

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

8

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

10

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

15 381.004 HIV testing.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

130 (h) Notwithstanding ~~the provisions of~~ paragraph (a),

131 informed consent is not required:

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

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

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

140 c. Testing for HIV by a medical examiner in accordance
141 with s. 406.11.

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

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

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

152 4. For the performance of an HIV-related test by licensed
153 medical personnel for medical diagnosis of acute illness where,
154 in the opinion of the attending physician, providing
155 notification ~~obtaining informed consent~~ would be detrimental to
156 the patient, as supported by documentation in the medical

157 record, and the test results are necessary for medical
158 diagnostic purposes to provide appropriate care or treatment to
159 the person being tested. Notification of test results in
160 accordance with paragraph (c) is required if it would not be
161 detrimental to the patient. This subparagraph does not authorize
162 the routine testing of patients for HIV infection without
163 notification ~~informed consent~~.

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

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

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

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

181 9. If ~~When~~ human tissue is collected lawfully without the
182 consent of the donor for corneal removal as authorized by s.

183 765.5185 or enucleation of the eyes as authorized by s. 765.519.

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

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

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

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

233 d. In order to use ~~utilize~~ the provisions of this
234 subparagraph, the medical personnel must ~~either~~ be tested for

235 HIV pursuant to this section or provide the results of an HIV
236 test taken within 6 months before ~~prior to~~ the significant
237 exposure if such test results are negative.

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

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

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

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

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

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

287 personnel.

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

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

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

306 f. If the source of the exposure will not voluntarily
307 submit to HIV testing and a blood sample was not obtained during
308 treatment for the medical emergency, the medical personnel, the
309 employer of the medical personnel acting on behalf of the
310 employee, or the nonmedical personnel may seek a court order
311 directing the source of the exposure to submit to HIV testing. A
312 sworn statement by a physician licensed under chapter 458 or

313 chapter 459 that a significant exposure has occurred and that,
314 in the physician's medical judgment, testing is medically
315 necessary to determine the course of treatment constitutes
316 probable cause for the issuance of an order by the court. The
317 results of the test shall be released to the source of the
318 exposure and to the person who experienced the exposure.

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

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

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

338 c. For ~~the provisions of~~ this subparagraph to be

339 applicable, the medical personnel or nonmedical personnel must
 340 be tested for HIV under this section or must provide the results
 341 of an HIV test taken within 6 months before the significant
 342 exposure if such test results are negative.

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

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

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

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

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

365 year, complying with all other applicable provisions of state
366 law, and meeting the following requirements:

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

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

375 456.032 Hepatitis B or HIV carriers.—

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

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