
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 do not
3 know they are infected, because they have not been tested for
4 human immunodeficiency virus. In 2006, the Centers for Disease
5 Control and Prevention recommended human immunodeficiency virus
6 screening as a routine part of medical care. However, research
7 and experience indicate that the requirements for health care
8 providers to obtain written informed consent and to provide pre-
9 test human immunodeficiency virus counseling are significant
10 barriers to human immunodeficiency virus testing. The purpose
11 of this Act is to remove these identified barriers, while
12 providing for the individual's opportunity to decline testing.

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

15 "§325-16 Informed consent for testing or disclosure. (a)
16 A health care provider may subject a person's body fluids or
17 tissue to a test for the presence of human immunodeficiency



1 virus infection only after affording the patient the opportunity
2 to decline the test and advising the patient that free and
3 anonymous human immunodeficiency virus may be available through
4 the department of health and community agencies. No health care
5 provider shall be required to:

6 (1) Receive specific written informed consent from a
7 patient prior to testing for human immunodeficiency
8 virus infection; or

9 (2) Provide human immunodeficiency virus pre-test
10 counseling; provided that a health care provider shall
11 provide the test results to the patient and offer
12 human immunodeficiency virus post-test counseling when
13 a test has a reactive, indeterminate, or confirmed
14 positive result.

15 [(a)] (b) No [health care provider,] blood bank, plasma
16 center, or any other public or private agency, institution[7] or
17 individual (except a health care provider acting pursuant to
18 subsections (a) or (c)), may subject a person's body fluids or
19 tissue to a test for the presence of human immunodeficiency
20 virus [(HIV)] infection unless the subject of the test [first
21 provides]:



1 (1) Provides informed written consent pursuant to the
2 standards in section 671-3 to the testing~~[. Any~~
3 ~~person in this State whose body fluids or tissue are~~
4 ~~subject to a test for the presence of HIV infection~~
5 ~~shall be]~~; and

6 (2) Is afforded the opportunity to receive [HIV] human
7 immunodeficiency virus pre-test counseling by the
8 party ordering or requesting that the test be
9 performed ~~[and shall be afforded the opportunity to~~
10 ~~obtain]~~;

11 provided that the person tested shall be provided with the test
12 ~~results~~~~[. The counseling provided shall be consistent with~~
13 ~~guidelines established by the department.]~~ by the blood bank,
14 plasma center, agency, institution, or individual subjecting the
15 person to the test. The opportunity to receive counseling shall
16 be afforded both prior to obtaining a sample for [HIV] human
17 immunodeficiency virus testing, and upon disclosure of the test
18 results, regardless of the serostatus of the individual tested,
19 except that testing conducted pursuant to subsection ~~[(b)(1)]~~
20 (c)(1) and (2) shall be exempted from the counseling
21 requirements of this subsection.



1 [~~(b)~~] (c) Consent to testing is not required for any of
2 the following:

3 (1) A health care provider or organ donor center that
4 procures, processes, distributes, or uses human body
5 parts donated for scientific purposes, without
6 obtaining consent, may test for the presence of [~~HIV~~
7 ~~in order~~] human immunodeficiency virus to assure
8 medical acceptability of the gift for the purpose
9 intended;

10 (2) The department, laboratories and research facilities,
11 health care providers, blood banks, plasma centers,
12 and educational institutions may subject any body
13 fluids or tissue to be used in research to a test for
14 [~~HIV~~] human immunodeficiency virus infection if the
15 test is performed in a manner by which the identity of
16 the test subject is not known and may not be retrieved
17 by the researcher;

18 (3) Anonymous testing carried out at [~~HIV~~] human
19 immunodeficiency virus test sites established by the
20 department; provided that informed oral consent is
21 obtained;



1 (4) Testing of body fluids or tissue ordered by a third
2 party, so long as that third party, including [~~but not~~
3 ~~limited to~~] an insurance company, employer, or school,
4 obtains the informed written consent of the person to
5 be tested authorizing the release of the test results
6 to the third party, and transmits a signed copy of the
7 written informed consent to the health care provider
8 prior to any release of the requested test results to
9 the third party[+]. The health care provider shall
10 provide all positive and indeterminate human
11 immunodeficiency virus test results and offer post-
12 test counseling to those individuals with positive and
13 indeterminate human immunodeficiency virus test
14 results;

15 (5) Informed consent is not required where the patient is
16 unable to give consent and it is determined by the
17 patient's treating physician that the patient's [HIV]
18 human immunodeficiency virus status is necessary to
19 make a diagnosis or determine an appropriate course of
20 treatment for the patient. The patient shall be
21 informed in a timely manner that a test for the
22 presence of [HIV] human immunodeficiency virus has



1 been performed pursuant to this paragraph, and the
2 ~~[patient shall be provided the opportunity to obtain~~
3 ~~the test results and appropriate counseling,]~~ health
4 care provider shall provide all positive and
5 indeterminate human immunodeficiency virus test
6 results and offer appropriate post-test counseling to
7 those individuals with positive and indeterminate
8 human immunodeficiency virus test results;

- 9 (6) A treating physician may order an [HIV] human
10 immunodeficiency virus test without the patient's
11 informed consent if the physician has determined that
12 the patient is incapable of giving consent prior to
13 the rendering of treatment and when there is reason to
14 believe that the safety of a health care worker may be
15 affected due to exposure to the blood or bodily fluids
16 of a patient suspected of possible [HIV] human
17 immunodeficiency virus infection. The availability
18 and quality of health care services shall not be
19 compromised based on the findings and testing
20 performed pursuant to this paragraph. The costs of
21 any testing performed shall be borne by the health
22 care provider and may not be claimed against the



1 patient or the patient's health care insurer. The
2 patient and the health care worker shall be informed
3 in a timely manner that a test for the presence of
4 [HIV] human immunodeficiency virus has been performed
5 pursuant to the provisions of this paragraph [~~and~~
6 ~~the patient and the health care worker shall be~~
7 ~~provided the opportunity to obtain the test results~~
8 ~~and appropriate counseling;]. The health care
9 provider shall provide all positive and indeterminate
10 human immunodeficiency virus test results and offer
11 appropriate post-test counseling to the individual
12 being tested and afford the health care worker the
13 opportunity to obtain the test results and appropriate
14 post-test counseling;~~

- 15 (7) A person who has been charged, or a juvenile who has
16 been charged, pursuant to section 707-730, 707-731,
17 707-732(1)(a), 707-733.6, or 707-741 shall be tested
18 to determine the person's [HIV] human immunodeficiency
19 virus status upon court order issued pursuant to
20 section 325-16.5. The test shall be performed
21 according to the protocols set forth in section
22 325-17; and



1 (8) A person who has been convicted, or a juvenile who has
2 been adjudicated, pursuant to section 707-730,
3 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be
4 tested to determine the person's [HIV] human
5 immunodeficiency virus status upon court order issued
6 pursuant to section 325-16.5. The test shall be
7 performed according to the protocols set forth in
8 section 325-17.

9 ~~[(e) Confidentiality.]~~ (d) The confidentiality of all
10 records held pursuant to this section is governed by section
11 325-101.

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

20 ~~[(e)]~~ (f) The department of health shall make available to
21 health care providers current information on accessing anonymous



1 human immunodeficiency virus testing that may be provided to
2 their patients.

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

6 (h) As used in this section, "health care provider" means a
7 physician or surgeon licensed under chapter 453, a podiatrist
8 licensed under chapter 463E, a health care facility as defined
9 in section 323D-2, and their employees. "Health care provider"
10 shall not mean any nursing institution or nursing service
11 conducted by and for those who rely upon treatment by spiritual
12 means through prayer alone, or employees of such an institution
13 or service."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2020.



Report Title:

Human Immunodeficiency Virus Testing; Health care Providers

Description:

Expands routine HIV testing by health care providers to improve early diagnosis of HIV. Removes the requirement that health care providers obtain written informed consent prior to testing for HIV. Provides for post-testing HIV counseling if there is a reactive, indeterminate, or confirmed positive result from an HIV test provided by health care providers. Authorizes DOH to adopt rules. Effective July 1, 2020. (SB932 HD1)

