

By the Committee on Health Care and Senator Myers

317-2008-98

1 A bill to be entitled
2 An act relating to human immunodeficiency virus
3 testing; amending s. 381.0035, F.S.; requiring
4 certain information related to HIV testing and
5 counseling to be included in HIV educational
6 courses; amending s. 381.004, F.S.; requiring
7 informed consent before an HIV test may be
8 ordered; requiring certain information to be
9 provided when informed consent is sought;
10 providing requirements with respect to
11 notification and release of test results;
12 authorizing certain disclosures of test
13 results; providing for court orders for testing
14 in specified circumstances; providing for
15 emergency action against a registration;
16 providing requirements for model protocols;
17 providing penalties; amending s. 384.25, F.S.;
18 deleting provisions relating to protocols and
19 to notification to school superintendents;
20 amending s. 455.604, F.S.; requiring certain
21 information related to HIV testing to be
22 included in HIV educational courses for certain
23 licensed professions; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Subsection (1) of section 381.0035, Florida
29 Statutes, is amended to read:

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1 381.0035 Educational course on human immunodeficiency
2 virus and acquired immune deficiency syndrome; employees and
3 clients of certain health care facilities.--

4 (1) The Department of Health shall require all
5 employees and clients of facilities licensed under chapters
6 393, 394, and 397 and employees of facilities licensed under
7 chapter 395 and parts II, III, IV, and VI of chapter 400 to
8 complete, biennially, a continuing educational course on the
9 modes of transmission, infection control procedures, clinical
10 management, and prevention of human immunodeficiency virus and
11 acquired immune deficiency syndrome with an emphasis on
12 appropriate behavior and attitude change. Such instruction
13 shall include information on current Florida law and its
14 impact on testing, confidentiality of test results, and
15 treatment of patients and any protocols and procedures
16 applicable to human immunodeficiency counseling and testing,
17 reporting, the offering of HIV testing to pregnant women, and
18 partner notification issues pursuant to ss. 381.004 and
19 384.25.

20 Section 2. Subsections (2), (3), (4), (5), and (8) of
21 section 381.004, Florida Statutes, are amended, and subsection
22 (6) of that section is reenacted, to read:

23 381.004 Testing for human immunodeficiency virus.--

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

25 (a) "HIV test" means a test ordered after July 6,
26 1988, to determine the presence of the antibody or antigen to
27 human immunodeficiency virus or the presence of human
28 immunodeficiency virus infection.

29 (b) "HIV test result" means a laboratory report of a
30 human immunodeficiency virus test result entered into a
31 medical record on or after July 6, 1988, or any report or

1 notation in a medical record of a laboratory report of a human
2 immunodeficiency virus test. As used in this section, the
3 term "HIV test result" does not include test results reported
4 to a health care provider by a patient.

5 (c) "Significant exposure" means:

6 1. Exposure to blood or body fluids through
7 needlestick, instruments, or sharps;

8 2. Exposure of mucous membranes to visible blood or
9 body fluids, to which universal precautions apply according to
10 the National Centers for Disease Control and Prevention,
11 including, without limitations, the following body fluids:

12 a. Blood.

13 b. Semen.

14 c. Vaginal secretions.

15 d. Cerebro-spinal fluid (CSF).

16 e. Synovial fluid.

17 f. Pleural fluid.

18 g. Peritoneal fluid.

19 h. Pericardial fluid.

20 i. Amniotic fluid.

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

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

27 (d) "Preliminary HIV test" means an antibody screening
28 test, such as the enzyme-linked immunosorbent assays (ELISAs)
29 or the Single-Use Diagnostic System (SUDS).

30 (e)~~(d)~~ "Test subject" or "subject of the test" means
31 the person upon whom an HIV test is performed, or the person

1 who has legal authority to make health care decisions for the
2 test subject.

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

5 (a) No person in this state shall order ~~perform~~ a test
6 designed to identify the human immunodeficiency virus, or its
7 antigen or antibody, without first obtaining the informed
8 consent of the person upon whom the test is being performed,
9 except as specified in paragraph (i). Informed consent shall
10 be preceded by an explanation of the right to confidential
11 treatment of information identifying the subject of the test
12 and the results of the test to the extent provided by law.
13 Information shall also be provided on the fact that a positive
14 HIV test result will be reported to the county health
15 department with sufficient information to identify the test
16 subject and on the availability and location of sites at which
17 anonymous testing is performed. As required in paragraph
18 (4)(c), each county health department shall maintain a list of
19 sites at which anonymous testing is performed, including the
20 locations, phone numbers, and hours of operation of the sites.
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, is incapacitated, or is otherwise
28 unable to make an 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) The person ordering the test or that person's
2 designee shall ensure that all reasonable efforts are made to
3 notify the test subject of his or her test result.
4 Notification of a person with a positive test result shall
5 include information on the availability of appropriate medical
6 and support services, on the importance of notifying partners
7 who may have been exposed, and on preventing transmission of
8 HIV. Notification of a person with a negative test result
9 shall include, as appropriate, information on preventing the
10 transmission of HIV. When testing occurs in a hospital
11 emergency department, detention facility, or other facility
12 and the test subject has been released before being notified
13 of positive test results, informing the county health
14 department for that department to notify the test subject
15 fulfills this responsibility.~~No person shall order a test~~
16 ~~without making available to the person tested, prior to the~~
17 ~~test, information regarding measures for the prevention of,~~
18 ~~exposure to, and transmission of human immunodeficiency virus.~~
19 ~~At the time an HIV test is ordered, the person ordering the~~
20 ~~test shall schedule a return visit with the test subject for~~
21 ~~the purpose of disclosing the test results and conducting~~
22 ~~posttest counseling as described in paragraph (e).~~

23 (d) No test result shall be determined as positive,
24 and no positive test result shall be revealed to any person,
25 without corroborating or confirmatory tests being conducted
26 except in the following situations:-

27 1. However, Preliminary test results may be released
28 to licensed physicians or the medical or nonmedical personnel
29 subject to the significant exposure for purposes of
30 subparagraphs (h)10., (i)10. and 11., and 12.

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1 2. Preliminary test results may be released to health
2 care providers and to the person tested when decisions about
3 medical care or treatment of the person tested cannot await
4 the results of confirmatory testing. Positive preliminary HIV
5 test results shall not be characterized to the patient as a
6 diagnosis of HIV infection. Justification for the use of
7 preliminary test results must be documented in the medical
8 record by the health care provider who ordered the test. This
9 subparagraph does not authorize the release of preliminary
10 test results for the purpose of routine identification of
11 HIV-infected individuals or when HIV testing is incidental to
12 the preliminary diagnosis or care of a patient. Corroborating
13 or confirmatory testing must be conducted as followup to a
14 positive preliminary test. Results shall be communicated to
15 the patient according to statute regardless of the outcome.
16 Except as provided in this section, test results are
17 confidential and 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.~~

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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 (e)(f) Except as provided in this section, the
14 identity of any person upon whom a test has been performed and
15 test results are confidential and exempt from the provisions
16 of s. 119.07(1). No person who has obtained or has knowledge
17 of a 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. Those employees of residential facilities or of
26 community-based care programs that care for developmentally
27 disabled persons, pursuant to chapter 393, who are directly
28 involved in the care, control, or custody of such test subject
29 and who have a need to know such information.
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1 13. A health care provider involved in the delivery of
2 a child can note the mother's HIV test results in the child's
3 medical record.

4 ~~14.12.~~ Medical personnel or nonmedical personnel who
5 have been subject to a significant exposure during the course
6 of medical practice or in the performance of professional
7 duties, or individuals who are the subject of the significant
8 exposure as provided in subparagraphs ~~(h)10., (i)10.~~ and 11.,
9 and 13.

10 15. The medical examiner shall disclose positive HIV
11 test results to the department in accordance with rules for
12 reporting and controlling the spread of disease.

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

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1 that this notice shall not be required for disclosures made
2 pursuant to subparagraphs (e)3.~~(f)3.~~ and 4.

3 (g)~~(h)~~ Human immunodeficiency virus test results
4 contained in the medical records of a hospital licensed under
5 chapter 395 may be released in accordance with s. 395.3025
6 without being subject to the requirements of subparagraph
7 (e)2.~~(f)2.~~, subparagraph (e)9.~~(f)9.~~, or paragraph (f)~~(g)~~;
8 provided the hospital has obtained written informed consent
9 for the HIV test in accordance with provisions of this
10 section.

11 (h)~~(i)~~ Notwithstanding the provisions of paragraph
12 (a), informed consent is not required:

13 1. When testing for sexually transmissible diseases is
14 required by state or federal law, or by rule including the
15 following situations:

16 a. HIV testing pursuant to s. 796.08 of persons
17 convicted of prostitution or of procuring another to commit
18 prostitution.

19 b. Testing for HIV by a medical examiner in accordance
20 with s. 406.11.

21 2. Those exceptions provided for blood, plasma,
22 organs, skin, semen, or other human tissue pursuant to s.
23 381.0041.

24 3. For the performance of an HIV-related test by
25 licensed medical personnel in bona fide medical emergencies
26 when the test results are necessary for medical diagnostic
27 purposes to provide appropriate emergency care or treatment to
28 the person being tested and the patient is unable to consent,
29 as supported by documentation in the medical record.

30 Notification of test results in accordance with paragraph (c)
31 ~~Posttest counseling~~ is required.

1 4. For the performance of an HIV-related test by
2 licensed medical personnel for medical diagnosis of acute
3 illness where, in the opinion of the attending physician,
4 obtaining informed consent would be detrimental to the
5 patient, as supported by documentation in the medical record,
6 and the test results are necessary for medical diagnostic
7 purposes to provide appropriate care or treatment to the
8 person being tested. Notification of test results in
9 accordance with paragraph (c)~~Posttest counseling~~ is required
10 if it would not be detrimental to the patient. This
11 subparagraph does not authorize the routine testing of
12 patients for HIV infection without informed consent.

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

15 6. For the performance of an HIV test upon a defendant
16 pursuant to the victim's request in a prosecution for any type
17 of sexual battery where a blood sample is taken from the
18 defendant voluntarily, pursuant to court order for any
19 purpose, or pursuant to the provisions of s. 775.0877, s.
20 951.27, or s. 960.003; however, the results of any HIV test
21 performed shall be disclosed solely to the victim and the
22 defendant, except as provided in ss. 775.0877, 951.27, and
23 960.003.

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

25 8. For epidemiological research pursuant to s.
26 381.0032, for research consistent with institutional review
27 boards created by 45 C.F.R. part 46, or for the performance of
28 an HIV-related test for the purpose of research, if the
29 testing is performed in a manner by which the identity of the
30 test subject is not known and may not be retrieved by the
31 researcher.

1 9. When human tissue is collected lawfully without the
2 consent of the donor for corneal removal as authorized by s.
3 732.9185 or enucleation of the eyes as authorized by s.
4 732.919.

5 10. For the performance of an HIV test upon an
6 individual who comes into contact with medical personnel in
7 such a way that a significant exposure has occurred during the
8 course of employment or within the scope of practice and where
9 a blood sample is available that was taken from that
10 individual voluntarily by medical personnel for other
11 purposes. "Medical personnel" includes a licensed or
12 certified health care professional; an employee of a health
13 care professional, health care facility, or blood bank; and a
14 paramedic or emergency medical technician as defined in s.
15 401.23.

16 a. Prior to performance of an HIV test on a
17 voluntarily obtained blood sample, the individual from whom
18 the blood was obtained shall be requested to consent to the
19 performance of the test and to the release of the results.
20 The individual's refusal to consent and all information
21 concerning the performance of an HIV test and any HIV test
22 result shall be documented only in the medical personnel's
23 record unless the individual gives written consent to entering
24 this information on the individual's medical record.

25 b. Reasonable attempts to locate the individual and to
26 obtain consent shall be made and all attempts must be
27 documented. If the individual cannot be found, an HIV test may
28 be conducted on the available blood sample. If the individual
29 does not voluntarily consent to the performance of an HIV
30 test, the individual shall be informed that an HIV test will
31 be performed, and counseling shall be furnished as provided in

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

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

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

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

25 f. If the source of the exposure will not voluntarily
26 submit to HIV testing and a blood sample is not available, the
27 medical personnel or the employer of such person acting on
28 behalf of the employee may seek a court order directing the
29 source of the exposure to submit to HIV testing. A sworn
30 statement by a physician licensed under chapter 458 or chapter
31 459 that a significant exposure has occurred and that, in the

1 physician's medical judgment, testing is medically necessary
2 to determine the course of treatment constitutes probable
3 cause for the issuance of an order by the court. The results
4 of the test shall be released to the source of the exposure
5 and to the person who experienced the exposure.

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

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

27 b. HIV testing shall be conducted only after a
28 licensed physician documents, in the medical record of the
29 medical personnel or nonmedical personnel, that there has been
30 a significant exposure and that, in the physician's medical
31 judgment, the information is medically necessary to determine

1 the course of treatment for the medical personnel or
2 nonmedical personnel.

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

11 d. In order to utilize the provisions of this
12 subparagraph, the medical personnel or nonmedical personnel
13 shall be tested for HIV pursuant to this section or shall
14 provide the results of an HIV test taken within 6 months prior
15 to the significant exposure if such test results are negative.

16 e. A person who receives the results of an HIV test
17 pursuant to this subparagraph shall maintain the
18 confidentiality of the information received and of the persons
19 tested. Such confidential information is exempt from s.
20 119.07(1).

21 f. If the source of the exposure will not voluntarily
22 submit to HIV testing and a blood sample was not obtained
23 during treatment for the medical emergency, the medical
24 personnel, the employer of the medical personnel acting on
25 behalf of the employee, or the nonmedical personnel may seek a
26 court order directing the source of the exposure to submit to
27 HIV testing. A sworn statement by a physician licensed under
28 chapter 458 or chapter 459 that a significant exposure has
29 occurred and that, in the physician's medical judgment,
30 testing is medically necessary to determine the course of
31 treatment constitutes probable cause for the issuance of an

1 order by the court. The results of the test shall be released
2 to the source of the exposure and to the person who
3 experienced the exposure.

4 12. For the performance of an HIV test by the medical
5 examiner upon a deceased individual who is the source of a
6 significant exposure to medical personnel or nonmedical
7 personnel who provided emergency medical assistance and who
8 expired or could not be resuscitated during treatment for the
9 medical emergency.

10 13.12. For the performance of an HIV-related test
11 medically indicated by licensed medical personnel for medical
12 diagnosis of a hospitalized infant as necessary to provide
13 appropriate care and treatment of the infant when, after a
14 reasonable attempt, a parent cannot be contacted to provide
15 consent. The medical records of the infant shall reflect the
16 reason consent of the parent was not initially obtained. Test
17 results and posttest counseling shall be provided to the
18 parent when the parent is located.

19 14. For the performance of HIV testing conducted to
20 monitor the clinical progress of a patient previously
21 diagnosed to be HIV positive.

22 15. For the performance of repeated HIV testing
23 conducted to monitor possible conversion from a significant
24 exposure.

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

27 (a) The Department of Health shall establish a network
28 of voluntary human immunodeficiency virus testing programs in
29 every county in the state. These programs shall be conducted
30 in each ~~county~~ health department established under the
31 provisions of part I of chapter 154. Additional programs may

1 be contracted to other private providers to the extent that
2 finances permit and local circumstances dictate.

3 (b) Each county health department shall have the
4 ability to provide counseling and testing for human
5 immunodeficiency virus to each patient who receives services
6 and shall offer such testing on a voluntary basis to each
7 patient who presents himself or herself for services in a
8 public health program designated by the State Health Officer
9 by rule.

10 (c) Each county health department shall provide a
11 program of counseling and testing for human immunodeficiency
12 virus infection, on both an anonymous and confidential basis.
13 Counseling provided to a patient tested on both an anonymous
14 and confidential basis shall include informing the patient of
15 the availability of partner-notification services, the
16 benefits of such services, and the confidentiality protections
17 available as part of such services. The Department of Health
18 or its designated agent shall continue to provide for
19 anonymous testing through an alternative testing site program
20 with sites throughout all areas of the state. Each county
21 health department shall maintain a list of anonymous testing
22 sites. The list shall include the locations, phone numbers,
23 and hours of operation of the sites and shall be disseminated
24 to all persons and programs offering human immunodeficiency
25 virus testing within the service area of the county health
26 department, including physicians licensed under chapter 458 or
27 chapter 459. Except as provided in this section, the identity
28 of a person upon whom a test has been performed and test
29 results are confidential and exempt from the provisions of s.
30 119.07(1).

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1 (d) The result of a serologic test conducted under the
2 auspices of the Department of Health shall not be used to
3 determine if a person may be insured for disability, health,
4 or life insurance or to screen or determine suitability for,
5 or to discharge a person from, employment. Any person who
6 violates the provisions of this subsection is guilty of a
7 misdemeanor of the first degree, punishable as provided in s.
8 775.082 or s. 775.083.

9 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
10 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
11 REGISTRATION.--No county health department and no other person
12 in this state shall conduct or hold themselves out to the
13 public as conducting a testing program for acquired immune
14 deficiency syndrome, ~~acquired immune deficiency syndrome~~
15 ~~related complex~~, or human immunodeficiency virus status
16 without first registering with the Department of Health,
17 reregistering each year, complying with all other applicable
18 provisions of state law, and meeting the following
19 requirements:

20 (a) The program must be directed by a person with a
21 minimum number of contact hours of experience in the
22 counseling of persons with acquired immune deficiency
23 syndrome, ~~acquired immune deficiency syndrome related complex~~,
24 or human immunodeficiency virus infection, as established by
25 the Department of Health by rule.

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

29 (c) The program shall have all laboratory procedures
30 performed in a laboratory licensed under the provisions of
31 chapter 483.

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

3 (e) The program must provide the opportunity for
4 pretest counseling on the meaning of a test for human
5 immunodeficiency virus, including medical indications for the
6 test; the possibility of false positive or false negative
7 results; the potential need for confirmatory testing; the
8 potential social, medical, and economic consequences of a
9 positive test result; and the need to eliminate high-risk
10 behavior.

11 (f) The program must provide supplemental
12 corroborative testing on all positive test results before the
13 results of any positive test are provided to the patient.
14 Except as provided in this section, the identity of any person
15 upon whom a test has been performed and test results are
16 confidential and exempt from the provisions of s. 119.07(1).

17 (g) The program must provide the opportunity for
18 face-to-face posttest counseling on the meaning of the test
19 results; the possible need for additional testing; the social,
20 medical, and economic consequences of a positive test result;
21 and the need to eliminate behavior which might spread the
22 disease to others.

23 (h) Each person providing posttest counseling to a
24 patient with a positive test result shall receive specialized
25 training, to be specified by rule of the department, about the
26 special needs of persons with positive results, including
27 recognition of possible suicidal behavior, and shall refer the
28 patient for further health and social services as appropriate.

29 (i) When services are provided for a charge during
30 pretest counseling, testing, supplemental testing, and
31 posttest counseling, the program must provide a complete list

1 of all such charges to the patient and the Department of
2 Health.

3 (j) Nothing in this subsection shall be construed to
4 require a facility licensed under chapter 483 or a person
5 licensed under the provisions of chapter 457, chapter 458,
6 chapter 459, chapter 460, chapter 461, chapter 466, or chapter
7 467 to register with the Department of Health if he or she
8 does not advertise or hold himself or herself out to the
9 public as conducting testing programs for human
10 immunodeficiency virus infection or specializing in such
11 testing.

12 (k) The department shall deny, suspend, or revoke the
13 registration of any person or agency that violates this
14 section, or any rule adopted under this section, constituting
15 an emergency affecting the immediate health, safety, and
16 welfare of a person receiving service.

17 (6) PENALTIES.--

18 (a) Any violation of this section by a facility or
19 licensed health care provider shall be a ground for
20 disciplinary action contained in the facility's or
21 professional's respective licensing chapter.

22 (b) Any person who violates the confidentiality
23 provisions of this section and s. 951.27 commits a misdemeanor
24 of the first degree, punishable as provided in s. 775.082 or
25 s. 775.083.

26 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR
27 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall
28 develop, by rule, a model protocol consistent with the
29 provisions of this section for counseling and testing persons
30 for the human immunodeficiency virus. The protocol shall
31 include criteria for evaluating a patient's risk for human

1 immunodeficiency virus infection and for offering human
2 immunodeficiency virus testing, on a voluntary basis, as a
3 routine part of primary health care or admission to a health
4 care facility. The Department of Health shall ensure that the
5 protocols developed under this section are made available to
6 health care providers.

7 Section 3. Section 384.25, Florida Statutes, is
8 amended to read:

9 384.25 Reporting required.--

10 (1) Each person who makes a diagnosis of or treats a
11 person with a sexually transmissible disease and each
12 laboratory that performs a test for a sexually transmissible
13 disease which concludes with a positive result shall report
14 such facts as may be required by the department by rule,
15 within a time period as specified by rule of the department,
16 but in no case to exceed 2 weeks.

17 (2) The department shall adopt rules specifying the
18 information required in and a minimum time period for
19 reporting a sexually transmissible disease. In adopting such
20 rules, the department shall consider the need for information,
21 protections for the privacy and confidentiality of the
22 patient, and the practical ability of persons and laboratories
23 to report in a reasonable fashion. To ensure the
24 confidentiality of persons infected with the human
25 immunodeficiency virus (HIV), reporting of HIV infection and
26 acquired immune deficiency syndrome (AIDS) must be conducted
27 using the HIV/AIDS Reporting System (HARS) developed by the
28 Centers for Disease Control and Prevention of the United
29 States Public Health Service.

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1 (3) The department shall require reporting of
2 physician diagnosed cases of AIDS based upon diagnostic
3 criteria from the Centers for Disease Control and Prevention.

4 (4) The department may require physician and
5 laboratory reporting of HIV infection. However, only reports
6 of HIV infection identified on or after the effective date of
7 the rule developed by the department pursuant to this
8 subsection shall be accepted. The reporting may not affect or
9 relate to anonymous HIV testing programs conducted pursuant to
10 s. 381.004(4) or to university-based medical research
11 protocols as determined by the department.

12 (5) After notification of the test subject under
13 subsection (4), the department may, with the consent of the
14 test subject, notify school superintendents of students and
15 school personnel whose HIV tests are positive.

16 (6) The department shall by February 1 of each year
17 submit to the Legislature an annual report relating to all
18 information obtained pursuant to this section.

19 ~~(7) The rules adopted by the department pursuant to~~
20 ~~this section shall specify the protocols for the reporting~~
21 ~~required or permitted by subsection (3) or subsection (4).~~
22 ~~The protocol developed for implementation of subsection (4)~~
23 ~~shall include, but need not be limited to, information to be~~
24 ~~given to a test subject during pretest counseling, including:~~

25 ~~(a) The fact that a positive HIV test result may be~~
26 ~~reported to the county health department with sufficient~~
27 ~~information to identify the test subject and the availability~~
28 ~~and location of anonymous testing sites; and~~

29 ~~(b) The partner notification services available~~
30 ~~through the county health departments, the benefits of such~~
31

1 ~~services, and the confidentiality protections available as~~
2 ~~part of such services.~~

3 (7)~~(8)~~ Each person who violates the provisions of this
4 section or the rules adopted hereunder may be fined by the
5 department up to \$500 for each offense. The department shall
6 report each violation of this section to the regulatory agency
7 responsible for licensing each health care professional and
8 each laboratory to which these provisions apply.

9 Section 4. Subsection (1) of section 455.604, Florida
10 Statutes, is amended to read:

11 455.604 Requirement for instruction for certain
12 licensees on human immunodeficiency virus and acquired immune
13 deficiency syndrome.--

14 (1) The appropriate board shall require each person
15 licensed or certified under chapter 457; chapter 458; chapter
16 459; chapter 460; chapter 461; chapter 463; chapter 464;
17 chapter 465; chapter 466; part II, part III, or part V of
18 chapter 468; or chapter 486 to complete a continuing
19 educational course, approved by the board, on human
20 immunodeficiency virus and acquired immune deficiency syndrome
21 as part of biennial relicensure or recertification. The course
22 shall consist of education on the modes of transmission,
23 infection control procedures, clinical management, and
24 prevention of human immunodeficiency virus and acquired immune
25 deficiency syndrome. Such course shall include information on
26 current Florida law on acquired immune deficiency syndrome and
27 its impact on testing, confidentiality of test results, ~~and~~
28 treatment of patients, and any protocols and procedures
29 applicable to human immunodeficiency virus counseling and
30 testing, reporting, the offering of HIV testing to pregnant
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1 women, and partner notification issues pursuant to ss. 381.004
2 and 384.25.

3 Section 5. This act shall take effect July 1, 1998.

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 2262

8 Restates HIV/AIDS continuing education requirements for
9 employees and clients at certain state residential facilities
10 and employees at certain health care facilities to include as
11 an education topic the offering of HIV testing to pregnant
12 women.

13 Revises requirements regarding notifying test subjects of test
14 results, both positive and negative.

15 Authorizes the sharing of HIV test results with those
16 employees of residential facilities or of community-based care
17 programs which care for developmentally disabled persons
18 pursuant to ch. 393, F.S., who are directly involved in the
19 care, control, or custody of the test subject and who have a
20 need to know such information.

21 Requires, rather than authorizes, medical examiners to
22 disclose HIV positive test results to the Department of Health
23 in accordance with rules for reporting and controlling the
24 spread of disease.

25 Deletes the proposed authority of the Department of Health to
26 make inspections and investigations in response to complaints
27 or to determine compliance with HIV test center standards. The
28 department retains the ability to deny, suspend, or revoke the
29 registration of such centers.

30 Restores proposed deleted language regarding the department's
31 sharing of HIV test results of students and school personnel
with school superintendents.

Amends s. 455.604, F.S., to update HIV/AIDS continuing
education requirements for certain licensed health care
professionals.

Deletes proposed revisions to the HIV/AIDS continuing
education requirements for funeral directors and embalmers, s.
455.2226, F.S.

Incorporates technical revisions.