
A BILL FOR AN ACT

RELATING TO INFECTIOUS DISEASE TESTING.

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

1 SECTION 1. An estimated twenty-five per cent of
2 individuals infected with human immunodeficiency virus (HIV) do
3 not know their HIV status because they have not been tested for
4 HIV. In 2006, the Centers for Disease Control and Prevention
5 (CDC) recommended HIV screening as a routine part of medical
6 care. Research and experience indicate that the requirements
7 for health care providers to obtain written informed consent and
8 to provide pre-test HIV counseling are significant barriers to
9 HIV testing. The purpose of this Act is to remove these
10 identified barriers, while providing for the individual's
11 opportunity to decline testing.

12 SECTION 2. Section 325-16, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§325-16 Informed consent for testing or disclosure.** (a)
15 As used in this section, the term "health care provider" means a
16 physician or surgeon licensed under chapter 453, a physician and
17 surgeon licensed under chapter 460, a podiatrist licensed under

1 chapter 463E, a health care facility as defined in section 323D-
2 2, and their employees. The term "health care provider" shall
3 not mean any nursing institution or nursing service conducted by
4 and for those who rely upon treatment by spiritual means through
5 prayer alone, or employees of such an institution or service.

6 (b) A health care provider may subject a person's body
7 fluids or tissue to a test for the presence of human
8 immunodeficiency virus (HIV) infection only after affording the
9 patient the opportunity to decline the test. Specific written
10 informed consent for HIV testing ordered by a health care
11 provider is not required. For HIV tests ordered by a health
12 care provider, pre-test HIV counseling is not required. When a
13 HIV test ordered by a health care provider has a reactive,
14 indeterminate, or confirmed positive result, the health care
15 provider shall provide the test results to the patient and offer
16 HIV post-test counseling.

17 [~~(a)~~] (c) No [~~health care provider,~~] blood bank, plasma
18 center, or any other public or private agency, institution[~~]~~
19 (~~except a health care provider pursuant to subsection (b)~~), or
20 individual may subject a person's body fluids or tissue to a test
21 for the presence of [~~human immunodeficiency virus (HIV)] HIV~~
22 infection unless the subject of the test first provides informed

1 written consent pursuant to the standards in section 671-3 to
2 the testing [~~. Any person in this State whose body fluids or~~
3 ~~tissue are subject to a test for the presence of HIV infection~~
4 ~~shall be]~~ and is afforded the opportunity to receive HIV pre-
5 test counseling by the party ordering or requesting that the
6 test be performed, and shall be [~~afforded the opportunity to~~
7 ~~obtain]~~ provided the test results. [~~The counseling provided~~
8 ~~shall be consistent with guidelines established by the~~
9 ~~department.~~] The opportunity to receive counseling shall be
10 afforded both prior to obtaining a sample for HIV testing, and
11 upon disclosure of the test results, regardless of the
12 serostatus of the individual tested, except that testing
13 conducted pursuant to subsection [~~(b)(1)~~] (d)(1) and (2) shall
14 be exempted from the counseling requirements of this subsection.

15 [~~(b)~~] (d) Consent to testing is not required for any of the
16 following:

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

- 1 (2) The department, laboratories and research facilities,
2 health care providers, blood banks, plasma centers,
3 and educational institutions may subject any body
4 fluids or tissue to be used in research to a test for
5 HIV infection if the test is performed in a manner by
6 which the identity of the test subject is not known
7 and may not be retrieved by the researcher;
- 8 (3) Anonymous testing carried out at HIV test sites
9 established by the department; provided that informed
10 oral consent is obtained;
- 11 (4) Testing of body fluids or tissue ordered by a third
12 party, so long as that third party, including but not
13 limited to an insurance company, employer, or school,
14 obtains the informed written consent of the person to
15 be tested authorizing the release of the test results
16 to the third party, and transmits a signed copy of the
17 written informed consent to the health care provider
18 prior to any release of the requested test results to
19 the third party[+]. The health care provider shall
20 provide all positive and indeterminate HIV test
21 results and offer post-test counseling to those

1 individuals with positive and indeterminate HIV test

2 results;

3 (5) Informed consent is not required where the patient is

4 unable to give consent and it is determined by the

5 patient's treating physician that the patient's HIV

6 status is necessary to make a diagnosis or determine

7 an appropriate course of treatment for the patient.

8 The patient shall be informed in a timely manner that

9 a test for the presence of HIV has been performed

10 pursuant to this paragraph, and the ~~[patient shall be~~

11 ~~provided the opportunity to obtain the test results~~

12 ~~and appropriate counseling;]~~ health care provider

13 shall provide all positive and indeterminate HIV test

14 results and offer appropriate post-test counseling to

15 those individuals with positive and indeterminate HIV

16 test results;

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

18 patient's informed consent if the physician has

19 determined that the patient is incapable of giving

20 consent prior to the rendering of treatment and when

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

22 care worker may be affected due to exposure to the

1 blood or bodily fluids of a patient suspected of
2 possible HIV infection. The availability and quality
3 of health care services shall not be compromised based
4 on the findings and testing performed pursuant to this
5 paragraph. The costs of any testing performed shall
6 be borne by the health care provider and may not be
7 claimed against the patient or the patient's health
8 care insurer. The patient and the health care worker
9 shall be informed in a timely manner that a test for
10 the presence of HIV has been performed pursuant to the
11 provisions of this paragraph [~~, and the patient and~~
12 ~~the health care worker shall be provided the~~
13 ~~opportunity to obtain the test results and appropriate~~
14 ~~counseling;]. The health care provider shall provide
15 all positive and indeterminate HIV test results and
16 offer appropriate post-test counseling to the indiv
17 idual being tested and afford the health care worker
18 the opportunity to obtain the test results and
19 appropriate post-test counseling;~~

- 20 (7) A person who has been charged, or a juvenile who has
21 been charged, pursuant to section 707-730, 707-731,
22 707-732(1)(a), 707-733.6, or 707-741 shall be tested

1 to determine the person's HIV status upon court order
2 issued pursuant to section 325-16.5. The test shall
3 be performed according to the protocols set forth in
4 section 325-17; and

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

12 [~~(e) Confidentiality.~~](e) The confidentiality of all
13 records held pursuant to this section is governed by section
14 325-101.

15 [~~(d) Civil penalty.~~](f) Any person or institution who
16 wilfully violates any provision of this section shall be fined
17 not less than \$1,000 nor more than \$10,000 for each violation
18 plus reasonable court costs and attorney's fees as determined by
19 the court, which penalty and costs shall be paid to the person
20 whose records were released. This subsection shall not be
21 construed as limiting the right of any person or persons to
22 recover actual damages.

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1 [~~e~~] (g) The department [~~shall~~] may adopt rules, pursuant
2 to chapter 91, to establish procedures and standards to
3 implement this section."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Calvin K. Ay
BY REQUEST

JAN 26 2009

Report Title:

HIV Testing; Health care Providers

Description:

Proposes to expand routine HIV testing by health care providers to improve early diagnosis of HIV by removing the requirement for health care providers to obtain written informed consent and to provide pre-test counseling prior to testing for HIV.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO INFECTIOUS DISEASE TESTING.

PURPOSE: To expand HIV screening by health care providers to improve early diagnosis of HIV infections.

MEANS: Amend section 325-16, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Hawaii has over 3,000 reported AIDS cases and an estimated 1,300 cases of HIV. Nationally it is estimated that approximately twenty-five percent of individuals with HIV do not know their status because they have not been tested. As a result, they cannot access effective HIV care, treatment, and prevention services. Early HIV care and treatment can maintain and improve the health status of infected individuals and reduce costs due to hospitalization, emergency room visits, and loss of employment for medical reasons. Prevention, starting with knowledge of HIV positivity, can reduce transmission to other individuals. National research and Hawaii experience has shown that some individuals are not being tested for HIV until they present with the symptoms of full blown AIDS despite the fact that they have received health care services since the initial infection. Unfortunately, they were not offered HIV testing by health care providers.

In 2006, the Centers for Disease Control and Prevention (CDC) issued recommendations to make HIV screening a routine part of medical care for adults, adolescents, and pregnant women. CDC identified two major barriers to routine HIV screening: the requirement for providers to obtain specific written

informed consent prior to testing and the requirement for providers to offer pretest HIV prevention counseling. Section 325-16, HRS, requires that both written informed consent be obtained and that prevention counseling be offered prior to HIV testing.

In Hawaii, HIV testing is often still offered based on the perceived risk behavior of the patient. However, many health care providers do not discuss risk behaviors with patients for a variety of reasons and many individuals, particularly pregnant women, may not know they are at risk and are thus not offered HIV testing. Approximately eighty-five percent of all pregnant women in Hawaii have been tested for HIV and twenty-two have tested positive since 1997. In general, there are very few, and usually no, infants born with HIV in Hawaii annually. However, there is no way to know the HIV status of mothers or newborns who are not tested.

Testing based on perceived risk behavior stigmatizes both offering and accepting the test. Input from Hawaii health care providers indicates that they often do not have the time nor are they reimbursed for obtaining written informed consent or for providing HIV prevention counseling prior to HIV testing. These are barriers to offering these services. There is strong consensus, however, that all individuals be informed that they are going to be tested for HIV and have the opportunity to decline testing. Currently, most health insurance providers including Medicaid will pay for HIV diagnostic testing but do not pay for HIV screening, with the exception of prenatal screening for pregnant women.

The STD/AIDS Prevention Branch (SAPB) of the Communicable Disease Division and its community partners and contractors offer anonymous HIV testing statewide for populations considered at risk based on

epidemiologic data. SAPB has also supported a number of trainings and conferences for health care providers encouraging them to discuss sexual history and risk behaviors with patients and offer them HIV testing. Health care providers serving patients with STD or in specified risk populations are also encouraged to test for HIV in accordance with other CDC recommendations.

Despite this, there remain many missed opportunities for HIV testing and early diagnosis in health care settings. SAPB has worked with the local chapters of the American College of Obstetricians and Gynecologists (ACOG) and the American Academy of Pediatrics to provide information and encourage providers to offer HIV testing to all women considering pregnancy or who are pregnant. SAPB has helped introduce prenatal HIV testing through family planning and community health centers. SAPB, through a University of Hawaii School of Medicine project continues to collect and monitor data on the number of prenatal HIV tests provided annually and the number of positives compared to the number of live births.

In the 2008 Hawaii legislative session, several bills were introduced in support of the 2006 CDC screening recommendations. The bills did not move forward largely because the Department, the HIV community, and health care providers had not had adequate opportunity to consider the recommendations. Consequently, SAPB initiated a workgroup process in mid-2008 that included the Hawaii Medical Association, Queen's Medical Center, Kaiser Permanente, the Life Foundation, representatives of the HIV community, and other key stakeholders to develop a broad understanding of the issues and to develop community consensus. The workgroup established a series of recommendations in support of expanded HIV screening, including the provisions of this measure.

Amending section 325-16, HRS, would allow HIV testing by health care providers without the requirement of specific written informed consent prior to testing. Nevertheless, the patient would have to be informed that an HIV test is going to be performed and offered the opportunity to decline testing. The recommended amendment would remove the requirement for the health care provider to offer pretest HIV prevention counseling to the patient. The provider, however, would still be mandated to offer post-test counseling for all patients with a reactive, indeterminate, or positive-confirmed HIV test result.

Passage of this bill will remove two significant barriers identified by health care providers to screen for HIV. HIV screening will become a more routine part of medical care and reduce stigma associated with the test since it can be offered routinely and not based on perceived risk behaviors. This will potentially increase the number of individuals tested for HIV, facilitate earlier diagnosis of HIV and access to health care, and significantly enhance the timely prevention of HIV transmission in Hawaii.

Impact on the public: Removal of the two significant barriers, required written informed consent and required prevention counseling prior to HIV testing, will allow Hawaii health care providers to routinely offer HIV testing. As a result more individuals will learn their HIV status. Individuals who test positive status can access HIV care, treatment, and prevention services. Access to these services can reduce severity of disease, cost of treatment, and transmission to other individuals. The statutory change is expected to also increase the number of pregnant women being offered HIV screening. If they test positive they can be linked

with care to reduce HIV transmission to the infant. This bill does not deal with the issue of payment; it does not obligate any individual or entity to cover the cost of HIV testing. The cost will likely be voluntarily covered by some health insurers, paid by individual patients or offered as part of other services.

Impact on the department and other agencies:

The legislative change will, at no cost to the Department of Health, increase the number of individuals who know their HIV status. This will likely increase early diagnosis and access to early care and treatment. This will allow many of these individuals to remain healthy, continue working, and maintain their health insurance. Otherwise, late diagnosis when HIV becomes symptomatic can require more complex, costly, and possibly less successful care and treatment. These individuals are more likely to require assistance from State-funded care and support programs.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HTH-100.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2009.