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

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

16           "**§325-16 Informed consent for testing or disclosure.** (a)

17 As used in this section, the term "health care provider" means a

1 physician or surgeon licensed under chapter 453, a podiatrist  
2 licensed under chapter 463E, a health care facility as defined  
3 in section 323D-2, and their employees. The term "health care  
4 provider" shall not mean any nursing institution or nursing  
5 service conducted by and for those who rely upon treatment by  
6 spiritual means through prayer alone, or employees of such an  
7 institution or service.

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

1           ~~[(a)]~~ (c) No ~~[health care provider]~~ blood bank, plasma  
2 center, or any other public or private agency, institution~~[r]~~  
3 (except a health care provider pursuant to subsection (b)), or  
4 individual may subject a person's body fluids or tissue to a test  
5 for the presence of human immunodeficiency virus ~~[(HIV)]~~  
6 infection unless the subject of the test first provides informed  
7 written consent pursuant to the standards in section 671-3 to  
8 the testing ~~[. Any person in this State whose body fluids or~~  
9 ~~tissue are subject to a test for the presence of HIV infection~~  
10 ~~shall be]~~ and is afforded the opportunity to receive ~~[(HIV)]~~ human  
11 immunodeficiency virus pre-test counseling by the party ordering  
12 or requesting that the test be performed, and shall be ~~[afforded~~  
13 ~~the opportunity to obtain]~~ provided the test results. ~~[The~~  
14 ~~counseling provided shall be consistent with guidelines~~  
15 ~~established by the department.]~~ The opportunity to receive  
16 counseling shall be afforded both prior to obtaining a sample  
17 for ~~[(HIV)]~~ human immunodeficiency virus testing, and upon  
18 disclosure of the test results, regardless of the serostatus of  
19 the individual tested, except that testing conducted pursuant to  
20 subsection ~~[(b)(1)]~~ (d)(1) and (2) shall be exempted from the  
21 counseling requirements of this subsection.

1        [~~(b)~~] (d) 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        human immunodeficiency virus in order 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 325-  
22 17; and

1 (8) A person who has been convicted, or a juvenile who has  
2 been adjudicated, pursuant to section 707-730, 707-  
3 731, 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.~~] (e) The confidentiality of all  
10 records held pursuant to this section is governed by section  
11 325-101.

12 [~~(d) Civil penalty.~~] (f) 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)~~] (g) The department [~~shall~~] may adopt rules, pursuant  
21 to chapter 91, to establish procedures and standards to  
22 implement this section."



1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

**Report Title:**

Human Immunodeficiency Virus Testing; Health care Providers

**Description:**

Proposes to expand routine human immunodeficiency virus testing by health care providers to improve early diagnosis of human immunodeficiency virus by removing the requirement for health care providers to obtain written informed consent and to provide pre-test counseling prior to testing for human immunodeficiency virus. (SD1)