

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Avila offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

11 381.004 HIV testing.—

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

13 (a) "Health care setting" means a setting devoted to the
14 diagnosis and care of persons or the provision of medical
15 services to persons, such as county health department clinics,
16 hospitals, urgent care clinics, substance abuse treatment

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17 clinics, primary care settings, community clinics, blood banks,
18 mobile medical clinics, and correctional health care facilities.

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

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

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

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

36 1. Exposure to blood or body fluids through needlestick,
37 instruments, or sharps;

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

42 a. Blood.

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- 43 b. Semen.
- 44 c. Vaginal secretions.
- 45 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
- 46 e. Synovial fluid.
- 47 f. Pleural fluid.
- 48 g. Peritoneal fluid.
- 49 h. Pericardial fluid.
- 50 i. Amniotic fluid.
- 51 j. Laboratory specimens that contain HIV (e.g.,
- 52 suspensions of concentrated virus); or
- 53 3. Exposure of skin to visible blood or body fluids,
- 54 especially when the exposed skin is chapped, abraded, or
- 55 afflicted with dermatitis or the contact is prolonged or
- 56 involving an extensive area.
- 57 (e) ~~(d)~~ "Preliminary HIV test" means an antibody or
- 58 antibody-antigen screening test, such as the ~~enzyme-linked~~
- 59 immunosorbent assays (IA), or a rapid test approved by the
- 60 United States Food and Drug Administration ~~(ELISAs) or the~~
- 61 ~~Single-Use Diagnostic System (SUDS).~~
- 62 (g) ~~(e)~~ "Test subject" or "subject of the test" means the
- 63 person upon whom an HIV test is performed, or the person who has
- 64 legal authority to make health care decisions for the test
- 65 subject.
- 66 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
- 67 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—
- 68 (a) Before performing an HIV test:

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

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

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

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

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

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

117 (g) Human immunodeficiency virus test results contained in
118 the medical records of a hospital licensed under chapter 395 may
119 be released in accordance with s. 395.3025 without being subject
120 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,

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121 or paragraph (f); ~~provided the hospital has obtained written~~
122 ~~informed consent for the HIV test in accordance with provisions~~
123 ~~of this section.~~

124 (h) Paragraph (a) does not apply ~~Notwithstanding the~~
125 ~~provisions of paragraph (a), informed consent is not required:~~

126 1. When testing for sexually transmissible diseases is
127 required by state or federal law, or by rule including the
128 following situations:

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

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

134 c. Testing for HIV by a medical examiner in accordance
135 with s. 406.11.

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

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

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

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

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

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

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

169 8. For epidemiological research pursuant to s. 381.0031,
170 for research consistent with institutional review boards created
171 by 45 C.F.R. part 46, or for the performance of an HIV-related

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172 test for the purpose of research, if the testing is performed in
173 a manner by which the identity of the test subject is not known
174 and may not be retrieved by the researcher.

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

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

194 a. The occurrence of a significant blood-borne pathogen
195 exposure, as defined by the Centers for Disease Control and
196 Prevention guidelines for the management of occupational
197 exposures and recommendations for postexposure prophylaxis,

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198 shall be documented by medical personnel under the supervision
199 of a licensed physician and recorded only in the medical
200 personnel's health file ~~Prior to performance of an HIV test on a~~
201 ~~voluntarily obtained blood sample, the individual from whom the~~
202 ~~blood was obtained shall be requested to consent to the~~
203 ~~performance of the test and to the release of the results. If~~
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~~

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

235 ~~c.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 ~~d.f.~~ If the source of the exposure is not available and
245 will not voluntarily present to a health facility to be tested
246 for HIV will not voluntarily submit to HIV testing and a blood
247 sample is not available, the medical personnel or the employer
248 of such person acting on behalf of the employee may seek a court
249 order directing the source of the exposure to submit to HIV

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250 testing. A sworn statement by a physician licensed under chapter
251 458 or chapter 459 that a significant exposure has occurred and
252 that, in the physician's medical judgment, testing is medically
253 necessary to determine the course of treatment constitutes
254 probable cause for the issuance of an order by the court. The
255 results of the test shall be released to the source of the
256 exposure and to the person who experienced the exposure.

257 11. For the performance of an HIV test upon an individual
258 who comes into contact with nonmedical ~~medical~~ personnel in such
259 a way that a significant exposure has occurred ~~during the course~~
260 ~~of employment or within the scope of practice of the medical~~
261 ~~personnel~~ while the nonmedical ~~medical~~ personnel provides
262 emergency medical assistance during a medical emergency
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. The occurrence of a significant exposure, as defined by
273 the Centers for Disease Control and Prevention guidelines, shall
274 be documented by medical personnel under the supervision of a
275 licensed physician and recorded in the nonmedical personnel's

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

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

296 ~~b.e. Costs of any HIV test performed with or without the~~
297 ~~consent of the individual, as provided in this subparagraph,~~
298 ~~shall be borne by the nonmedical ~~medical~~ personnel or the~~
299 ~~employer of the ~~medical personnel~~ or nonmedical personnel.~~
300 ~~However, costs of testing or treatment not directly related to~~
301 ~~the initial HIV tests or costs of subsequent testing or~~

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302 treatment may not be borne by the nonmedical ~~medical~~ personnel
303 or the employer of the ~~medical personnel or~~ nonmedical
304 personnel.

305 ~~c.d.~~ In order to use ~~utilize~~ the provisions of this
306 subparagraph, the ~~medical personnel or~~ nonmedical personnel
307 shall be tested for HIV pursuant to this section or shall
308 provide the results of an HIV test taken within 6 months before
309 ~~prior to~~ the significant exposure if such test results are
310 negative.

311 ~~e.~~ A person who receives the results of an HIV test
312 pursuant to this subparagraph shall maintain the confidentiality
313 of the information received and of the persons tested. Such
314 confidential information is exempt from s. 119.07(1).

315 ~~d.f.~~ If the source of the exposure is not available and
316 will not voluntarily present to a health facility to be tested
317 for HIV ~~submit to HIV testing and a blood sample was not~~
318 ~~obtained during treatment for the medical emergency,~~ the
319 nonmedical ~~medical~~ personnel or, the employer of the nonmedical
320 ~~medical~~ personnel acting on behalf of the employee, ~~or the~~
321 ~~nonmedical personnel~~ may seek a court order directing the source
322 of the exposure to submit to HIV testing. A sworn statement by a
323 physician licensed under chapter 458 or chapter 459 that a
324 significant exposure has occurred and that, in the physician's
325 medical judgment, testing is medically necessary to determine
326 the course of treatment constitutes probable cause for the
327 issuance of an order by the court. The results of the test shall

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328 be released to the source of the exposure and to the person who
329 experienced the exposure.

330 12. For the performance of an HIV test by the medical
331 examiner or attending physician upon an individual who expired
332 or could not be resuscitated while receiving emergency medical
333 assistance or care and who was the source of a significant
334 exposure to medical or nonmedical personnel providing such
335 assistance or care.

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

346 b. Costs of an ~~any~~ HIV test performed under this
347 subparagraph may not be charged to the deceased or to the family
348 of the deceased person.

349 c. For ~~the provisions of~~ this subparagraph to be
350 applicable, the medical personnel or nonmedical personnel must
351 be tested for HIV under this section or must provide the results
352 of an HIV test taken within 6 months before the significant
353 exposure if such test results are negative.

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

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

364 14. For the performance of HIV testing conducted to
365 monitor the clinical progress of a patient previously diagnosed
366 to be HIV positive.

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

369 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
370 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
371 REGISTRATION.—No county health department and no other person in
372 this state offering HIV tests in a nonhealth care setting shall
373 conduct or hold themselves out to the public as conducting a
374 testing program for acquired immune deficiency syndrome or human
375 immunodeficiency virus status without first registering with the
376 Department of Health, reregistering each year, complying with
377 all other applicable provisions of state law, and meeting the
378 following requirements:

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379 (d) A program in a nonhealth care setting shall meet all
380 informed consent criteria provided in subparagraph (2)(a)2 ~~The~~
381 ~~program must meet all the informed consent criteria contained in~~
382 ~~subsection (2).~~

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

385 456.032 Hepatitis B or HIV carriers.—

386 (2) Any person licensed by the department and any other
387 person employed by a health care facility who contracts a blood-
388 borne infection shall have a rebuttable presumption that the
389 illness was contracted in the course and scope of his or her
390 employment, provided that the person, as soon as practicable,
391 reports to the person's supervisor or the facility's risk
392 manager any significant exposure, as that term is defined in s.
393 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
394 employer may test the blood or body fluid to determine if it is
395 infected with the same disease contracted by the employee. The
396 employer may rebut the presumption by the preponderance of the
397 evidence. Except as expressly provided in this subsection, there
398 shall be no presumption that a blood-borne infection is a job-
399 related injury or illness.

400 Section 3. This act shall take effect July 1, 2015.

401

402 -----

403 **T I T L E A M E N D M E N T**

404 Remove everything before the enacting clause and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 321 (2015)

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405 | An act relating to HIV testing; amending s. 381.004,
406 | F.S.; revising and providing definitions; specifying
407 | the notification and consent procedures for performing
408 | an HIV test in a health care setting and a nonhealth
409 | care setting; amending s. 456.032, F.S.; conforming a
410 | cross-reference; providing an effective date.