

By the Committees on Fiscal Policy; and Health Policy; and
Senators Thompson and Soto

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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 paragraphs (d) and (j) of
14 subsection (4) of that section are amended, to read:

15 381.004 HIV testing.—

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

17 (a) "Health care setting" means a setting devoted to the
18 diagnosis and care of persons or the provision of medical
19 services to persons, such as county health department clinics,
20 hospitals, urgent care clinics, substance abuse treatment
21 clinics, primary care settings, community clinics, blood banks,
22 mobile medical clinics, and 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

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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 HIV
35 testing for the sole purpose of identifying HIV infection but
36 does not provide medical treatment. The term includes community-
37 based organizations, outreach settings, county health department
38 HIV testing programs, and mobile clinics.

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., suspensions
56 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

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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 CONSENT;
71 RESULTS; COUNSELING; CONFIDENTIALITY.—

72 (a) Before performing an HIV test:

73 1. In a health care setting, the person to be tested must
74 be notified orally or in writing that the HIV test is planned
75 and that he or she has the right to decline the test. If the
76 person to be tested declines the test, such decision shall be
77 documented in the person's medical record. A person who has
78 signed a general consent form for medical care is not required
79 to sign or otherwise provide a separate consent for an HIV test
80 during the period in which the general consent form is in effect
81 ~~No person in this state shall order a test designed to identify~~
82 ~~the human immunodeficiency virus, or its antigen or antibody,~~
83 ~~without first obtaining the informed consent of the person upon~~
84 ~~whom the test is being performed, except as specified in~~
85 ~~paragraph (h). Informed consent shall be preceded by an~~
86 ~~explanation of the right to confidential treatment of~~
87 ~~information identifying the subject of the test and the results~~

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

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

105
106 The test subject must 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 must
109 also be provided with the availability and location of sites at
110 which anonymous testing is performed. As required in paragraph
111 (3) (c), each county health department shall maintain a list of
112 sites at which anonymous HIV testing is performed, including the
113 locations, telephone numbers, and hours of operation of the
114 sites.

115 (b) Except as provided in paragraph (h), informed consent
116 must be obtained from a legal guardian or other person

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117 authorized by law if ~~when~~ the person:

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

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

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

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

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

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

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

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

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

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

144 3. For the performance of an HIV-related test by licensed
145 medical personnel in bona fide medical emergencies if ~~when~~ the

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146 test results are necessary for medical diagnostic purposes to
147 provide appropriate emergency care or treatment to the person
148 being tested and the patient is unable to consent, as supported
149 by documentation in the medical record. Notification of test
150 results in accordance with paragraph (c) is required.

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

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

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

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

174 8. For epidemiological research pursuant to s. 381.0031,

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

180 9. ~~If~~ When human tissue is collected lawfully without the
181 consent of the donor for corneal removal as authorized by s.
182 765.5185 or enucleation of the eyes as authorized by s. 765.519.

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

199 a. The occurrence of a significant exposure must be
200 documented by medical personnel under the supervision of a
201 licensed physician and recorded only in the personal record of
202 the medical personnel ~~Prior to performance of an HIV test on a~~
203 ~~voluntarily obtained blood sample, the individual from whom the~~

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

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

230 ~~b.e. Costs of an any HIV test ~~of a blood sample performed~~~~
231 ~~with or without the consent of the individual, as provided in~~
232 ~~this subparagraph, shall be borne by the medical personnel or~~

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

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

242 d. If the source of the exposure is not available and will
243 not voluntarily present to a health facility to be tested for
244 HIV, the medical personnel or the employer of such person acting
245 on 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 e. A person who receives the results of an HIV test
255 pursuant to this subparagraph shall maintain the confidentiality
256 of the information received and of the persons tested. Such
257 confidential information is exempt from s. 119.07(1).

258 ~~f. If the source of the exposure will not voluntarily~~
259 ~~submit to HIV testing and a blood sample is not available, the~~
260 ~~medical personnel or the employer of such person acting on~~
261 ~~behalf of the employee may seek a court order directing the~~

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262 ~~source of the exposure to submit to HIV testing. A sworn~~
263 ~~statement by a physician licensed under chapter 458 or chapter~~
264 ~~459 that a significant exposure has occurred and that, in the~~
265 ~~physician's medical judgment, testing is medically necessary to~~
266 ~~determine the course of treatment constitutes probable cause for~~
267 ~~the issuance of an order by the court. The results of the test~~
268 ~~shall be released to the source of the exposure and to the~~
269 ~~person who experienced the exposure.~~

270 11. For the performance of an HIV test upon an individual
271 who comes into contact with nonmedical ~~medical~~ personnel in such
272 a way that a significant exposure has occurred ~~during the course~~
273 ~~of employment or within the scope of practice of the medical~~
274 ~~personnel~~ while the nonmedical ~~medical~~ personnel provides
275 emergency medical assistance during a medical emergency
276 ~~treatment to the individual; or notwithstanding s. 384.287, an~~
277 ~~individual who comes into contact with nonmedical personnel in~~
278 ~~such a way that a significant exposure has occurred while the~~
279 ~~nonmedical personnel provides emergency medical assistance~~
280 ~~during a medical emergency. For the purposes of this~~
281 ~~subparagraph, a medical emergency means an emergency medical~~
282 ~~condition outside of a hospital or health care facility that~~
283 ~~provides physician care. The test may be performed only during~~
284 ~~the course of treatment for the medical emergency.~~

285 a. The occurrence of a significant exposure shall be
286 documented by medical personnel under the supervision of a
287 licensed physician and recorded only in the personal record of
288 the nonmedical personnel ~~An individual who is capable of~~
289 ~~providing consent shall be requested to consent to an HIV test~~
290 ~~prior to the testing. If consent cannot be obtained within the~~

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291 ~~time necessary to perform the HIV test and begin prophylactic~~
292 ~~treatment of the exposed medical personnel and nonmedical~~
293 ~~personnel, all information concerning the performance of an HIV~~
294 ~~test and its result, shall be documented only in the medical~~
295 ~~personnel's or nonmedical personnel's record unless the~~
296 ~~individual gives written consent to entering this information on~~
297 ~~the individual's medical record.~~

298 ~~b. HIV testing shall be conducted only after appropriate~~
299 ~~medical personnel under the supervision of a licensed physician~~
300 ~~documents, in the medical record of the medical personnel or~~
301 ~~nonmedical personnel, that there has been a significant exposure~~
302 ~~and that, in accordance with the written protocols based on the~~
303 ~~National Centers for Disease Control and Prevention guidelines~~
304 ~~on HIV postexposure prophylaxis and in the physician's medical~~
305 ~~judgment, the information is medically necessary to determine~~
306 ~~the course of treatment for the medical personnel or nonmedical~~
307 ~~personnel.~~

308 ~~b.e. Costs of any HIV test performed with or without the~~
309 ~~consent of the individual, as provided in this subparagraph,~~
310 ~~shall be borne by the nonmedical ~~medical~~ personnel or the~~
311 ~~employer of the ~~medical personnel or~~ nonmedical personnel.~~
312 ~~However, costs of testing or treatment not directly related to~~
313 ~~the initial HIV tests or costs of subsequent testing or~~
314 ~~treatment may not be borne by the nonmedical ~~medical~~ personnel~~
315 ~~or the employer of the ~~medical personnel or~~ nonmedical~~
316 ~~personnel.~~

317 ~~c.d. For In order to utilize the provisions of this~~
318 ~~subparagraph to be applicable, the ~~medical personnel or~~~~
319 ~~nonmedical personnel must ~~shall~~ be tested for HIV under ~~pursuant~~~~

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320 ~~to~~ this section or must ~~shall~~ provide the results of an HIV test
321 taken within 6 months before ~~prior to~~ the significant exposure
322 if such test results are negative.

323 d. If the source of the exposure is not available and will
324 not voluntarily present to a health facility to be tested for
325 HIV, the nonmedical personnel or the employer of the nonmedical
326 personnel acting on behalf of the employee may seek a court
327 order directing the source of the exposure to submit to HIV
328 testing. A sworn statement by a physician licensed under chapter
329 458 or chapter 459 that a significant exposure has occurred and
330 that, in the physician's medical judgment, HIV testing is
331 medically necessary to determine the course of treatment
332 constitutes probable cause for the issuance of an order by the
333 court. The results of the HIV test shall be released to the
334 source of the exposure and to the person who experienced the
335 exposure.

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

340 ~~f. If the source of the exposure will not voluntarily~~
341 ~~submit to HIV testing and a blood sample was not obtained during~~
342 ~~treatment for the medical emergency, the medical personnel, the~~
343 ~~employer of the medical personnel acting on behalf of the~~
344 ~~employee, or the nonmedical personnel may seek a court order~~
345 ~~directing the source of the exposure to submit to HIV testing. A~~
346 ~~sworn statement by a physician licensed under chapter 458 or~~
347 ~~chapter 459 that a significant exposure has occurred and that,~~
348 ~~in the physician's medical judgment, testing is medically~~

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349 ~~necessary to determine the course of treatment constitutes~~
350 ~~probable cause for the issuance of an order by the court. The~~
351 ~~results of the test shall be released to the source of the~~
352 ~~exposure and to the person who experienced the exposure.~~

353 12. For the performance of an HIV test by the medical
354 examiner or attending physician upon an individual who expired
355 or could not be resuscitated while receiving emergency medical
356 assistance or care and who was the source of a significant
357 exposure to medical or nonmedical personnel providing such
358 assistance or care.

359 a. HIV testing may be conducted only after appropriate
360 medical personnel under the supervision of a licensed physician
361 documents in the medical record of the medical personnel or
362 nonmedical personnel that there has been a significant exposure
363 and that, in accordance with the written protocols based on the
364 National Centers for Disease Control and Prevention guidelines
365 on HIV postexposure prophylaxis and in the physician's medical
366 judgment, the information is medically necessary to determine
367 the course of treatment for the medical personnel or nonmedical
368 personnel.

369 b. Costs of an ~~any~~ HIV test performed under this
370 subparagraph may not be charged to the deceased or to the family
371 of the deceased person.

372 c. For ~~the provisions of~~ this subparagraph to be
373 applicable, the medical personnel or nonmedical personnel must
374 be tested for HIV under this section or must provide the results
375 of an HIV test taken within 6 months before the significant
376 exposure if such test results are negative.

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

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

379 13. For the performance of an HIV-related test medically
380 indicated by licensed medical personnel for medical diagnosis of
381 a hospitalized infant as necessary to provide appropriate care
382 and treatment of the infant if ~~when~~, after a reasonable attempt,
383 a parent cannot be contacted to provide consent. The medical
384 records of the infant must ~~shall~~ reflect the reason consent of
385 the parent was not initially obtained. Test results shall be
386 provided to the parent when the parent is located.

387 14. For the performance of HIV testing conducted to monitor
388 the clinical progress of a patient previously diagnosed to be
389 HIV positive.

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

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

401 (d) The program must meet all the requirements of informed
402 ~~consent criteria contained in~~ subsection (2).

403 (j) Nothing in this subsection shall be construed to
404 require a facility licensed under chapter 395 or chapter 483 or
405 a person licensed under the provisions of chapter 457, chapter
406 458, chapter 459, chapter 460, chapter 461, chapter 466, or

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407 chapter 467 to register with the Department of Health or to
408 comply with the requirements of this subsection if a testing
409 program is part of routine medical care or if the facility or
410 person does not conspicuously advertise to significant numbers
411 of the general ~~he or she does not advertise or hold himself or~~
412 ~~herself out to the public as conducting testing programs for~~
413 human immunodeficiency virus infection or specializing in such
414 testing.

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

417 456.032 Hepatitis B or HIV carriers.—

418 (2) Any person licensed by the department and any other
419 person employed by a health care facility who contracts a blood-
420 borne infection shall have a rebuttable presumption that the
421 illness was contracted in the course and scope of his or her
422 employment, provided that the person, as soon as practicable,
423 reports to the person's supervisor or the facility's risk
424 manager any significant exposure, as that term is defined in s.
425 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
426 employer may test the blood or body fluid to determine if it is
427 infected with the same disease contracted by the employee. The
428 employer may rebut the presumption by the preponderance of the
429 evidence. Except as expressly provided in this subsection, there
430 shall be no presumption that a blood-borne infection is a job-
431 related injury or illness.

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