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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2014	.	
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The Committee on Transportation (Thompson) recommended the following:

Senate Amendment (with title amendment)

Between lines 411 and 412

insert:

Section 22. Subsection (1), paragraphs (a), (b), (g), and (h) of subsection (2), and paragraph (d) of subsection (4) of section 381.004, Florida Statutes, are amended, and subsection (1) of that section is reordered, to read:

381.004 HIV testing.—

(1) DEFINITIONS.—As used in this section, the term:



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11 (a) "Health care setting" means a setting devoted to both
12 the diagnosis and care of persons, such as county health
13 department clinics, hospital emergency departments, urgent care
14 clinics, substance abuse treatment clinics, primary care
15 settings, community clinics, mobile medical clinics, and
16 correctional health care facilities.

17 (b)-(a) "HIV test" means a test ordered after July 6, 1988,
18 to determine the presence of the antibody or antigen to human
19 immunodeficiency virus or the presence of human immunodeficiency
20 virus infection.

21 (c)-(b) "HIV test result" means a laboratory report of a
22 human immunodeficiency virus test result entered into a medical
23 record on or after July 6, 1988, or any report or notation in a
24 medical record of a laboratory report of a human
25 immunodeficiency virus test. ~~As used in this section,~~ The term
26 "~~HIV test result~~" does not include test results reported to a
27 health care provider by a patient.

28 (d) "Nonhealth care setting" means a site that conducts HIV
29 testing for the sole purpose of identifying HIV infection. Such
30 setting does not provide medical treatment but may include
31 community-based organizations, outreach settings, county health
32 department HIV testing programs, and mobile vans.

33 (f)-(e) "Significant exposure" means:

34 1. Exposure to blood or body fluids through needlestick,
35 instruments, or sharps;

36 2. Exposure of mucous membranes to visible blood or body
37 fluids, to which universal precautions apply according to the
38 National Centers for Disease Control and Prevention, including,
39 without limitations, the following body fluids:



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- 40 a. Blood.
41 b. Semen.
42 c. Vaginal secretions.
43 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
44 e. Synovial fluid.
45 f. Pleural fluid.
46 g. Peritoneal fluid.
47 h. Pericardial fluid.
48 i. Amniotic fluid.
49 j. Laboratory specimens that contain HIV (e.g., suspensions
50 of concentrated virus); or

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

55 (e) ~~(d)~~ "Preliminary HIV test" means an antibody or
56 antibody-antigen screening test, such as the ~~enzyme-linked~~
57 immunosorbent assays (IA), or a rapid test approved by the
58 federal Food and Drug Administration ~~(ELISAs) or the Single-Use~~
59 ~~Diagnostic System (SUDS).~~

60 (g) ~~(e)~~ "Test subject" or "subject of the test" means the
61 person upon whom an HIV test is performed, or the person who has
62 legal authority to make health care decisions for the test
63 subject.

64 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
65 RESULTS; COUNSELING; CONFIDENTIALITY.—

66 (a) Before performing an HIV test:

67 1. In a health care setting, the health care provider shall
68 notify the person to be tested that the test is planned, provide



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69 information about the test, and advise the person that he or she
70 has the right to decline the test. The health care provider
71 shall also explain the right to confidential treatment of
72 information identifying the subject of the test and the results
73 of the test as provided by law. If a person declines the test,
74 the health care provider shall note that fact in the person's
75 medical record. No person in this state shall order a test
76 designed to identify the human immunodeficiency virus, or its
77 antigen or antibody, without first obtaining the informed
78 consent of the person upon whom the test is being performed,
79 except as specified in paragraph (h). Informed consent shall be
80 preceded by an explanation of the right to confidential
81 treatment of information identifying the subject of the test and
82 the results of the test to the extent provided by law.
83 Information shall also be provided on the fact that a positive
84 HIV test result will be reported to the county health department
85 with sufficient information to identify the test subject and on
86 the availability and location of sites at which anonymous
87 testing is performed. As required in paragraph (3) (c), each
88 county health department shall maintain a list of sites at which
89 anonymous testing is performed, including the locations, phone
90 numbers, and hours of operation of the sites. Consent need not
91 be in writing provided there is documentation in the medical
92 record that the test has been explained and the consent has been
93 obtained.

94 2. In a nonhealth care setting, a provider shall obtain the
95 informed consent of the person upon whom the test is being
96 performed. Informed consent shall be preceded by an explanation
97 of the right to confidential treatment of information



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98 identifying the subject of the test and the results of the test
99 as provided by law.

100
101 The test subject shall also be informed that a positive HIV test
102 result will be reported to the county health department with
103 sufficient information to identify the test subject and on the
104 availability and location of sites at which anonymous testing is
105 performed. As required in paragraph (3)(c), each county health
106 department shall maintain a list of sites at which anonymous
107 testing is performed, including the locations, telephone
108 numbers, and hours of operation of the sites.

109 (b) Except as provided in paragraph (h), informed consent
110 must be obtained from a legal guardian or other person
111 authorized by law if ~~when~~ the person:

- 112 1. Is not competent, is incapacitated, or is otherwise
113 unable to make an informed judgment; or
114 2. Has not reached the age of majority, except as provided
115 in s. 384.30.

116 (g) Human immunodeficiency virus test results contained in
117 the medical records of a hospital licensed under chapter 395 may
118 be released in accordance with s. 395.3025 without being subject
119 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,
120 or paragraph (f) if; ~~provided~~ the hospital has notified the
121 patient of the limited confidentiality protections afforded HIV
122 test results contained in hospital medical records ~~obtained~~
123 ~~written informed consent for the HIV test in accordance with~~
124 ~~provisions of this section.~~

125 (h) Notwithstanding ~~the provisions of~~ paragraph (a),
126 informed consent is not required:



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127 1. When testing for sexually transmissible diseases is
128 required by state or federal law, or by rule including the
129 following situations:
130 a. HIV testing pursuant to s. 796.08 of persons convicted
131 of prostitution or of procuring another to commit prostitution.
132 b. HIV testing of inmates pursuant to s. 945.355 before
133 ~~prior to their~~ release from prison by reason of parole,
134 accumulation of gain-time credits, or expiration of sentence.
135 c. Testing for HIV by a medical examiner in accordance with
136 s. 406.11.
137 d. HIV testing of pregnant women pursuant to s. 384.31.
138 2. Those exceptions provided for blood, plasma, organs,
139 skin, semen, or other human tissue pursuant to s. 381.0041.
140 3. For the performance of an HIV-related test by licensed
141 medical personnel in bona fide medical emergencies if ~~when~~ the
142 test results are necessary for medical diagnostic purposes to
143 provide appropriate emergency care or treatment to the person
144 being tested and the patient is unable to consent, as supported
145 by documentation in the medical record. Notification of test
146 results in accordance with paragraph (c) is required.
147 4. For the performance of an HIV-related test by licensed
148 medical personnel for medical diagnosis of acute illness where,
149 in the opinion of the attending physician, providing
150 notification ~~obtaining informed consent~~ would be detrimental to
151 the patient, as supported by documentation in the medical
152 record, and the test results are necessary for medical
153 diagnostic purposes to provide appropriate care or treatment to
154 the person being tested. Notification of test results in
155 accordance with paragraph (c) is required if it would not be



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156 detrimental to the patient. This subparagraph does not authorize
157 the routine testing of patients for HIV infection without
158 notification ~~informed consent~~.

159 5. If ~~When~~ HIV testing is performed as part of an autopsy
160 for which consent was obtained pursuant to s. 872.04.

161 6. For the performance of an HIV test upon a defendant
162 pursuant to the victim's request in a prosecution for any type
163 of sexual battery where a blood sample is taken from the
164 defendant voluntarily, pursuant to court order for any purpose,
165 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
166 960.003; however, the results of an ~~any~~ HIV test performed shall
167 be disclosed solely to the victim and the defendant, except as
168 provided in ss. 775.0877, 951.27, and 960.003.

169 7. If ~~When~~ an HIV test is mandated by court order.

170 8. For epidemiological research pursuant to s. 381.0031,
171 for research consistent with institutional review boards created
172 by 45 C.F.R. part 46, or for the performance of an HIV-related
173 test for the purpose of research, if the testing is performed in
174 a manner by which the identity of the test subject is not known
175 and may not be retrieved by the researcher.

176 9. If ~~When~~ human tissue is collected lawfully without the
177 consent of the donor for corneal removal as authorized by s.
178 765.5185 or enucleation of the eyes as authorized by s. 765.519.

179 10. For the performance of an HIV test upon an individual
180 who comes into contact with medical personnel in such a way that
181 a significant exposure has occurred during the course of
182 employment or within the scope of practice and where a blood
183 sample is available which ~~that~~ was taken from that individual
184 voluntarily by medical personnel for other purposes. The term



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185 "medical personnel" includes a licensed or certified health care
186 professional; an employee of a health care professional or
187 health care facility; employees of a laboratory licensed under
188 chapter 483; personnel of a blood bank or plasma center; a
189 medical student or other student who is receiving training as a
190 health care professional at a health care facility; and a
191 paramedic or emergency medical technician certified by the
192 department to perform life-support procedures under s. 401.23.

193 a. Before performing ~~Prior to performance of~~ an HIV test on
194 a voluntarily obtained blood sample, the individual from whom
195 the blood was obtained shall be requested to consent to the
196 performance of the test and to the release of the results. If
197 consent cannot be obtained within the time necessary to perform
198 the HIV test and begin prophylactic treatment of the exposed
199 medical personnel, all information concerning the performance of
200 an HIV test and any HIV test result shall be documented only in
201 the medical personnel's record unless the individual gives
202 written consent to entering this information on the individual's
203 medical record.

204 b. Reasonable attempts to locate the individual and to
205 obtain consent shall be made, and all attempts must be
206 documented. If the individual cannot be found or is incapable of
207 providing consent, an HIV test may be conducted on the available
208 blood sample. If the individual does not voluntarily consent to
209 the performance of an HIV test, the individual shall be informed
210 that an HIV test will be performed, and counseling shall be
211 furnished as provided in this section. However, HIV testing
212 shall be conducted only after appropriate medical personnel
213 under the supervision of a licensed physician documents, in the



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214 medical record of the medical personnel, that there has been a
215 significant exposure and that, in accordance with the written
216 protocols based on the National Centers for Disease Control and
217 Prevention guidelines on HIV postexposure prophylaxis and in the
218 physician's medical judgment, the information is medically
219 necessary to determine the course of treatment for the medical
220 personnel.

221 c. Costs of an ~~any~~ HIV test of a blood sample performed
222 with or without the consent of the individual, as provided in
223 this subparagraph, shall be borne by the medical personnel or
224 the employer of the medical personnel. However, costs of testing
225 or treatment not directly related to the initial HIV tests or
226 costs of subsequent testing or treatment may not be borne by the
227 medical personnel or the employer of the medical personnel.

228 d. In order to use ~~utilize~~ the provisions of this
229 subparagraph, the medical personnel must ~~either~~ be tested for
230 HIV pursuant to this section or provide the results of an HIV
231 test taken within 6 months before ~~prior to~~ the significant
232 exposure if such test results are negative.

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

237 f. If the source of the exposure will not voluntarily
238 submit to HIV testing and a blood sample is not available, the
239 medical personnel or the employer of such person acting on
240 behalf of the employee may seek a court order directing the
241 source of the exposure to submit to HIV testing. A sworn
242 statement by a physician licensed under chapter 458 or chapter



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243 459 that a significant exposure has occurred and that, in the
244 physician's medical judgment, testing is medically necessary to
245 determine the course of treatment constitutes probable cause for
246 the issuance of an order by the court. The results of the test
247 shall be released to the source of the exposure and to the
248 person who experienced the exposure.

249 11. For the performance of an HIV test upon an individual
250 who comes into contact with medical personnel in such a way that
251 a significant exposure has occurred during the course of
252 employment or within the scope of practice of the medical
253 personnel while the medical personnel provides emergency medical
254 treatment to the individual; or notwithstanding s. 384.287, an
255 individual who comes into contact with nonmedical personnel in
256 such a way that a significant exposure has occurred while the
257 nonmedical personnel provides emergency medical assistance
258 during a medical emergency. For the purposes of this
259 subparagraph, a medical emergency means an emergency medical
260 condition outside of a hospital or health care facility that
261 provides physician care. The test may be performed only during
262 the course of treatment for the medical emergency.

263 a. An individual who is capable of providing consent shall
264 be requested to consent to an HIV test before ~~prior to the~~
265 testing. If consent cannot be obtained within the time necessary
266 to perform the HIV test and begin prophylactic treatment of the
267 exposed medical personnel and nonmedical personnel, all
268 information concerning the performance of an HIV test and its
269 result, shall be documented only in the medical personnel's or
270 nonmedical personnel's record unless the individual gives
271 written consent to entering this information in ~~on~~ the



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272 individual's medical record.

273 b. HIV testing shall be conducted only after appropriate
274 medical personnel under the supervision of a licensed physician
275 documents, in the medical record of the medical personnel or
276 nonmedical personnel, that there has been a significant exposure
277 and that, in accordance with the written protocols based on the
278 National Centers for Disease Control and Prevention guidelines
279 on HIV postexposure prophylaxis and in the physician's medical
280 judgment, the information is medically necessary to determine
281 the course of treatment for the medical personnel or nonmedical
282 personnel.

283 c. Costs of any HIV test performed with or without the
284 consent of the individual, as provided in this subparagraph,
285 shall be borne by the medical personnel or the employer of the
286 medical personnel or nonmedical personnel. However, costs of
287 testing or treatment not directly related to the initial HIV
288 tests or costs of subsequent testing or treatment may not be
289 borne by the medical personnel or the employer of the medical
290 personnel or nonmedical personnel.

291 d. In order to use ~~utilize~~ the provisions of this
292 subparagraph, the medical personnel or nonmedical personnel
293 shall be tested for HIV pursuant to this section or shall
294 provide the results of an HIV test taken within 6 months before
295 ~~prior to~~ the significant exposure if such test results are
296 negative.

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



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301 f. If the source of the exposure will not voluntarily
302 submit to HIV testing and a blood sample was not obtained during
303 treatment for the medical emergency, the medical personnel, the
304 employer of the medical personnel acting on behalf of the
305 employee, or the nonmedical personnel may seek a court order
306 directing the source of the exposure to submit to HIV testing. A
307 sworn statement by a physician licensed under chapter 458 or
308 chapter 459 that a significant exposure has occurred and that,
309 in the physician's medical judgment, testing is medically
310 necessary to determine the course of treatment constitutes
311 probable cause for the issuance of an order by the court. The
312 results of the test shall be released to the source of the
313 exposure and to the person who experienced the exposure.

314 12. For the performance of an HIV test by the medical
315 examiner or attending physician upon an individual who expired
316 or could not be resuscitated while receiving emergency medical
317 assistance or care and who was the source of a significant
318 exposure to medical or nonmedical personnel providing such
319 assistance or care.

320 a. HIV testing may be conducted only after appropriate
321 medical personnel under the supervision of a licensed physician
322 documents in the medical record of the medical personnel or
323 nonmedical personnel that there has been a significant exposure
324 and that, in accordance with the written protocols based on the
325 National Centers for Disease Control and Prevention guidelines
326 on HIV postexposure prophylaxis and in the physician's medical
327 judgment, the information is medically necessary to determine
328 the course of treatment for the medical personnel or nonmedical
329 personnel.



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330 b. Costs of an ~~any~~ HIV test performed under this
331 subparagraph may not be charged to the deceased or to the family
332 of the deceased person.

333 c. For ~~the provisions of~~ this subparagraph to be
334 applicable, the medical personnel or nonmedical personnel must
335 be tested for HIV under this section or must provide the results
336 of an HIV test taken within 6 months before the significant
337 exposure if such test results are negative.

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

340 13. For the performance of an HIV-related test medically
341 indicated by licensed medical personnel for medical diagnosis of
342 a hospitalized infant as necessary to provide appropriate care
343 and treatment of the infant if ~~when~~, after a reasonable attempt,
344 a parent cannot be contacted to provide consent. The medical
345 records of the infant must ~~shall~~ reflect the reason consent of
346 the parent was not initially obtained. Test results shall be
347 provided to the parent when the parent is located.

348 14. For the performance of HIV testing conducted to monitor
349 the clinical progress of a patient previously diagnosed to be
350 HIV positive.

351 15. For the performance of repeated HIV testing conducted
352 to monitor possible conversion from a significant exposure.

353 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
354 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
355 REGISTRATION.—No county health department and no other person in
356 this state shall conduct or hold themselves out to the public as
357 conducting a testing program for acquired immune deficiency
358 syndrome or human immunodeficiency virus status without first



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359 registering with the Department of Health, reregistering each
360 year, complying with all other applicable provisions of state
361 law, and meeting the following requirements:

362 (d) A program in a health care setting shall meet the
363 notification criteria contained in subparagraph (2) (a)1. A
364 program in a nonhealth care setting shall meet all informed
365 consent criteria contained in subparagraph (2) (a)2. ~~The program~~
366 ~~must meet all the informed consent criteria contained in~~
367 ~~subsection (2).~~

368 Section 23. Subsection (2) of section 456.032, Florida
369 Statutes, is amended to read:

370 456.032 Hepatitis B or HIV carriers.-

371 (2) Any person licensed by the department and any other
372 person employed by a health care facility who contracts a blood-
373 borne infection shall have a rebuttable presumption that the
374 illness was contracted in the course and scope of his or her
375 employment, provided that the person, as soon as practicable,
376 reports to the person's supervisor or the facility's risk
377 manager any significant exposure, as that term is defined in s.
378 381.004(1) ~~381.004(1)(c)~~, to blood or body fluids. The employer
379 may test the blood or body fluid to determine if it is infected
380 with the same disease contracted by the employee. The employer
381 may rebut the presumption by the preponderance of the evidence.
382 Except as expressly provided in this subsection, there shall be
383 no presumption that a blood-borne infection is a job-related
384 injury or illness.

385
386 ===== T I T L E A M E N D M E N T =====

387 And the title is amended as follows:



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388 Delete line 63
389 and insert:
390 conforming a cross-reference; amending s. 381.004,
391 F.S.; revising and providing definitions; specifying
392 the notification and consent procedures for performing
393 an HIV test in a health care setting and a nonhealth
394 care setting; amending s. 456.032, F.S.; conforming a
395 cross-reference; providing an effective