

By Senator Thompson

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1 A bill to be entitled
2 An act relating to HIV testing; amending s. 381.004,
3 F.S.; defining and redefining terms; differentiating
4 between the notification and consent procedures for
5 performing an HIV test in a health care setting and a
6 non-health care setting; amending s. 456.032, F.S.;
7 conforming a cross-reference; reenacting s.
8 483.314(4), F.S., relating to the collection and
9 transmittal of specimens, to incorporate the amendment
10 made to s. 381.004, F.S., in a reference thereto;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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

19 381.004 HIV testing.—

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

21 (a) "Health care setting" means a setting devoted to both
22 the diagnosis and care of persons, such as a county health
23 department clinic, a hospital emergency department, an urgent
24 care clinic, a substance abuse treatment clinic, a primary care
25 setting, a community clinic, a mobile medical clinic, and a
26 correctional health care facility.

27 (b)~~(a)~~ "HIV test" means a test ordered after July 6, 1988,
28 to determine the presence of the antibody or antigen to human
29 immunodeficiency virus or the presence of human immunodeficiency

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30 virus infection.

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

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

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

44 1. Exposure to blood or body fluids through needlestick,
45 instruments, or sharps;

46 2. Exposure of mucous membranes to visible blood or body
47 fluids, to which universal precautions apply according to the
48 National Centers for Disease Control and Prevention, including,
49 without limitations, the following body fluids:

50 a. Blood.

51 b. Semen.

52 c. Vaginal secretions.

53 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

54 e. Synovial fluid.

55 f. Pleural fluid.

56 g. Peritoneal fluid.

57 h. Pericardial fluid.

58 i. Amniotic fluid.

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59 j. Laboratory specimens that contain HIV (e.g., suspensions
60 of concentrated virus); or

61 3. Exposure of skin to visible blood or body fluids,
62 especially when the exposed skin is chapped, abraded, or
63 afflicted with dermatitis or the contact is prolonged or
64 involving an extensive area.

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

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

74 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
75 RESULTS; COUNSELING; CONFIDENTIALITY.—

76 (a) Before performing an HIV test:

77 1. In a health care setting, the health care provider shall
78 notify the person to be tested that the HIV test is planned,
79 provide information about the HIV test, and advise the person
80 that he or she has the right to decline the HIV test. The health
81 care provider shall also explain the right to confidential
82 treatment of information that identifies the test subject and
83 the test result as provided by law. If a person declines the HIV
84 test, the health care provider shall note such fact in the
85 person's medical record ~~No person in this state shall order a~~
86 ~~test designed to identify the human immunodeficiency virus, or~~
87 ~~its antigen or antibody, without first obtaining the informed~~

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~~consent of the person upon whom the test is being performed, except as specified in paragraph (h). 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 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 non-health 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 that identifies the test subject and the test result 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 of the availability and location of sites that perform anonymous testing. As required in paragraph (3) (c), each county health department shall maintain a list of anonymous testing sites. The

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117 list must include the locations, telephone numbers, and hours of
118 operation of the sites.

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

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

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

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

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

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

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

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

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

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146 s. 406.11.

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

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

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

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

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

171 6. For the performance of an HIV test upon a defendant
172 pursuant to the victim's request in a prosecution for any type
173 of sexual battery if ~~where~~ a blood sample is taken from the
174 defendant voluntarily, pursuant to court order for any purpose,

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175 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
176 960.003; however, the results of an ~~any~~ HIV test performed shall
177 be disclosed solely to the victim and the defendant, except as
178 provided in ss. 775.0877, 951.27, and 960.003.

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

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

186 9. If ~~When~~ human tissue is collected lawfully without the
187 consent of the donor for corneal removal as authorized by s.
188 765.5185 or enucleation of the eyes as authorized by s. 765.519.

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

203 a. Before performing ~~Prior to performance of~~ an HIV test on

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204 a voluntarily obtained blood sample, the individual from whom
205 the blood was obtained shall be requested to consent to the
206 performance of the test and to the release of the results. If
207 consent cannot be obtained within the time necessary to perform
208 the HIV test and begin prophylactic treatment of the exposed
209 medical personnel, all information concerning the performance of
210 an HIV test and any HIV test result shall be documented only in
211 the medical personnel's record unless the individual gives
212 written consent to entering this information on the individual's
213 medical record.

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

231 c. Costs of an ~~any~~ HIV test of a blood sample performed
232 with or without the consent of the individual, as provided in

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233 this subparagraph, shall be borne by the medical personnel or
234 the employer of the medical personnel. However, costs of testing
235 or treatment not directly related to the initial HIV tests or
236 costs of subsequent testing or treatment may not be borne by the
237 medical personnel or the employer of the medical personnel.

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

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

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

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

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

273 a. An individual who is capable of providing consent shall
274 be requested to consent to an HIV test before ~~prior to the~~
275 testing. If consent cannot be obtained within the time necessary
276 to perform the HIV test and begin prophylactic treatment of the
277 exposed medical personnel and nonmedical personnel, all
278 information concerning the performance of an HIV test and its
279 result~~7~~ shall be documented only in the medical personnel's or
280 nonmedical personnel's record unless the individual gives
281 written consent to entering this information in ~~on~~ the
282 individual's medical record.

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

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291 the course of treatment for the medical personnel or nonmedical
292 personnel.

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

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

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

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

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320 necessary to determine the course of treatment constitutes
321 probable cause for the issuance of an order by the court. The
322 results of the test shall be released to the source of the
323 exposure and to the person who experienced the exposure.

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

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

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

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

348 d. A person who receives the results of an HIV test

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349 pursuant to this subparagraph shall comply with paragraph (e).

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

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

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

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

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

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

380 456.032 Hepatitis B or HIV carriers.—

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

395 Section 3. For the purpose of incorporating the amendment
396 made by this act to section 381.004, Florida Statutes, in a
397 reference thereto, subsection (4) of section 483.314, Florida
398 Statutes, is reenacted to read:

399 483.314 Collection and transmittal of specimens.—

400 (4) A center may not perform or hold itself out to the
401 public as providing for testing for the human immunodeficiency
402 virus (HIV) unless it complies with s. 381.004.

403 Section 4. This act shall take effect July 1, 2015.