

JAN 18 2008

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# A BILL FOR AN ACT

RELATING TO HIV.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 325, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§325- Administration of HIV test; patient's informed  
5 right to decline test; prenatal care for pregnant women. (a)  
6 Prior to performing an HIV test in this State, a licensed  
7 physician or other health care provider in this State authorized  
8 to order or perform a human immunodeficiency virus (HIV) test  
9 shall advise the patient that the patient has the right to  
10 decline the HIV test.

11           (b) With regard to the prenatal care of a pregnant woman,  
12 prior to obtaining a blood specimen, the physician or other  
13 person engaged in the prenatal care of that pregnant woman shall  
14 ensure that:

15           (1) The woman is informed of the intent to perform a test  
16           for HIV infection;

17           (2) The routine nature of the HIV test;



- 1        (3) The purpose of the HIV testing;
- 2        (4) The risks and benefits of the HIV test;
- 3        (5) The risk of perinatal transmission of HIV;
- 4        (6) That approved treatments are known to decrease the  
5                risk of perinatal transmission of HIV; and
- 6        (7) That the woman has a right to decline the HIV test.
- 7        (c) If, during the final review of prenatal care medical  
8        tests, the medical records of the pregnant woman do not document  
9        a test for HIV, the physician or other person engaged in the  
10        prenatal care of the woman shall obtain a blood specimen from  
11        the woman for the undocumented HIV test. Prior to obtaining  
12        this blood specimen, the physician or other person engaged in  
13        the prenatal care of the woman shall ensure that:
- 14        (1) The woman is informed of the intent to perform the  
15                undocumented test for HIV infection;
- 16        (2) The routine nature of the HIV test;
- 17        (3) The purpose of the HIV testing;
- 18        (4) The risks and benefits of the HIV test;
- 19        (5) The risk of perinatal transmission of HIV;
- 20        (6) That approved treatments are known to decrease the  
21                risk of perinatal transmission of HIV; and
- 22        (7) That the woman has a right to decline the HIV test.



1       The blood shall be tested by a method that will ensure the  
2 earliest possible results, and the results shall be reported to  
3 the physician or other person engaged in the prenatal care of  
4 the woman or attending the woman at the time of delivery and the  
5 woman tested.

6       (d) After the results of the tests done pursuant to this  
7 section have been received, the physician or other person  
8 engaged in the prenatal care of the pregnant woman or attending  
9 the woman at the time of labor, delivery, or postpartum care at  
10 the time the results are received shall ensure that the woman  
11 receives information and counseling, as appropriate, to explain  
12 the results and the implications for the health of mothers and  
13 infants, including any follow-up testing and care that is  
14 indicated. If the woman tests positive for HIV antibodies, the  
15 woman shall also receive, whenever possible, a referral to a  
16 provider, provider group, or institution specializing in  
17 prenatal and postpartum care for HIV-positive women and their  
18 infants. Health care providers are also strongly encouraged to  
19 seek consultation with HIV specialists who provide care for  
20 pregnant and postpartum HIV-positive women and their infants.

21       (e) For purposes of this section, unless the context  
22 clearly requires otherwise, "prenatal care provider" means a



1 licensed health care professional in this State providing  
2 prenatal care within the person's lawful scope of practice and  
3 shall not include a licensed health care professional who  
4 provides care other than prenatal care to a pregnant patient.

5 (f) The prenatal care provider primarily responsible for  
6 providing prenatal care to a pregnant patient shall offer in-  
7 person, oral, or written HIV information and counseling to every  
8 pregnant patient.

9 (g) Nothing in this section shall be construed to require  
10 mandatory testing. Any documentation or disclosure of HIV-  
11 related information shall be made in accordance with section  
12 325-16(c) regarding confidentiality."

13 SECTION 2. Section 325-16, Hawaii Revised Statutes, is  
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) [~~No~~] A health care provider, blood bank, plasma  
16 center, or any other public or private agency, institution, or  
17 individual may subject a person's body fluids or tissue to a  
18 test for the presence of human immunodeficiency virus (HIV)  
19 infection [~~unless the subject of the test first provides~~  
20 ~~informed written consent to the testing.~~] in accordance with  
21 section 325-A, except as provided in subsection (b). Any person  
22 in this State whose body fluids or tissue are subject to a test



1 for the presence of HIV infection shall be afforded the  
2 opportunity to receive HIV counseling by the party ordering or  
3 requesting that the test be performed and shall be afforded the  
4 opportunity to obtain the test results. The counseling provided  
5 shall be consistent with guidelines established by the  
6 department. The opportunity to receive counseling shall be  
7 afforded both prior to obtaining a sample for HIV testing and  
8 upon disclosure of the test results, regardless of the  
9 serostatus of the individual tested, except that testing  
10 conducted pursuant to subsection (b)(1) and (2) shall be  
11 exempted from the counseling requirements of this subsection.

12 (b) Consent to testing is not required for any of the  
13 following:

14 (1) A health care provider or organ donor center that  
15 procures, processes, distributes, or uses human body  
16 parts donated for scientific purposes, without  
17 obtaining consent, may test for the presence of HIV in  
18 order to assure medical acceptability of the gift for  
19 the purpose intended;

20 (2) The department, laboratories and research facilities,  
21 health care providers, blood banks, plasma centers,  
22 and educational institutions may subject any body



1 fluids or tissue to be used in research to a test for  
2 HIV infection if the test is performed in a manner by  
3 which the identity of the test subject is not known  
4 and may not be retrieved by the researcher;

5 (3) Anonymous testing may be carried out at HIV test sites  
6 established by the department; provided that informed  
7 oral consent is obtained;

8 (4) Testing of body fluids or tissue may be ordered by a  
9 third party, so long as that third party, including  
10 but not limited to an insurance company, employer, or  
11 school, obtains [~~the informed written consent of the~~  
12 ~~person to be tested authorizing the~~] a written  
13 authorization of the person to be tested to release  
14 ~~[of]~~ the test results to the third party~~[r]~~ and  
15 transmits a signed copy of the written [~~informed~~  
16 ~~consent~~] authorization to the health provider prior to  
17 any release of the requested test results to the third  
18 party;

19 (5) Informed consent is not required where the patient is  
20 unable to give consent and it is determined by the  
21 patient's treating physician that the patient's HIV  
22 status is necessary to make a diagnosis or determine



1 an appropriate course of treatment for the patient.

2 The patient shall be informed in a timely manner that

3 a test for the presence of HIV has been performed

4 pursuant to this paragraph, and the patient shall be

5 provided the opportunity to obtain the test results

6 and appropriate counseling;

7 (6) A treating physician may order an HIV test without the

8 patient's informed consent if the physician has

9 determined that the patient is incapable of giving

10 consent prior to the rendering of treatment and when

11 there is reason to believe that the safety of a health

12 care worker may be affected due to exposure to the

13 blood or bodily fluids of a patient suspected of

14 possible HIV infection. The availability and quality

15 of health care services shall not be compromised based

16 on the findings and testing performed pursuant to this

17 paragraph. The costs of any testing performed shall

18 be borne by the health care provider and may not be

19 claimed against the patient or the patient's health

20 care insurer. The patient and the health care worker

21 shall be informed in a timely manner that a test for

22 the presence of HIV has been performed pursuant to the



1 provisions of this paragraph, and the patient and the  
2 health care worker shall be provided the opportunity  
3 to obtain the test results and appropriate counseling;

4 (7) A person who has been charged, or a juvenile who has  
5 been charged, pursuant to section 707-730, 707-731,  
6 707-732(1)(a), 707-733.6, or 707-741 shall be tested  
7 to determine the person's HIV status upon court order  
8 issued pursuant to section 325-16.5. The test shall  
9 be performed according to the protocols set forth in  
10 section 325-17; and

11 (8) A person who has been convicted, or a juvenile who has  
12 been adjudicated, pursuant to section 707-730,  
13 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be  
14 tested to determine the person's HIV status upon court  
15 order issued pursuant to section 325-16.5. The test  
16 shall be performed according to the protocols set  
17 forth in section 325-17."

18 SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.





# S.B. NO. 2339

1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Will Eyo  
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**Report Title:**

HIV Testing; Duty to Inform Patient of Right to Decline Test

**Description:**

Repeals requirement to obtain prior written informed consent to HIV test, except for certain individuals. Requires doctor or provider to inform patients, including pregnant women, of right to decline HIV test, among other things.

