

By the Committees on Health Policy; Health Regulation; and
Senator Saunders

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1 A bill to be entitled

2 An act relating to human immunodeficiency virus testing;
3 amending s. 381.004, F.S.; requiring that when consent
4 cannot be obtained within the time necessary to conduct an
5 HIV test on an individual and begin prophylactic treatment
6 of exposed medical personnel, the results of the HIV test
7 shall be documented only in the medical file of the
8 medical personnel and not in the medical file of the
9 patient unless he or she gives consent; authorizing
10 appropriate medical personnel under the supervision of a
11 licensed physician to make the decision to test under
12 these conditions; requiring those personnel to document
13 the significant exposure requiring the HIV testing without
14 valid consent in accordance with written protocol based on
15 the medical judgment of a licensed physician; providing an
16 effective date.

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

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20 Section 1. Paragraph (h) of subsection (3) of section
21 381.004, Florida Statutes, is amended to read:

22 381.004 HIV testing.--

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

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

27 1. When testing for sexually transmissible diseases is
28 required by state or federal law, or by rule including the
29 following situations:

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30 a. HIV testing pursuant to s. 796.08 of persons convicted
31 of prostitution or of procuring another to commit prostitution.

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

35 c. Testing for HIV by a medical examiner in accordance with
36 s. 406.11.

37 d. HIV testing of pregnant women pursuant to s. 384.31.

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

40 3. For the performance of an HIV-related test by licensed
41 medical personnel in bona fide medical emergencies when the test
42 results are necessary for medical diagnostic purposes to provide
43 appropriate emergency care or treatment to the person being
44 tested and the patient is unable to consent, as supported by
45 documentation in the medical record. Notification of test results
46 in accordance with paragraph (c) is required.

47 4. For the performance of an HIV-related test by licensed
48 medical personnel for medical diagnosis of acute illness where,
49 in the opinion of the attending physician, obtaining informed
50 consent would be detrimental to the patient, as supported by
51 documentation in the medical record, and the test results are
52 necessary for medical diagnostic purposes to provide appropriate
53 care or treatment to the person being tested. Notification of
54 test results in accordance with paragraph (c) is required if it
55 would not be detrimental to the patient. This subparagraph does
56 not authorize the routine testing of patients for HIV infection
57 without informed consent.

58 5. When HIV testing is performed as part of an autopsy for

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59 | which consent was obtained pursuant to s. 872.04.

60 | 6. For the performance of an HIV test upon a defendant
61 | pursuant to the victim's request in a prosecution for any type of
62 | sexual battery where a blood sample is taken from the defendant
63 | voluntarily, pursuant to court order for any purpose, or pursuant
64 | to the provisions of s. 775.0877, s. 951.27, or s. 960.003;
65 | however, the results of any HIV test performed shall be disclosed
66 | solely to the victim and the defendant, except as provided in ss.
67 | 775.0877, 951.27, and 960.003.

68 | 7. When an HIV test is mandated by court order.

69 | 8. For epidemiological research pursuant to s. 381.0032,
70 | for research consistent with institutional review boards created
71 | by 45 C.F.R. part 46, or for the performance of an HIV-related
72 | test for the purpose of research, if the testing is performed in
73 | a manner by which the identity of the test subject is not known
74 | and may not be retrieved by the researcher.

75 | 9. When human tissue is collected lawfully without the
76 | consent of the donor for corneal removal as authorized by s.
77 | 765.5185 or enucleation of the eyes as authorized by s. 765.519.

78 | 10. For the performance of an HIV test upon an individual
79 | who comes into contact with medical personnel in such a way that
80 | a significant exposure has occurred during the course of
81 | employment or within the scope of practice and where a blood
82 | sample is available that was taken from that individual
83 | voluntarily by medical personnel for other purposes. The term
84 | "medical personnel" includes a licensed or certified health care
85 | professional; an employee of a health care professional or health
86 | care facility; employees of a laboratory licensed under chapter
87 | 483; personnel of a blood bank or plasma center; a medical

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88 student or other student who is receiving training as a health
89 care professional at a health care facility; and a paramedic or
90 emergency medical technician certified by the department to
91 perform life-support procedures under s. 401.23.

92 a. Prior to performance of an HIV test on a voluntarily
93 obtained blood sample, the individual from whom the blood was
94 obtained shall be requested to consent to the performance of the
95 test and to the release of the results. If consent cannot be
96 obtained within the time necessary to perform the HIV test and
97 begin prophylactic treatment of the exposed medical personnel,
98 ~~The individual's refusal to consent and~~ all information
99 concerning the performance of an HIV test and any HIV test result
100 shall be documented only in the medical personnel's record unless
101 the individual gives written consent to entering this information
102 on the individual's medical record.

103 b. Reasonable attempts to locate the individual and to
104 obtain consent shall be made, and all attempts must be
105 documented. If the individual cannot be found or is incapable of
106 providing consent, an HIV test may be conducted on the available
107 blood sample. If the individual does not voluntarily consent to
108 the performance of an HIV test, the individual shall be informed
109 that an HIV test will be performed, and counseling shall be
110 furnished as provided in this section. However, HIV testing shall
111 be conducted only after appropriate medical personnel under the
112 supervision of a licensed physician documents, in the medical
113 record of the medical personnel, that there has been a
114 significant exposure and that, in accordance with the written
115 protocols based on the National Centers for Disease Control and
116 Prevention guidelines on HIV postexposure prophylaxis and in the

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117 physician's medical judgment, the information is medically
118 necessary to determine the course of treatment for the medical
119 personnel.

120 c. Costs of any HIV test of a blood sample performed with
121 or without the consent of the individual, as provided in this
122 subparagraph, shall be borne by the medical personnel or the
123 employer of the medical personnel. However, costs of testing or
124 treatment not directly related to the initial HIV tests or costs
125 of subsequent testing or treatment may not be borne by the
126 medical personnel or the employer of the medical personnel.

127 d. In order to utilize the provisions of this subparagraph,
128 the medical personnel must either be tested for HIV pursuant to
129 this section or provide the results of an HIV test taken within 6
130 months prior to the significant exposure if such test results are
131 negative.

132 e. A person who receives the results of an HIV test
133 pursuant to this subparagraph shall maintain the confidentiality
134 of the information received and of the persons tested. Such
135 confidential information is exempt from s. 119.07(1).

136 f. If the source of the exposure will not voluntarily
137 submit to HIV testing and a blood sample is not available, the
138 medical personnel or the employer of such person acting on behalf
139 of the employee may seek a court order directing the source of
140 the exposure to submit to HIV testing. A sworn statement by a
141 physician licensed under chapter 458 or chapter 459 that a
142 significant exposure has occurred and that, in the physician's
143 medical judgment, testing is medically necessary to determine the
144 course of treatment constitutes probable cause for the issuance
145 of an order by the court. The results of the test shall be

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146 released to the source of the exposure and to the person who
147 experienced the exposure.

148 11. For the performance of an HIV test upon an individual
149 who comes into contact with medical personnel in such a way that
150 a significant exposure has occurred during the course of
151 employment or within the scope of practice of the medical
152 personnel while the medical personnel provides emergency medical
153 treatment to the individual; or notwithstanding s. 384.287, an
154 individual who comes into contact with nonmedical personnel in
155 such a way that a significant exposure has occurred while the
156 nonmedical personnel provides emergency medical assistance during
157 a medical emergency. For the purposes of this subparagraph, a
158 medical emergency means an emergency medical condition outside of
159 a hospital or health care facility that provides physician care.
160 The test may be performed only during the course of treatment for
161 the medical emergency.

162 a. An individual who is capable of providing consent shall
163 be requested to consent to an HIV test prior to the testing. If
164 consent cannot be obtained within the time necessary to perform
165 the HIV test and begin prophylactic treatment of the exposed
166 medical personnel and nonmedical personnel, ~~The individual's~~
167 ~~refusal to consent,~~ and all information concerning the
168 performance of an HIV test and its result, shall be documented
169 only in the medical personnel's or nonmedical personnel's record
170 unless the individual gives written consent to entering this
171 information on the individual's medical record.

172 b. HIV testing shall be conducted only after appropriate
173 medical personnel under the supervision of a licensed physician
174 documents, in the medical record of the medical personnel or

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175 nonmedical personnel, that there has been a significant exposure
176 and that, in accordance with the written protocols based on the
177 National Centers for Disease Control and Prevention guidelines on
178 HIV postexposure prophylaxis and in the physician's medical
179 judgment, the information is medically necessary to determine the
180 course of treatment for the medical personnel or nonmedical
181 personnel.

182 c. Costs of any HIV test performed with or without the
183 consent of the individual, as provided in this subparagraph,
184 shall be borne by the medical personnel or the employer of the
185 medical personnel or nonmedical personnel. However, costs of
186 testing or treatment not directly related to the initial HIV
187 tests or costs of subsequent testing or treatment may not be
188 borne by the medical personnel or the employer of the medical
189 personnel or nonmedical personnel.

190 d. In order to utilize the provisions of this subparagraph,
191 the medical personnel or nonmedical personnel shall be tested for
192 HIV pursuant to this section or shall provide the results of an
193 HIV test taken within 6 months prior to the significant exposure
194 if such test results are negative.

195 e. A person who receives the results of an HIV test
196 pursuant to this subparagraph shall maintain the confidentiality
197 of the information received and of the persons tested. Such
198 confidential information is exempt from s. 119.07(1).

199 f. If the source of the exposure will not voluntarily
200 submit to HIV testing and a blood sample was not obtained during
201 treatment for the medical emergency, the medical personnel, the
202 employer of the medical personnel acting on behalf of the
203 employee, or the nonmedical personnel may seek a court order

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204 directing the source of the exposure to submit to HIV testing. A
205 sworn statement by a physician licensed under chapter 458 or
206 chapter 459 that a significant exposure has occurred and that, in
207 the physician's medical judgment, testing is medically necessary
208 to determine the course of treatment constitutes probable cause
209 for the issuance of an order by the court. The results of the
210 test shall be released to the source of the exposure and to the
211 person who experienced the exposure.

212 12. For the performance of an HIV test by the medical
213 examiner or attending physician upon an individual who expired or
214 could not be resuscitated while receiving emergency medical
215 assistance or care and who was the source of a significant
216 exposure to medical or nonmedical personnel providing such
217 assistance or care.

218 a. HIV testing may be conducted only after appropriate
219 medical personnel under the supervision of a licensed physician
220 documents in the medical record of the medical personnel or
221 nonmedical personnel that there has been a significant exposure
222 and that, in accordance with the written protocols based on the
223 National Centers for Disease Control and Prevention guidelines on
224 HIV post-exposure prophylaxis and in the physician's medical
225 judgment, the information is medically necessary to determine the
226 course of treatment for the medical personnel or nonmedical
227 personnel.

228 b. Costs of any HIV test performed under this subparagraph
229 may not be charged to the deceased or to the family of the
230 deceased person.

231 c. For the provisions of this subparagraph to be
232 applicable, the medical personnel or nonmedical personnel must be

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233 | tested for HIV under this section or must provide the results of
234 | an HIV test taken within 6 months before the significant exposure
235 | if such test results are negative.

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

238 | 13. For the performance of an HIV-related test medically
239 | indicated by licensed medical personnel for medical diagnosis of
240 | a hospitalized infant as necessary to provide appropriate care
241 | and treatment of the infant when, after a reasonable attempt, a
242 | parent cannot be contacted to provide consent. The medical
243 | records of the infant shall reflect the reason consent of the
244 | parent was not initially obtained. Test results shall be provided
245 | to the parent when the parent is located.

246 | 14. For the performance of HIV testing conducted to monitor
247 | the clinical progress of a patient previously diagnosed to be HIV
248 | positive.

249 | 15. For the performance of repeated HIV testing conducted
250 | to monitor possible conversion from a significant exposure.

251 | Section 2. This act shall take effect July 1, 2008.