
10 ~~take or submit to a human immunodeficiency virus-related test~~
11 ~~as a condition of admission to any such facility or as a~~
12 ~~condition of purchasing or obtaining any service or product~~
13 ~~for which the license is required. This subsection shall not~~
14 ~~be construed to prohibit any physician in good faith from~~
15 ~~declining to provide a particular treatment requested by a~~
16 ~~patient if the appropriateness of that treatment can only be~~
17 ~~determined through a human immunodeficiency virus-related~~
18 ~~test.~~

19 ~~(b) The Agency for Health Care Administration, the~~
20 ~~Department of Health, and the Department of Business and~~
21 ~~Professional Regulation shall adopt rules implementing this~~
22 ~~subsection.~~

23 ~~(c) Any violation of this subsection or the rules~~
24 ~~implementing it shall be punishable as provided in subsection~~
25 ~~(6).~~

26 Section 2. Subsection (10) is added to section
27 395.3025, Florida Statutes, to read:

28 395.3025 Patient and personnel records; copies;
29 examination.--

30 (10) Patient records shall include a notation of any
31 infectious diseases, including the result of HIV testing

1 conducted pursuant to s. 381.004(3)(i)13., and shall be made
2 available to the health care providers involved in the
3 patient's care so that appropriate treatment can be provided
4 and that protection can be offered to the health care
5 providers.

6 Section 3. This act shall take effect July 1, 1998.

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9 SENATE SUMMARY

10 Requires HIV testing of persons entering a health care
11 facility licensed under ch. 395, F.S., for treatment
12 involving an invasive procedure. Health care providers
of patients are entitled to know HIV test results, but
they may not breach requirements of confidentiality.

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