



LATE

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Health

S.B. 932, S.D. 2, Relating to Infectious Disease Testing

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

March 24, 2009, 10:00 a.m.

1 **Department's Position:** The Department strongly supports this Administration bill.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** The purpose of this bill is to facilitate HIV testing by health care providers
4 to improve early diagnosis of HIV infections by removing significant procedural barriers unique to HIV
5 testing. This will be accomplished by amending Hawaii Revised Statutes §325-16 to remove the
6 requirement for pre-test HIV counseling and for written informed consent and add an opt-out
7 requirement. Opt-out requires a health care provider inform a patient, either verbally or in writing, that
8 they want to perform a HIV test and allows the patient to decline this test.

9 In 2006, the Centers for Disease Control and Prevention (CDC) strongly recommended that states
10 amend their laws, as this bill proposes, to reduce barriers to HIV testing. Patients are often not offered
11 HIV testing despite previous health care visits because of such barriers. An estimated one out of four
12 Americans who have HIV do not know they are infected.

13 This change in law will allow Hawaii's health care providers to more easily offer HIV testing and
14 more individuals, including pregnant women, to access HIV care and treatment if they are infected.
15 They will be able to receive prevention services earlier to lower the risk of new HIV transmissions to

1 others. This will help to contain costs of emergency and inpatient HIV critical care for private and
2 public medical insurers and/or individual patients.

3 After S.B. 932, S.D. 2 crossed over to the House, the Department and the Life Foundation met
4 with the American Civil Liberties Union (ACLU) to discuss concerns it had expressed in Senate
5 testimony. The following draft revised language, developed through this collaboration, is provided for
6 the Chair's consideration.

7 Page 2, line 11:only after affording the patient the opportunity to decline the test and advising the
8 patient that free and anonymous HIV tests may be available through the department and community
9 agencies.

10 Page 2, line 17: Specific written informed consent for HIV testing ordered by the health care provider
11 shall not be required.

12 Page 9, line 9 (g): The department shall make available to health care providers current information on
13 accessing anonymous HIV testing that may be provided to their patients.

14 Page 9, line 13: (h): The department ~~shall~~ may adopt rules...

15 Page 9, line 18, SECTION 4: This act shall take effect on July 1, ~~2050~~ 2009.

16 We believe that these changes strengthen the public health and fully respect the rights of all
17 individuals. Attached for the Chair's reference is a draft with this revised language placed in the bill.

18 Thank you for the opportunity to testify.

**DEPARTMENT OF HEALTH SUGGESTED
AMENDMENTS HIGHLIGHTED IN TEXT**

**S.B. NO.932, S.D.2
PROPOSED H.D.1**

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)

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

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

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1 health care provider shall provide the test results to the
2 patient and offer human immunodeficiency virus post-test
3 counseling.

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

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1 sample for [HIV] human immunodeficiency virus testing, and upon
2 disclosure of the test results, regardless of the serostatus of
3 the individual tested, except that testing conducted pursuant to
4 subsection [~~(b)(1)~~] (d)(1) and (2) shall be exempted from the
5 counseling requirements of this subsection.

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

- 8 (1) A health care provider or organ donor center that
9 procures, processes, distributes, or uses human body
10 parts donated for scientific purposes, without
11 obtaining consent, may test for the presence of [HIV]
12 human immunodeficiency virus in order to assure
13 medical acceptability of the gift for the purpose
14 intended;
- 15 (2) The department, laboratories and research facilities,
16 health care providers, blood banks, plasma centers,
17 and educational institutions may subject any body
18 fluids or tissue to be used in research to a test for
19 [HIV] human immunodeficiency virus infection if the
20 test is performed in a manner by which the identity of

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1 the test subject is not known and may not be retrieved
2 by the researcher;

3 (3) Anonymous testing carried out at [HIV] human
4 immunodeficiency virus test sites established by the
5 department; provided that informed oral consent is
6 obtained;

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

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1 (5) Informed consent is not required where the patient is
2 unable to give consent and it is determined by the
3 patient's treating physician that the patient's [HIV]
4 human immunodeficiency virus status is necessary to
5 make a diagnosis or determine an appropriate course of
6 treatment for the patient. The patient shall be
7 informed in a timely manner that a test for the
8 presence of [HIV] human immunodeficiency virus has
9 been performed pursuant to this paragraph, and the
10 ~~[patient shall be provided the opportunity to obtain~~
11 ~~the test results and appropriate counseling;]~~ health
12 care provider shall provide all positive and
13 indeterminate human immunodeficiency virus test
14 results and offer appropriate post-test counseling to
15 those individuals with positive and indeterminate
16 human immunodeficiency virus test results;

17 (6) A treating physician may order an [HIV] human
18 immunodeficiency virus test without the patient's
19 informed consent if the physician has determined that
20 the patient is incapable of giving consent prior to
21 the rendering of treatment and when there is reason to

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

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1 worker the opportunity to obtain the test results and
2 appropriate post-test counseling;

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

19 [~~(e)~~ [~~Confidentiality.~~](e) The confidentiality of all
20 records held pursuant to this section is governed by section
21 325-101.

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1 [~~(d)~~] [~~Civil penalty.~~] (f) Any person or institution who
2 willfully violates any provision of this section shall be fined
3 not less than \$1,000 nor more than \$10,000 for each violation
4 plus reasonable court costs and attorney's fees as determined by
5 the court, which penalty and costs shall be paid to the person
6 whose records were released. This subsection shall not be
7 construed as limiting the right of any person or persons to
8 recover actual damages.

9 [~~(e)~~] (g) The department shall make available to health
10 care providers current information on accessing anonymous human
11 immunodeficiency virus testing that may be provided to their
12 patients.

13 (h) The department [~~shall~~] may adopt rules, pursuant to
14 chapter 91, to establish procedures and standards to implement
15 this section."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, [~~2050~~]
19 2009.

20 INTRODUCED BY: _____
21 BY REQUEST

LATE

nishimoto2-Bryce

From: katz001@hawaii.rr.com
Sent: Monday, March 23, 2009 7:02 PM
To: HLTtestimony
Subject: SB 932 SD2: March 24, 2009, 10 am, Room 329

23 March 2009
Testimony relating to
SB 932 SD2: RELATING TO INFECTIOUS DISEASE TESTING

COMMITTEE ON HEALTH
Rep. Ryan I. Yamane, Chair
Rep. Scott Y. Nishimoto, Vice Chair

To be discussed: March 24, 10 am, Room 329

Dear Representative Yamane and Members of the Committee on Health:

Thank you for the opportunity to testify in support of the original intent of this proposed legislation. The original intent was to allow for increased access to HIV testing by health care providers by removing the barriers imposed by mandated pre test counseling and obtaining informed written consent prior to testing. However, the current version of SB 932 SD 2 needs some major revision for this to happen. Thus, I recommend passage of the bill with the original wording of HB 1114 that was already previously passed out by the House Health Committee.

Please note the original proposal was written in close consultation with representatives from the US Centers for Disease Control and Prevention and wide representation of members of community-based Hawaii AIDS services groups and health care providers.

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