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

1 subsection [~~(b)(1)~~] (d)(1) and (2) shall be exempted from the
2 counseling requirements of this subsection.

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

- 5 (1) A health care provider or organ donor center that
6 procures, processes, distributes, or uses human body
7 parts donated for scientific purposes, without
8 obtaining consent, may test for the presence of [~~HIV~~]
9 human immunodeficiency virus in order to assure
10 medical acceptability of the gift for the purpose
11 intended;
- 12 (2) The department, laboratories and research facilities,
13 health care providers, blood banks, plasma centers,
14 and educational institutions may subject any body
15 fluids or tissue to be used in research to a test for
16 [~~HIV~~] human immunodeficiency virus infection if the
17 test is performed in a manner by which the identity of
18 the test subject is not known and may not be retrieved
19 by the researcher;
- 20 (3) Anonymous testing carried out at [~~HIV~~] human
21 immunodeficiency virus test sites established by the

1 department; provided that informed oral consent is
2 obtained;

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

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

1 informed in a timely manner that a test for the
2 presence of [HIV] human immunodeficiency virus has
3 been performed pursuant to this paragraph, and the
4 ~~[patient shall be provided the opportunity to obtain~~
5 ~~the test results and appropriate counseling;]~~ health
6 care provider shall provide all positive and
7 indeterminate human immunodeficiency virus test
8 results and offer appropriate post-test counseling to
9 those individuals with positive and indeterminate
10 human immunodeficiency virus test results;

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

1 any testing performed shall be borne by the health
2 care provider and may not be claimed against the
3 patient or the patient's health care insurer. The
4 patient and the health care worker shall be informed
5 in a timely manner that a test for the presence of
6 [~~HIV~~] human immunodeficiency virus has been performed
7 pursuant to the provisions of this paragraph [~~and~~
8 ~~the patient and the health care worker shall be~~
9 ~~provided the opportunity to obtain the test results~~
10 ~~and appropriate counseling;]. The health care
11 provider shall provide all positive and indeterminate
12 human immunodeficiency virus test results and offer
13 appropriate post-test counseling to the individual
14 being tested and afford the health care worker the
15 opportunity to obtain the test results and appropriate
16 post-test counseling;~~

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

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

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

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

1 [~~e~~] (g) The department shall adopt rules, pursuant to
2 chapter 91, to establish procedures and standards to implement
3 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 on July 1, 2050.

Report Title:

Human Immunodeficiency Virus Testing; Health care Providers

Description:

Expands routine human immunodeficiency virus testing by health care providers to improve early diagnosis of human immunodeficiency virus. Requires health care providers to obtain written informed consent and to provide pre-test counseling prior to testing for human immunodeficiency virus. Requires DOH to adopt rules. Effective 7/1/2050. (SD2)