

1 HIV; requiring that a pregnant woman be
2 informed of tests for sexually transmissible
3 diseases and her right to refuse; requiring
4 that a written statement of objection to
5 testing for sexually transmissible diseases be
6 placed in the pregnant woman's medical records;
7 deleting a requirement that a health care
8 provider counsel a pregnant woman concerning
9 HIV testing; deleting a provision that provides
10 immunity from liability to a health care
11 provider who counsels a pregnant woman who
12 objects to HIV testing; providing an effective
13 date.

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

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17 Section 1. Paragraphs (d) and (h) of subsection (3) of
18 section 381.004, Florida Statutes, are amended to read:

19 381.004 HIV testing.--

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

22 (d) A positive preliminary ~~No test result shall be~~
23 ~~determined as positive, and no positive test result may not~~
24 ~~shall be revealed to any person, without corroborating or~~
25 ~~confirmatory tests being conducted~~ except in the following
26 situations:

27 1. Preliminary test results may be released to
28 licensed physicians or the medical or nonmedical personnel
29 subject to the significant exposure for purposes of
30 subparagraphs (h)10., 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, or recommendation to, the person
4 tested and, in the case of an intrapartum or postpartum woman,
5 when care, treatment, or recommendations regarding her
6 newborn, cannot await the results of confirmatory testing.
7 Positive preliminary HIV test results may ~~shall~~ not be
8 characterized to the patient as a diagnosis of HIV infection.
9 Justification for the use of preliminary test results must be
10 documented in the medical record by the health care provider
11 who ordered the test.

12 3. The results of rapid testing technologies shall be
13 considered preliminary and may be released in accordance with
14 the manufacturer's instructions as approved by the federal
15 Food and Drug Administration. ~~This subparagraph does not~~
16 ~~authorize the release of preliminary test results for the~~
17 ~~purpose of routine identification of HIV infected individuals~~
18 ~~or when HIV testing is incidental to the preliminary diagnosis~~
19 ~~or care of a patient.~~

20 4. Corroborating or confirmatory testing must be
21 conducted as followup to a positive preliminary test. Results
22 shall be communicated to the patient according to statute
23 regardless of the outcome. Except as provided in this section,
24 test results are confidential and exempt from the provisions
25 of s. 119.07(1).

26 (h) Notwithstanding the provisions of paragraph (a),
27 informed consent is not required:

28 1. When testing for sexually transmissible diseases is
29 required by state or federal law, or by rule including the
30 following situations:
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1 a. HIV testing pursuant to s. 796.08 of persons
2 convicted of prostitution or of procuring another to commit
3 prostitution.

4 b. HIV testing of inmates pursuant to s. 945.355 prior
5 to their release from prison by reason of parole, accumulation
6 of gain-time credits, or expiration of sentence.

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

9 d. HIV testing of pregnant women pursuant to s.
10 384.31.

11 2. Those exceptions provided for blood, plasma,
12 organs, skin, semen, or other human tissue pursuant to s.
13 381.0041.

14 3. For the performance of an HIV-related test by
15 licensed medical personnel in bona fide medical emergencies
16 when the test results are necessary for medical diagnostic
17 purposes to provide appropriate emergency care or treatment to
18 the person being tested and the patient is unable to consent,
19 as supported by documentation in the medical record.
20 Notification of test results in accordance with paragraph (c)
21 is required.

22 4. For the performance of an HIV-related test by
23 licensed medical personnel for medical diagnosis of acute
24 illness where, in the opinion of the attending physician,
25 obtaining informed consent would be detrimental to the
26 patient, as supported by documentation in the medical record,
27 and the test results are necessary for medical diagnostic
28 purposes to provide appropriate care or treatment to the
29 person being tested. Notification of test results in
30 accordance with paragraph (c) is required if it would not be
31 detrimental to the patient. This subparagraph does not

1 authorize the routine testing of patients for HIV infection
2 without informed consent.

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

5 6. For the performance of an HIV test upon a defendant
6 pursuant to the victim's request in a prosecution for any type
7 of sexual battery where a blood sample is taken from the
8 defendant voluntarily, pursuant to court order for any
9 purpose, or pursuant to the provisions of s. 775.0877, s.
10 951.27, or s. 960.003; however, the results of any HIV test
11 performed shall be disclosed solely to the victim and the
12 defendant, except as provided in ss. 775.0877, 951.27, and
13 960.003.

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

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

22 9. When human tissue is collected lawfully without the
23 consent of the donor for corneal removal as authorized by s.
24 765.5185 or enucleation of the eyes as authorized by s.
25 765.519.

26 10. For the performance of an HIV test upon an
27 individual who comes into contact with medical personnel in
28 such a way that a significant exposure has occurred during the
29 course of employment or within the scope of practice and where
30 a blood sample is available that was taken from that
31 individual voluntarily by medical personnel for other

1 | purposes. The term "medical personnel" includes a licensed or
2 | certified health care professional; an employee of a health
3 | care professional or health care facility; employees of a
4 | laboratory licensed under chapter 483; personnel of a blood
5 | bank or plasma center; a medical student or other student who
6 | is receiving training as a health care professional at a
7 | health care facility; and a paramedic or emergency medical
8 | technician certified by the department to perform life-support
9 | procedures under s. 401.23.

10 | a. Prior to performance of an HIV test on a
11 | voluntarily obtained blood sample, the individual from whom
12 | the blood was obtained shall be requested to consent to the
13 | performance of the test and to the release of the results.
14 | The individual's refusal to consent and all information
15 | concerning the performance of an HIV test and any HIV test
16 | result shall be documented only in the medical personnel's
17 | record unless the individual gives written consent to entering
18 | this information on the individual's medical record.

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

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

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

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

19 f. If the source of the exposure will not voluntarily
20 submit to HIV testing and a blood sample is not available, the
21 medical personnel or the employer of such person acting on
22 behalf of the employee may seek a court order directing the
23 source of the exposure to submit to HIV testing. A sworn
24 statement by a physician licensed under chapter 458 or chapter
25 459 that a significant exposure has occurred and that, in the
26 physician's medical judgment, testing is medically necessary
27 to determine the course of treatment constitutes probable
28 cause for the issuance of an order by the court. The results
29 of the test shall be released to the source of the exposure
30 and to the person who experienced the exposure.
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1 11. For the performance of an HIV test upon an
2 individual who comes into contact with medical personnel in
3 such a way that a significant exposure has occurred during the
4 course of employment or within the scope of practice of the
5 medical personnel while the medical personnel provides
6 emergency medical treatment to the individual; or who comes
7 into contact with nonmedical personnel in such a way that a
8 significant exposure has occurred while the nonmedical
9 personnel provides emergency medical assistance during a
10 medical emergency. For the purposes of this subparagraph, a
11 medical emergency means an emergency medical condition outside
12 of a hospital or health care facility that provides physician
13 care. The test may be performed only during the course of
14 treatment for the medical emergency.

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

22 b. HIV testing shall be conducted only after a
23 licensed physician documents, in the medical record of the
24 medical personnel or nonmedical personnel, that there has been
25 a significant exposure and that, in the physician's medical
26 judgment, the information is medically necessary to determine
27 the course of treatment for the medical personnel or
28 nonmedical personnel.

29 c. Costs of any HIV test performed with or without the
30 consent of the individual, as provided in this subparagraph,
31 shall be borne by the medical personnel or the employer of the

1 | medical personnel or nonmedical personnel. However, costs of
2 | testing or treatment not directly related to the initial HIV
3 | tests or costs of subsequent testing or treatment ~~may shall~~
4 | not be borne by the medical personnel or the employer of the
5 | medical personnel or nonmedical personnel.

6 | d. In order to utilize the provisions of this
7 | subparagraph, the medical personnel or nonmedical personnel
8 | shall be tested for HIV pursuant to this section or shall
9 | provide the results of an HIV test taken within 6 months prior
10 | to the significant exposure if such test results are negative.

11 | e. A person who receives the results of an HIV test
12 | pursuant to this subparagraph shall maintain the
13 | confidentiality of the information received and of the persons
14 | tested. Such confidential information is exempt from s.
15 | 119.07(1).

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

30 | 12. For the performance of an HIV test by the medical
31 | examiner or attending physician upon an individual who expired

1 or could not be resuscitated while receiving emergency medical
2 assistance or care and who was the source of a significant
3 exposure to medical or nonmedical personnel providing such
4 assistance or care.

5 a. HIV testing may be conducted only after a licensed
6 physician documents in the medical record of the medical
7 personnel or nonmedical personnel that there has been a
8 significant exposure and that, in the physician's medical
9 judgment, the information is medically necessary to determine
10 the course of treatment for the medical personnel or
11 nonmedical personnel.

12 b. Costs of any HIV test performed under this
13 subparagraph may not be charged to the deceased or to the
14 family of the deceased person.

15 c. For the provisions of this subparagraph to be
16 applicable, the medical personnel or nonmedical personnel must
17 be tested for HIV under this section or must provide the
18 results of an HIV test taken within 6 months before the
19 significant exposure if such test results are negative.

20 d. A person who receives the results of an HIV test
21 pursuant to this subparagraph shall comply with paragraph (e).

22 13. For the performance of an HIV-related test
23 medically indicated by licensed medical personnel for medical
24 diagnosis of a hospitalized infant as necessary to provide
25 appropriate care and treatment of the infant when, after a
26 reasonable attempt, a parent cannot be contacted to provide
27 consent. The medical records of the infant shall reflect the
28 reason consent of the parent was not initially obtained. Test
29 results shall be provided to the parent when the parent is
30 located.

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1 14. For the performance of HIV testing conducted to
2 monitor the clinical progress of a patient previously
3 diagnosed to be HIV positive.

4 15. For the performance of repeated HIV testing
5 conducted to monitor possible conversion from a significant
6 exposure.

7 Section 2. 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 that for a sexually
13 ~~transmissible disease which~~ concludes with a positive result
14 for a sexually transmissible disease or a result indicative of
15 human immunodeficiency virus (HIV) or acquired immune
16 deficiency syndrome (AIDS) shall report such facts as may be
17 required by the department by rule, within a time period as
18 specified by rule of the department, but in no case to exceed
19 2 weeks.

20 (2) The department shall adopt rules specifying the
21 information required ~~in~~ and the maximum ~~a minimum~~ time period
22 for reporting a sexually transmissible disease. In adopting
23 such rules, the department shall consider the need for
24 information, protections for the privacy and confidentiality
25 of the patient, and the practical ability of persons and
26 laboratories to report in a reasonable fashion.

27 (3) To ensure the confidentiality of persons infected
28 with the human immunodeficiency virus (HIV), reporting of HIV
29 infection and ~~acquired immune deficiency syndrome (AIDS)~~ must
30 be conducted using a system ~~the HIV/AIDS Reporting System~~
31 ~~(HARS)~~ developed by the Centers for Disease Control and

1 Prevention of the United States Public Health Service or an
2 equivalent system.

3 (a) The department shall adopt rules requiring each
4 physician and laboratory to report any newborn or infant up to
5 18 months of age who has been exposed to HIV. Such rules may
6 include the method and time period for reporting, which may
7 not exceed 2 weeks, information to be included in the report,
8 enforcement requirements, and follow-up activities by the
9 department.

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

13 ~~(b)(4) The department may require physician and~~
14 ~~laboratory reporting of HIV infection. However, only reports~~
15 ~~of HIV infection identified on or after the effective date of~~
16 ~~the rule developed by the department pursuant to this~~
17 ~~subsection shall be accepted. The reporting may not affect or~~
18 ~~relate to anonymous HIV testing programs conducted pursuant to~~
19 ~~s. 381.004(4) or to university based medical research~~
20 ~~protocols as determined by the department.~~

21 ~~(c)(5) After notification of the test subject under~~
22 ~~subsection (4), the department may, with the consent of the~~
23 ~~test subject, notify school superintendents of students and~~
24 ~~school personnel whose HIV tests are positive.~~

25 ~~(6) The department shall by February 1 of each year~~
26 ~~submit to the Legislature an annual report relating to all~~
27 ~~information obtained pursuant to this section.~~

28 ~~(3)(7) Each person who violates the provisions of this~~
29 ~~section or the rules adopted hereunder may be fined by the~~
30 ~~department up to \$500 for each offense. The department shall~~
31 ~~report each violation of this section to the regulatory agency~~

1 responsible for licensing each health care professional and
2 each laboratory to which these provisions apply.

3 Section 3. Section 384.31, Florida Statutes, is
4 amended to read:

5 384.31 Serological testing of pregnant women; duty of
6 the attendant.--

7 ~~(1)~~ Every person, including every physician licensed
8 under chapter 458 or chapter 459 or midwife licensed under
9 part I of chapter 464 or chapter 467, attending a pregnant
10 woman for conditions relating to pregnancy during the period
11 of gestation and delivery shall ~~take or~~ cause the woman to be
12 tested for sexually transmissible diseases, including HIV, as
13 ~~taken a sample of venous blood at a time or times~~ specified by
14 the department rule. Testing ~~Each sample of blood~~ shall be
15 performed ~~tested~~ by a laboratory approved for such purposes
16 under part I of chapter 483 for sexually transmissible
17 diseases as required by rule of the department. Each pregnant
18 woman shall be notified of the tests that will be conducted
19 and of her right to refuse testing. If a woman objects to
20 testing, a written statement of objection, signed by the
21 woman, shall be placed in the woman's medical record and no
22 testing shall occur.

23 ~~(2) At the time the venous blood sample is taken,~~
24 ~~testing for human immunodeficiency virus (HIV) infection shall~~
25 ~~be offered to each pregnant woman. The prevailing professional~~
26 ~~standard of care in this state requires each health care~~
27 ~~provider and midwife who attends a pregnant woman to counsel~~
28 ~~the woman to be tested for human immunodeficiency virus (HIV).~~
29 ~~Counseling shall include a discussion of the availability of~~
30 ~~treatment if the pregnant woman tests HIV positive. If a~~
31 ~~pregnant woman objects to HIV testing, reasonable steps shall~~

1 ~~be taken to obtain a written statement of such objection,~~
2 ~~signed by the patient, which shall be placed in the patient's~~
3 ~~medical record. Every person, including every physician~~
4 ~~licensed under chapter 458 or chapter 459 or midwife licensed~~
5 ~~under part I of chapter 464 or chapter 467, who attends a~~
6 ~~pregnant woman who has been offered and objects to HIV testing~~
7 ~~shall be immune from liability arising out of or related to~~
8 ~~the contracting of HIV infection or acquired immune deficiency~~
9 ~~syndrome (AIDS) by the child from the mother.~~

10 Section 4. This act shall take effect upon becoming a
11 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 186

4 The committee substitute revises the circumstances under which
5 a positive preliminary HIV test result may be released, to
6 include the results of rapid testing technologies. The
7 prohibition on the release of preliminary test results for the
8 purpose of routine identification of HIV-infected individuals
9 or when HIV testing is incidental to the preliminary diagnosis
10 or care of a patient is eliminated.

11 The bill authorizes the HIV testing of pregnant women pursuant
12 to s. 384.31, F.S., without meeting the requirements for HIV
13 testing outlined in s. 381.004(3)(a), F.S., which provides
14 specific procedures for obtaining informed consent.

15 The bill clarifies that each person who makes a diagnosis of
16 or treats a person with a sexually transmissible disease, and
17 each laboratory that performs a test that concludes with a
18 positive report for a sexually transmissible disease or a
19 result indicative of HIV or AIDS must report such facts as may
20 be required by the Department of Health (DOH) by rule, within
21 a time period as specified by rule of the department, but in
22 no case to exceed 2 weeks. The department must adopt rules
23 specifying the maximum, rather than a minimum, time period for
24 reporting a sexually transmissible disease, including but not
25 limited to, HIV/AIDS.

26 The Department of Health must adopt rules requiring each
27 physician and laboratory to report any newborn or infant up to
28 18 months of age who has been exposed to HIV.

29 The required reporting of physician diagnosed cases of AIDS
30 based upon diagnostic criteria from the Centers for Disease
31 Control and Prevention is eliminated. Reports of HIV infection
identified on or after the effective date of DOH's
administrative rule, which required reporting, are eliminated,
which in effect would no longer exempt reports of HIV
infection identified before the effective date of such
administrative rules. Certain university-based medical
research protocols would no longer be exempt from HIV
reporting.

The bill eliminates requirements for DOH to submit an annual
report to the Legislature by February 1 of each year relating
to all information obtained pursuant to its duties for HIV
reporting.

The bill revises statutory requirements relating to
serological testing of pregnant women, to require every
medical physician, osteopathic physician, or midwife attending
a pregnant woman to cause the woman to be tested for sexually
transmissible diseases, including HIV, as required by rule of
DOH. Requirements for the tests to be done with a blood sample
are eliminated. In lieu of requiring all women to be tested
for HIV, the bill requires certain health care providers to
test pregnant women for sexually transmissible diseases and
outlines procedures for notification of the tests and the
right for the pregnant woman to object to the testing. The

1 bill eliminates the requirement making certain health care
2 practitioners immune from liability arising out of or related
3 to the contracting of HIV infection or AIDS when the pregnant
4 woman objects to HIV testing.
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