

A bill to be entitled

An act relating to HIV testing; amending s. 381.004, F.S.; revising and adding definitions; differentiating between the notification and consent procedures for performing an HIV test in a health care setting and a nonhealth care setting; deleting the exemption from the requirement to obtain informed consent before testing a pregnant woman; amending s. 456.032, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. 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:

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

(b) ~~(a)~~ "HIV test" means a test ordered after July 6, 1988,

27 to determine the presence of the antibody or antigen to human
 28 immunodeficiency virus or the presence of human immunodeficiency
 29 virus infection.

30 (c) ~~(b)~~ "HIV test result" means a laboratory report of a
 31 human immunodeficiency virus test result entered into a medical
 32 record on or after July 6, 1988, or any report or notation in a
 33 medical record of a laboratory report of a human
 34 immunodeficiency virus test. ~~As used in this section,~~ The term
 35 ~~"HIV test result"~~ does not include test results reported to a
 36 health care provider by a patient.

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

42 (f) ~~(e)~~ "Significant exposure" means:

- 43 1. Exposure to blood or body fluids through needlestick,
 44 instruments, or sharps;
- 45 2. Exposure of mucous membranes to visible blood or body
 46 fluids, to which universal precautions apply according to the
 47 National Centers for Disease Control and Prevention, including,
 48 without limitations, the following body fluids:
 - 49 a. Blood.
 - 50 b. Semen.
 - 51 c. Vaginal secretions.
 - 52 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

53 e. Synovial fluid.
 54 f. Pleural fluid.
 55 g. Peritoneal fluid.
 56 h. Pericardial fluid.
 57 i. Amniotic fluid.
 58 j. Laboratory specimens that contain HIV (e.g.,
 59 suspensions of concentrated virus); or
 60 3. Exposure of skin to visible blood or body fluids,
 61 especially when the exposed skin is chapped, abraded, or
 62 afflicted with dermatitis or the contact is prolonged or
 63 involving an extensive area.
 64 (e)~~(d)~~ "Preliminary HIV test" means an antibody or
 65 antibody-antigen screening test, such as the ~~enzyme-linked~~
 66 immunosorbent assays (IA), or a rapid test approved by the
 67 federal Food and Drug Administration ~~(ELISAs) or the Single-Use~~
 68 ~~Diagnostic System (SUDS)~~.
 69 (g)~~(e)~~ "Test subject" or "subject of the test" means the
 70 person upon whom an HIV test is performed, or the person who has
 71 legal authority to make health care decisions for the test
 72 subject.
 73 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
 74 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—
 75 (a) Before performing an HIV test:
 76 1. In a health care setting, the health care provider
 77 shall notify the person to be tested that the test is planned,
 78 provide information about the test, and advise the person that

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

103 2. In a nonhealth care setting, a provider shall obtain
104 the informed consent of the person upon whom the test is being

105 performed. Informed consent shall be preceded by an explanation
 106 of the right to confidential treatment of information
 107 identifying the subject of the test and the results of the test
 108 as provided by law.

109
 110 The test subject shall also be informed that a positive HIV test
 111 result will be reported to the county health department with
 112 sufficient information to identify the test subject and on the
 113 availability and location of sites at which anonymous testing is
 114 performed. As required in paragraph (3)(c), each county health
 115 department shall maintain a list of sites at which anonymous
 116 testing is performed, including the locations, telephone
 117 numbers, and hours of operation of the sites.

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

- 121 1. Is not competent, is incapacitated, or is otherwise
 122 unable to make an informed judgment; or
 123 2. Has not reached the age of majority, except as provided
 124 in s. 384.30.

125 (g) Human immunodeficiency virus test results contained in
 126 the medical records of a hospital licensed under chapter 395 may
 127 be released in accordance with s. 395.3025 without being subject
 128 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,
 129 or paragraph (f) if; ~~provided~~ the hospital has notified the
 130 patient of the limited confidentiality protections afforded HIV

131 test results contained in hospital medical records ~~obtained~~
 132 ~~written informed consent for the HIV test in accordance with~~
 133 ~~provisions of this section.~~

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

136 1. When testing for sexually transmissible diseases is
 137 required by state or federal law, or by rule including the
 138 following situations:

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

141 b. HIV testing of inmates pursuant to s. 945.355 before
 142 ~~prior to their~~ release from prison by reason of parole,
 143 accumulation of gain-time credits, or expiration of sentence.

144 c. Testing for HIV by a medical examiner in accordance
 145 with s. 406.11.

146 ~~d. HIV testing of pregnant women pursuant to s. 384.31.~~

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

149 3. For the performance of an HIV-related test by licensed
 150 medical personnel in bona fide medical emergencies if ~~when~~ the
 151 test results are necessary for medical diagnostic purposes to
 152 provide appropriate emergency care or treatment to the person
 153 being tested and the patient is unable to consent, as supported
 154 by documentation in the medical record. Notification of test
 155 results in accordance with paragraph (c) is required.

156 4. For the performance of an HIV-related test by licensed

157 | medical personnel for medical diagnosis of acute illness where,
158 | in the opinion of the attending physician, providing
159 | notification ~~obtaining informed consent~~ would be detrimental to
160 | the patient, as supported by documentation in the medical
161 | record, and the test results are necessary for medical
162 | diagnostic purposes to provide appropriate care or treatment to
163 | the person being tested. Notification of test results in
164 | accordance with paragraph (c) is required if it would not be
165 | detrimental to the patient. This subparagraph does not authorize
166 | the routine testing of patients for HIV infection without
167 | notification ~~informed consent~~.

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

170 | 6. For the performance of an HIV test upon a defendant
171 | pursuant to the victim's request in a prosecution for any type
172 | of sexual battery where a blood sample is taken from the
173 | defendant voluntarily, pursuant to court order for any purpose,
174 | or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
175 | 960.003; however, the results of an ~~any~~ HIV test performed shall
176 | be disclosed solely to the victim and the defendant, except as
177 | provided in ss. 775.0877, 951.27, and 960.003.

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

179 | 8. For epidemiological research pursuant to s. 381.0031,
180 | for research consistent with institutional review boards created
181 | by 45 C.F.R. part 46, or for the performance of an HIV-related
182 | test for the purpose of research, if the testing is performed in

183 a manner by which the identity of the test subject is not known
184 and may not be retrieved by the researcher.

185 9. If ~~When~~ human tissue is collected lawfully without the
186 consent of the donor for corneal removal as authorized by s.
187 765.5185 or enucleation of the eyes as authorized by s. 765.519.

188 10. For the performance of an HIV test upon an individual
189 who comes into contact with medical personnel in such a way that
190 a significant exposure has occurred during the course of
191 employment or within the scope of practice and where a blood
192 sample is available which ~~that~~ was taken from that individual
193 voluntarily by medical personnel for other purposes. The term
194 "medical personnel" includes a licensed or certified health care
195 professional; an employee of a health care professional or
196 health care facility; employees of a laboratory licensed under
197 chapter 483; personnel of a blood bank or plasma center; a
198 medical student or other student who is receiving training as a
199 health care professional at a health care facility; and a
200 paramedic or emergency medical technician certified by the
201 department to perform life-support procedures under s. 401.23.

202 a. Before performing ~~Prior to performance of~~ an HIV test
203 on a voluntarily obtained blood sample, the individual from whom
204 the blood was obtained shall be requested to consent to the
205 performance of the test and to the release of the results. If
206 consent cannot be obtained within the time necessary to perform
207 the HIV test and begin prophylactic treatment of the exposed
208 medical personnel, all information concerning the performance of

209 an HIV test and any HIV test result shall be documented only in
210 the medical personnel's record unless the individual gives
211 written consent to entering this information on the individual's
212 medical record.

213 b. Reasonable attempts to locate the individual and to
214 obtain consent shall be made, and all attempts must be
215 documented. If the individual cannot be found or is incapable of
216 providing consent, an HIV test may be conducted on the available
217 blood sample. If the individual does not voluntarily consent to
218 the performance of an HIV test, the individual shall be informed
219 that an HIV test will be performed, and counseling shall be
220 furnished as provided in this section. However, HIV testing
221 shall be conducted only after appropriate medical personnel
222 under the supervision of a licensed physician documents, in the
223 medical record of the medical personnel, that there has been a
224 significant exposure and that, in accordance with the written
225 protocols based on the National Centers for Disease Control and
226 Prevention guidelines on HIV postexposure prophylaxis and in the
227 physician's medical judgment, the information is medically
228 necessary to determine the course of treatment for the medical
229 personnel.

230 c. Costs of an ~~any~~ HIV test of a blood sample performed
231 with or without the consent of the individual, as provided in
232 this subparagraph, shall be borne by the medical personnel or
233 the employer of the medical personnel. However, costs of testing
234 or treatment not directly related to the initial HIV tests or

235 costs of subsequent testing or treatment may not be borne by the
236 medical personnel or the employer of the medical personnel.

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

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

246 f. If the source of the exposure will not voluntarily
247 submit to HIV testing and a blood sample is not available, the
248 medical personnel or the employer of such person acting on
249 behalf of the employee may seek a court order directing the
250 source of the exposure to submit to HIV testing. A sworn
251 statement by a physician licensed under chapter 458 or chapter
252 459 that a significant exposure has occurred and that, in the
253 physician's medical judgment, testing is medically necessary to
254 determine the course of treatment constitutes probable cause for
255 the issuance of an order by the court. The results of the test
256 shall be released to the source of the exposure and to the
257 person who experienced the exposure.

258 11. For the performance of an HIV test upon an individual
259 who comes into contact with medical personnel in such a way that
260 a significant exposure has occurred during the course of

261 employment or within the scope of practice of the medical
262 personnel while the medical personnel provides emergency medical
263 treatment to the individual; or notwithstanding s. 384.287, an
264 individual who comes into contact with nonmedical personnel in
265 such a way that a significant exposure has occurred while the
266 nonmedical personnel provides emergency medical assistance
267 during a medical emergency. For the purposes of this
268 subparagraph, a medical emergency means an emergency medical
269 condition outside of a hospital or health care facility that
270 provides physician care. The test may be performed only during
271 the course of treatment for the medical emergency.

272 a. An individual who is capable of providing consent shall
273 be requested to consent to an HIV test before ~~prior to the~~
274 testing. If consent cannot be obtained within the time necessary
275 to perform the HIV test and begin prophylactic treatment of the
276 exposed medical personnel and nonmedical personnel, all
277 information concerning the performance of an HIV test and its
278 result, shall be documented only in the medical personnel's or
279 nonmedical personnel's record unless the individual gives
280 written consent to entering this information in ~~on~~ the
281 individual's medical record.

282 b. HIV testing shall be conducted only after appropriate
283 medical personnel under the supervision of a licensed physician
284 documents, in the medical record of the medical personnel or
285 nonmedical personnel, that there has been a significant exposure
286 and that, in accordance with the written protocols based on the

287 National Centers for Disease Control and Prevention guidelines
288 on HIV postexposure prophylaxis and in the physician's medical
289 judgment, the information is medically necessary to determine
290 the course of treatment for the medical personnel or nonmedical
291 personnel.

292 c. Costs of any HIV test performed with or without the
293 consent of the individual, as provided in this subparagraph,
294 shall be borne by the medical personnel or the employer of the
295 medical personnel or nonmedical personnel. However, costs of
296 testing or treatment not directly related to the initial HIV
297 tests or costs of subsequent testing or treatment may not be
298 borne by the medical personnel or the employer of the medical
299 personnel or nonmedical personnel.

300 d. In order to use ~~utilize~~ the provisions of this
301 subparagraph, the medical personnel or nonmedical personnel
302 shall be tested for HIV pursuant to this section or shall
303 provide the results of an HIV test taken within 6 months before
304 ~~prior to~~ the significant exposure if such test results are
305 negative.

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

310 f. If the source of the exposure will not voluntarily
311 submit to HIV testing and a blood sample was not obtained during
312 treatment for the medical emergency, the medical personnel, the

313 employer of the medical personnel acting on behalf of the
314 employee, or the nonmedical personnel may seek a court order
315 directing the source of the exposure to submit to HIV testing. A
316 sworn statement by a physician licensed under chapter 458 or
317 chapter 459 that a significant exposure has occurred and that,
318 in the physician's medical judgment, testing is medically
319 necessary to determine the course of treatment constitutes
320 probable cause for the issuance of an order by the court. The
321 results of the test shall be released to the source of the
322 exposure and to the person who experienced the exposure.

323 12. For the performance of an HIV test by the medical
324 examiner or attending physician upon an individual who expired
325 or could not be resuscitated while receiving emergency medical
326 assistance or care and who was the source of a significant
327 exposure to medical or nonmedical personnel providing such
328 assistance or care.

329 a. HIV testing may be conducted only after appropriate
330 medical personnel under the supervision of a licensed physician
331 documents in the medical record of the medical personnel or
332 nonmedical personnel that there has been a significant exposure
333 and that, in accordance with the written protocols based on the
334 National Centers for Disease Control and Prevention guidelines
335 on HIV postexposure prophylaxis and in the physician's medical
336 judgment, the information is medically necessary to determine
337 the course of treatment for the medical personnel or nonmedical
338 personnel.

339 b. Costs of an ~~any~~ HIV test performed under this
 340 subparagraph may not be charged to the deceased or to the family
 341 of the deceased person.

342 c. For ~~the provisions of~~ this subparagraph to be
 343 applicable, the medical personnel or nonmedical personnel must
 344 be tested for HIV under this section or must provide the results
 345 of an HIV test taken within 6 months before the significant
 346 exposure if such test results are negative.

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

349 13. For the performance of an HIV-related test medically
 350 indicated by licensed medical personnel for medical diagnosis of
 351 a hospitalized infant as necessary to provide appropriate care
 352 and treatment of the infant if ~~when~~, after a reasonable attempt,
 353 a parent cannot be contacted to provide consent. The medical
 354 records of the infant must ~~shall~~ reflect the reason consent of
 355 the parent was not initially obtained. Test results shall be
 356 provided to the parent when the parent is located.

357 14. For the performance of HIV testing conducted to
 358 monitor the clinical progress of a patient previously diagnosed
 359 to be HIV positive.

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

362 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
 363 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
 364 REGISTRATION.—No county health department and no other person in

HB 1225

2014

365 this state shall conduct or hold themselves out to the public as
366 conducting a testing program for acquired immune deficiency
367 syndrome or human immunodeficiency virus status without first
368 registering with the Department of Health, reregistering each
369 year, complying with all other applicable provisions of state
370 law, and meeting the following requirements:

371 (d) A program in a health care setting shall meet the
372 notification criteria contained in subparagraph (2)(a)1. A
373 program in a nonhealth care setting shall meet all informed
374 consent criteria contained in subparagraph (2)(a)2. ~~The program~~
375 ~~must meet all the informed consent criteria contained in~~
376 ~~subsection (2).~~

377 Section 2. Subsection (2) of section 456.032, Florida
378 Statutes, is amended to read:

379 456.032 Hepatitis B or HIV carriers.—

380 (2) Any person licensed by the department and any other
381 person employed by a health care facility who contracts a blood-
382 borne infection shall have a rebuttable presumption that the
383 illness was contracted in the course and scope of his or her
384 employment, provided that the person, as soon as practicable,
385 reports to the person's supervisor or the facility's risk
386 manager any significant exposure, as that term is defined in s.
387 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
388 employer may test the blood or body fluid to determine if it is
389 infected with the same disease contracted by the employee. The
390 employer may rebut the presumption by the preponderance of the

HB 1225

2014

391 | evidence. Except as expressly provided in this subsection, there
392 | shall be no presumption that a blood-borne infection is a job-
393 | related injury or illness.

394 | Section 3. This act shall take effect July 1, 2014.