

By the Committee on Health Policy; and Senator Thompson

588-03602-14

20141470c1

1 A bill to be entitled
2 An act relating to HIV testing; amending s. 381.004,
3 F.S.; revising and adding definitions; differentiating
4 between the notification and consent procedures for
5 performing an HIV test in a health care setting and a
6 nonhealth care setting; amending s. 456.032, F.S.;
7 conforming a cross-reference; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (1), paragraphs (a), (b), (g), and
13 (h) of subsection (2), and paragraph (d) of subsection (4) of
14 section 381.004, Florida Statutes, are amended, and subsection
15 (1) of that section is reordered, to read:

16 381.004 HIV testing.—

17 (1) DEFINITIONS.—As used in this section:

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

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

28 (c)-(b) "HIV test result" means a laboratory report of a
29 human immunodeficiency virus test result entered into a medical

588-03602-14

20141470c1

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

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

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

- 41 1. Exposure to blood or body fluids through needlestick,
42 instruments, or sharps;
- 43 2. Exposure of mucous membranes to visible blood or body
44 fluids, ~~to which universal precautions apply according to the~~
45 National Centers for Disease Control and Prevention, including,
46 without limitations, the following body fluids:
 - 47 a. Blood.
 - 48 b. Semen.
 - 49 c. Vaginal secretions.
 - 50 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
 - 51 e. Synovial fluid.
 - 52 f. Pleural fluid.
 - 53 g. Peritoneal fluid.
 - 54 h. Pericardial fluid.
 - 55 i. Amniotic fluid.
 - 56 j. Laboratory specimens that contain HIV (e.g., suspensions
57 of concentrated virus); or
- 58 3. Exposure of skin to visible blood or body fluids,

588-03602-14

20141470c1

59 especially when the exposed skin is chapped, abraded, or
60 afflicted with dermatitis or the contact is prolonged or
61 involving an extensive area.

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

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

71 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
72 RESULTS; COUNSELING; CONFIDENTIALITY.—

73 (a) Before performing an HIV test:

74 1. In a health care setting, the health care provider shall
75 notify the person to be tested that the test is planned, provide
76 information about the test, and advise the person that he or she
77 has the right to decline the test. The health care provider
78 shall also explain the right to confidential treatment of
79 information identifying the subject of the test and the results
80 of the test as provided by law. If a person declines the test,
81 the health care provider shall note that fact in the person's
82 medical record. No person in this state shall order a test
83 designed to identify the human immunodeficiency virus, or its
84 antigen or antibody, without first obtaining the informed
85 consent of the person upon whom the test is being performed,
86 except as specified in paragraph (h). Informed consent shall be
87 preceded by an explanation of the right to confidential

588-03602-14

20141470c1

~~treatment of information identifying the subject of the test and the results of the test to the extent provided by law.~~

~~Information shall also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (3) (c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, phone numbers, and hours of operation of the sites. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.~~

2. In a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is being performed. Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law.

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

(b) Except as provided in paragraph (h), informed consent

588-03602-14

20141470c1

117 must be obtained from a legal guardian or other person
118 authorized by law if ~~when~~ the person:

119 1. Is not competent, is incapacitated, or is otherwise
120 unable to make an informed judgment; or

121 2. Has not reached the age of majority, except as provided
122 in s. 384.30.

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

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

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

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

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

142 c. Testing for HIV by a medical examiner in accordance with
143 s. 406.11.

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

145 2. Those exceptions provided for blood, plasma, organs,

588-03602-14

20141470c1

146 skin, semen, or other human tissue pursuant to s. 381.0041.

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

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

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

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

588-03602-14

20141470c1

175 provided in ss. 775.0877, 951.27, and 960.003.

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

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

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

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

200 a. Before performing ~~Prior to performance~~ of an HIV test on
201 a voluntarily obtained blood sample, the individual from whom
202 the blood was obtained shall be requested to consent to the
203 performance of the test and to the release of the results. If

588-03602-14

20141470c1

204 consent cannot be obtained within the time necessary to perform
205 the HIV test and begin prophylactic treatment of the exposed
206 medical personnel, all information concerning the performance of
207 an HIV test and any HIV test result shall be documented only in
208 the medical personnel's record unless the individual gives
209 written consent to entering this information on the individual's
210 medical record.

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

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

588-03602-14

20141470c1

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

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

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

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

256 11. For the performance of an HIV test upon an individual
257 who comes into contact with medical personnel in such a way that
258 a significant exposure has occurred during the course of
259 employment or within the scope of practice of the medical
260 personnel while the medical personnel provides emergency medical
261 treatment to the individual; or notwithstanding s. 384.287, an

588-03602-14

20141470c1

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

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

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

290 c. Costs of any HIV test performed with or without the

588-03602-14

20141470c1

291 consent of the individual, as provided in this subparagraph,
292 shall be borne by the medical personnel or the employer of the
293 medical personnel or nonmedical personnel. However, costs of
294 testing or treatment not directly related to the initial HIV
295 tests or costs of subsequent testing or treatment may not be
296 borne by the medical personnel or the employer of the medical
297 personnel or nonmedical personnel.

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

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

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

588-03602-14

20141470c1

320 exposure and to the person who experienced the exposure.

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

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

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

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

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

347 13. For the performance of an HIV-related test medically
348 indicated by licensed medical personnel for medical diagnosis of

588-03602-14

20141470c1

349 a hospitalized infant as necessary to provide appropriate care
350 and treatment of the infant if ~~when~~, after a reasonable attempt,
351 a parent cannot be contacted to provide consent. The medical
352 records of the infant must ~~shall~~ reflect the reason consent of
353 the parent was not initially obtained. Test results shall be
354 provided to the parent when the parent is located.

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

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

360 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
361 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
362 REGISTRATION.—No county health department and no other person in
363 this state shall conduct or hold themselves out to the public as
364 conducting a testing program for acquired immune deficiency
365 syndrome or human immunodeficiency virus status without first
366 registering with the Department of Health, reregistering each
367 year, complying with all other applicable provisions of state
368 law, and meeting the following requirements:

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

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

377 456.032 Hepatitis B or HIV carriers.—

588-03602-14

20141470c1

378 (2) Any person licensed by the department and any other
379 person employed by a health care facility who contracts a blood-
380 borne infection shall have a rebuttable presumption that the
381 illness was contracted in the course and scope of his or her
382 employment, provided that the person, as soon as practicable,
383 reports to the person's supervisor or the facility's risk
384 manager any significant exposure, as that term is defined in s.
385 381.004(1)~~(e)~~, to blood or body fluids. The employer may test
386 the blood or body fluid to determine if it is infected with the
387 same disease contracted by the employee. The employer may rebut
388 the presumption by the preponderance of the evidence. Except as
389 expressly provided in this subsection, there shall be no
390 presumption that a blood-borne infection is a job-related injury
391 or illness.

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