

**CHAPTER 325**  
**INFECTIOUS AND COMMUNICABLE DISEASES**

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### "PART I. GENERAL PROVISIONS

**§325-1 Diseases or conditions declared communicable or dangerous to public health.** The director of health by rules adopted pursuant to chapter 91, may declare diseases or conditions to be communicable or dangerous to the public health. [L 1911, c 125, §3; RL 1925, §934; RL 1935, §1093; RL 1945, §2304; am L 1949, c 53, §29; RL 1955, §49-1; HRS §325-1; am L 1969, c 152, §1; am L 1981, c 185, §1; am L 1983, c 124, §16; am L 1987, c 265, §1]

" **[§325-1.5] Purpose.** The purpose of this chapter is to address prevention, control, and treatment of, and advancement of knowledge about, communicable diseases in the State. [L 1989, c 67, §1]

" **§325-2 Physicians, laboratory directors, and health care professionals to report.** Every physician or health care professional having a client affected by or suspected of being affected by a disease or condition declared to be communicable or dangerous to the public health by the director of health shall report the incidence or suspected incidence of such disease or condition to the department of health in writing or in the manner specified by the department of health. Every laboratory director having laboratory data regarding an individual affected by or suspected of being affected by a disease or condition declared to be communicable or dangerous to the public health shall report such diseases or conditions to the department of health in writing or in a manner specified by the health department; provided that the laboratory data reported to the department of health shall include the individual's complete demographic information, including name, date of birth, residential address, and phone number, obtained and confirmed at the time of specimen collection for the purposes of facilitating a public health investigation as necessary by the department of health. Every physician, laboratory director, or health care professional who violates this section may be fined in an amount not to exceed \$1,000 per violation, to be assessed by the director of health. The director of health is authorized to impose the penalty pursuant to this section. [PC 1869, c 59, §24; am L 1911, c 125, §1; am L 1919, c 22, §1; RL 1925, §932, pt of §1022; RL 1935, §1090; am

L 1943, c 43, §5(b); RL 1945, §2301; am L 1949, c 53, §29; RL 1955, §49-2; am L Sp 1959 2d, c 1, §19; HRS §325-2; gen ch 1985; am L 1987, c 265, §2; am L 1988, c 158, §1; am L 2016, c 115, §2]

" **[\$325-2.5] Health care-associated infection**

**reporting.** (a) Each health care facility in the State that is certified by the Centers for Medicare and Medicaid Services shall report information about health care-associated infections to the Centers for Disease Control and Prevention's national healthcare safety network, as specified in the rules of the Centers for Medicare and Medicaid Services.

(b) Health care facilities subject to this section shall authorize the Centers for Disease Control and Prevention to allow the department to access health care-associated infection data reported by those health care facilities to the national healthcare safety network.

(c) The department may adopt rules pursuant to chapter 91 to require that health care-associated infections that are multidrug-resistant be reported to the department through the national healthcare safety network. The rules shall specify which health care facilities are required to report those health care-associated infections that are multidrug-resistant through the national healthcare safety network, as well as the patient populations that are to be targeted in the reports. The first year of reporting required under this subsection shall be a pilot test of the reporting system and shall not be reported or disclosed to the public.

(d) The department shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(e) The department may issue reports to the public regarding health care-associated infections in aggregate data form to protect individual patient identity. The reports may identify individual health care facilities. The reports shall use the methodology or any part of the methodology developed by the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services for national reporting of health care-associated infections.

(f) Health care-associated infection information held by the department as a result of reporting under this section is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding; provided that health care-associated infection information otherwise available from other sources is not immune from subpoena, discovery, or introduction into evidence through those sources solely because the information was reported as required by this section.

(g) Beginning on June 30, 2013, and no later than June 30 of each year, thereafter, the department shall prepare a public report, in accordance with this section, containing information pertaining to health care-associated infections in the State for the previous calendar year.

(h) For the purposes of this section:

"Department" means the department of health.

"Health care facility" means the same as in section 323D-2. [L 2011, c 177, §2]

#### **Revision Note**

Section was enacted as an addition to chapter 321 but was renumbered to this chapter pursuant to §23G-15.

" **§325-3 Others to report.** The director of health shall have the authority to determine which other persons shall report to the department of health communicable diseases or conditions dangerous to the public health. The director of health may assess an administrative fine not to exceed \$1,000 per violation against persons who refuse or neglect to report immediately such diseases or conditions to the department of health. Persons assessed an administrative fine under this section shall not be subject to other sanctions provided by this chapter. [PC 1869, c 59, §25; am L 1911, c 125, §2; RL 1925, §933; RL 1935, §1091; RL 1945, §2302; RL 1955, §49-3; am L Sp 1959 2d, c 1, §19; HRS §325-3; am L 1987, c 265, §3]

" **§325-4 Identity of patients safeguarded.** Reports to the department of health provided for by this chapter shall not be made public so as to disclose the identity of the persons to whom they relate except as necessary to safeguard the public health against those who disobey the rules relating to these diseases or to secure conformity to the laws of the State.

Reports to the department of health of persons who had or have diseases or conditions transmittable by blood or blood products may be disclosed by the department to any blood bank to enable it to reject as donors those individuals, any law to the contrary notwithstanding. In addition, the department may disclose to any blood bank information on persons suspected by physical symptoms, clinical examination, or laboratory evidence of having diseases or conditions transmittable by blood or blood products, any law to the contrary notwithstanding. [L 1927, c 117, §1; RL 1935, §1092; RL 1945, §2303; RL 1955, §49-4; am L Sp 1959 2d, c 1, §19; HRS §325-4; am L 1973, c 6, §1; am L 1987, c 264, §1]

" **§325-5 Antitoxins, antiserums, vaccines, biologics, and drugs.** The department of health shall purchase from time to time out of moneys which may be available to it therefor, and keep on hand and available for administration under this section in the several counties to persons unable to pay for them, antitoxins, antiserums, vaccines, and other biologics and drugs of types and in a supply sufficient for the public health, welfare, and safety.

The antitoxins, antiserums, vaccines, biologics, and drugs shall by any physician of the department or of any such county be administered free of charge to any person who is in need of them and is unable to pay for them or shall be furnished free of charge to the attending physician of the person for use in the treatment of the person; provided that the person so benefited, or the person's estate, or personal representatives, if subsequently able to do so, may be required by the department to pay for any such antitoxin, antiserum, vaccine, biologic, or drug furnished free of charge to or for the person under this chapter. [L 1931, c 197, §1; RL 1945, §2305; am L 1945, c 191, §1; RL 1955, §49-5; am L Sp 1959 2d, c 1, §19; HRS §325-5; gen ch 1985]

" **§325-6 Epidemic control.** Such appropriations as may be necessary for the purpose of controlling, suppressing, or preventing the spread of any communicable or preventable disease in the State or in any county thereof shall be allocated by the legislature out of the proceeds of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

Whenever the department of health certifies that any communicable or preventable disease is present to such an extent that the usual facilities and personnel of the department are not adequate to properly control, suppress, or prevent the spread of the disease, expenditures may be made by the department, with the approval of the governor, for use, in whatever manner the department may deem necessary, in controlling, suppressing, or preventing the spread of any such disease. [L 1941, c 121, §§1, 2; am L 1943, c 43, §2; RL 1945, §2306; RL 1955, §49-6; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §19; HRS §325-6; am L 1993, c 280, §35]

" **§325-7 REPEALED.** L 1996, c 211, §7.

" **§325-8 Infected persons and quarantine.** (a) As used in this section:

"Communicable disease" means any disease declared to be "communicable" by the director of health.

"Dangerous disease" means a disease as defined in section 325-20.

"Quarantine" means the compulsory physical separation, including the restriction of movement or confinement of individuals or groups believed to have been exposed to or known to have been infected with a contagious disease, from individuals who are believed not to have been exposed or infected, by order of the department or a court of competent jurisdiction.

(b) In implementing a quarantine, the dignity of the individual quarantined shall be respected at all times and to the greatest extent possible, consistent with the objective of preventing or limiting the transmission of the disease to others. The needs of individuals quarantined shall be addressed in as systematic and competent a fashion as is reasonable under the circumstances. To the greatest extent possible, the premises in which individuals are quarantined shall be maintained in a safe and hygienic manner, designed to minimize the likelihood of further transmission of infection or other harm to individuals subject to quarantine. Adequate food, clothing, medication, and other necessities, access to counsel, means of communication with those in and outside these settings, and competent medical care shall be provided to the person quarantined.

To the greatest extent possible, cultural and religious beliefs shall be considered in addressing the needs of quarantined individuals. The department may establish and maintain places of quarantine and quarantine any individual by the least restrictive means necessary to protect the public health.

The department shall take all reasonable means to prevent the transmission of infection between or among quarantined individuals. The quarantine of any individual shall be terminated when the director determines that the quarantine of that individual is no longer necessary to protect the public health.

(c) An individual subject to quarantine shall obey the department's rules and orders, shall not go beyond the quarantined premises, and shall not put the individual's self in contact with any individual not subject to quarantine other than a physician, health care provider, or individual authorized to enter a quarantined premises by the department. Violation of any of the provisions of this subsection is a misdemeanor.

(d) No individual, other than an individual authorized by the department, shall enter a quarantined premises. Any



individual entering a quarantined premises without permission of the department shall be guilty of a misdemeanor. If, by reason of an unauthorized entry into a quarantined premises, the individual poses a danger to public health, the individual may be subject to the quarantine pursuant to this section.

(e) Before quarantining an individual, the department shall obtain a written, ex parte order from a court of this State authorizing such action. A petition for an ex parte order shall be filed with the circuit court of the circuit in which the individual resides, is suspected of residing, or is quarantined under subsection (f). Proceedings on or related to a petition for an ex parte order shall be a civil action. The court shall grant an ex parte order upon finding that probable cause exists to believe a quarantine is warranted pursuant to this section. A copy of the ex parte order shall be given to the individual quarantined, along with notification that the individual has a right to a hearing under this section.

(f) Notwithstanding subsection (e), the department may quarantine an individual without first obtaining a written, ex parte order from the court if any delay in the quarantine of the individual would pose an immediate threat to the public health. Following such a quarantine, the department shall promptly obtain a written, ex parte order from the court authorizing the quarantine.

(g) An individual quarantined pursuant to subsection (e) or (f) shall have the right to a court hearing to contest the ex parte order. If the individual, the individual's guardian ad litem, or the individual's counsel requests a hearing, the hearing shall be held within fourteen days of filing of the request. The request shall be in writing and shall be filed with the circuit court in the circuit in which the individual is quarantined. A request for a hearing shall not alter or stay the quarantine of the individual. The department shall be notified of the request for a hearing at least ten days before the hearing. At the hearing, the department shall show that the quarantine is warranted pursuant to this section. If, after hearing all relevant evidence, the court finds that the criteria for quarantine under subsection (i) have been met by clear and convincing evidence, the court shall authorize the continued quarantine of the individual.

(h) On or after thirty days following the issuance of an ex parte order or a hearing as provided for in this section, an individual quarantined pursuant to this section may request in writing a court hearing to contest the continued quarantine. The hearing shall be held within fourteen days of the filing of the request. The request shall be in writing and shall be filed with the circuit court for the circuit in which the individual

is quarantined. A request for a hearing shall not alter or stay the order of quarantine. The department shall be notified of the request for a hearing at least ten days before the hearing. At the hearing, the department shall show that continuation of the quarantine is warranted pursuant to this section. If, after hearing all relevant evidence, the court finds that the criteria for the quarantine under subsection (i) have been met by clear and convincing evidence, the court shall authorize the continued quarantine of the individual.

(i) A court may order an individual to be quarantined if the court finds that:

- (1) The individual is reasonably believed to have been exposed to or known to have been infected with a communicable or dangerous disease; and
- (2) A quarantine is the least restrictive means by which the public's health, safety, and welfare can be protected, due to the transmittable nature of the communicable or dangerous disease and the lack of preventive measures, or due to the failure by the individual quarantined to accept or practice less restrictive measures to prevent disease transmission.

(j) An individual quarantined pursuant to this section may request a hearing in the courts of this State regarding the individual's treatment and the terms and conditions of the quarantine. Upon receiving a request, the court shall fix a date for a hearing. The hearing shall take place within fourteen days of the filing of the request with the court. The request for a hearing shall not alter or stay the order of quarantine. The department shall be notified of the request for a hearing at least ten days before the hearing. If, upon a hearing, the court finds that the quarantine of the individual is not in compliance with subsection (b), the court may fashion remedies reasonable under the circumstances and consistent with this chapter.

(k) Judicial decisions shall be based upon clear and convincing evidence, and a written record of the disposition of the case shall be made and retained. If the personal appearance before the court of a quarantined individual is determined by the director to pose a threat to individuals at the proceeding and the quarantined individual does not waive the right to attend the proceeding, the court shall appoint a guardian ad litem as provided in article V of chapter 560, to represent the quarantined individual throughout the proceeding or shall hold the hearing via any means that allow all parties to participate as fully and safely as is reasonable under the circumstances.

(l) Upon written request, the court shall appoint counsel at state expense to represent individuals or groups of

individuals who are or who are about to be quarantined pursuant to this section and who are not otherwise represented by counsel. Adequate means of communication between those individuals or groups and their counsel and guardians ad litem shall be provided.

(m) In any proceeding brought pursuant to this section, in consideration of the protection of the public's health, the severity of the emergency, and the availability of necessary witnesses and evidence, the court may order the consolidation of claims by individuals involved or to be affected by a quarantine where:

- (1) The number of individuals involved or to be affected by a quarantine is so large as to render individual participation impractical;
- (2) There are questions of law or fact common to the individual claims or rights to be determined;
- (3) The group claims or rights to be determined are typical of the affected individuals' claims or rights; and
- (4) The entire group will be adequately represented in the consolidation.

(n) Each individual quarantined shall be responsible for the costs of food, lodging, and medical care, except for those costs covered and paid by the individual's health plan. [PC 1869, c 59, §26; am L 1911, c 125, §4; RL 1925, §935; RL 1935, §1095; am L 1941, c 262, §1; RL 1945, §2307; RL 1955, §49-8; am L Sp 1959 2d, c 1, §19; HRS §325-8; gen ch 1985; am L 2002, c 169, §5]

" **§325-9 Quarantine without removal; duty of police officers to assist in removals and enforcement of quarantine.** If the department of health or its agent determines that the removal of the person infected or suspected of being infected would directly and seriously aggravate the disease so as to endanger the person's life, the department, or its agent may make provision for the person, as directed in section 325-8, in the house in which the person may be; and, in such case, the department or its agent may cause the persons in the neighborhood to be removed, and may take such other measures as it judges necessary for the public health and safety. The department or its agent, in effecting any removal or quarantine under this section or section 325-8, may require any sheriff, deputy sheriff, chief of police, or police officer to aid and assist it, and such force as is reasonably necessary to effect any such removal or quarantine may be used.

Every sheriff, deputy sheriff, chief of police, or police officer who is so required to aid and assist the department or

its agent shall immediately aid and assist it. [PC 1869, c 59, §27; RL 1935, §1096; am L 1941, c 262, §2; RL 1945, §2308; RL 1955, §49-9; am L Sp 1959 2d, c 1, §19; HRS §325-9; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2005, c 29, §1; am L 2006, c 38, §8]

" **§325-10 REPEALED.** L 1996, c 211, §8.

" **§325-11 REPEALED.** L 1988, c 140, §1.

" **§325-12 Common drinking cup prohibited.** The use of a common drinking cup is prohibited in all public places within the State. [L 1911, c 118, §4; RL 1925, §941; RL 1935, §1101; RL 1945, §2319; RL 1955, §49-12; HRS §325-12]

" **§325-13 Rules.** (a) For the purpose of carrying out this chapter, the director of health, with the approval of the governor, may adopt, amend, or repeal such rules as the director deems necessary which, when adopted in accordance with chapter 91, shall have the force and effect of law.

(b) The rules shall be designed to:

- (1) Protect the health and safety of the public;
- (2) Establish appropriate levels of access to Hawaii immunization registry information by authorized users;
- (3) Establish data entry and reporting requirements for health care providers; and
- (4) Establish penalties for the failure to comply with any rule. [L 1911, c 118, §17; RL 1925, §954; RL 1935, §1114; RL 1945, §2341; RL 1955, §49-13; am L 1965, c 96, §35; HRS §325-13; gen ch 1985; am L 2010, c 113, §2]

" **§325-14 Penalty.** Any person violating this chapter, or any rule or regulation of the department of health relating thereto, shall be deemed guilty of a misdemeanor. Except as herein otherwise provided the punishment therefor shall be the same as provided by section 321-18. [L 1911, c 118, §16; RL 1925, §953; RL 1935, §1113; am L 1943, c 43, §5(b)(2); RL 1945, §2342; RL 1955, §49-14; HRS §325-14]

" **[§325-15] Infectious and communicable diseases, examination and treatment.** United States citizens or nationals, upon returning to this State after five or more years residence in any territory or possession of the United States, or any foreign country, with a high occurrence of infectious and communicable diseases, shall submit a medical examination report that shall include a tuberculin skin test or a chest x-ray

examination, and in the case of a positive skin test a chest x-ray report shall be submitted, to the department of health within sixty days of return to this State. The department of health shall cooperate with public and private authorities, where feasible, in implementing this section. [L 1978, c 130, §1]

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

- (1) Orally explaining to the person that certain personalized test results are maintained by the department of health, according to strict confidentiality protocols established by law;
- (2) Orally advising the person that free and anonymous human immunodeficiency virus testing is available through the department of health and certain community agencies;
- (3) Providing the person reasonable opportunity to decline the test; and
- (4) Receiving the person's express oral consent to the test.

A health care provider may, for the purpose of obtaining consent to the test and in lieu of the oral-consent procedure specified in this subsection, use a written form that, at a minimum, provides equivalent information to that prescribed by paragraphs [(1) and (2)]; provided that the health care provider shall allow the person reasonable opportunity to decline consent by declining to sign the form.

(b) No blood bank, plasma center, or any other public or private agency, institution or individual (except a health care provider acting pursuant to subsections (a) or (c)), may subject a person's body fluids or tissue to a test for the presence of human immunodeficiency virus infection unless the subject of the test:

- (1) Provides informed written consent pursuant to the standards in section 671-3 to the testing; and
- (2) Is afforded the opportunity to receive human immunodeficiency virus pre-test counseling by the party ordering or requesting that the test be performed;

provided that the person tested shall be provided with the test results by the blood bank, plasma center, agency, institution, or individual subjecting the person to the test. The opportunity to receive counseling shall be afforded both prior to obtaining a sample for human immunodeficiency virus testing,

and upon disclosure of the test results, regardless of the serostatus of the individual tested, except that testing conducted pursuant to subsection (c)(1) and (2) shall be exempted from the counseling requirements of this subsection.

(c) Consent to testing is not required for any of the following:

- (1) A health care provider or organ donor center that procures, processes, distributes, or uses human body parts donated for scientific purposes, without obtaining consent, may test for the presence of human immunodeficiency virus to assure medical acceptability of the gift for the purpose intended;
- (2) The department of health, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for human immunodeficiency virus infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
- (3) Anonymous testing carried out at human immunodeficiency virus test sites established by the department of health; provided that informed oral consent is obtained;
- (4) Testing of body fluids or tissue ordered by a third party, so long as that third party, including an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health care provider prior to any release of the requested test results to the third party. The health care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer post-test counseling to those individuals with positive and indeterminate human immunodeficiency virus test results;
- (5) Informed consent is not required where the patient is unable to give consent and it is determined by the patient's treating physician that the patient's human immunodeficiency virus status is necessary to make a diagnosis or determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of human immunodeficiency virus has been performed pursuant to this paragraph, and the health

care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer appropriate post-test counseling to those individuals with positive and indeterminate human immunodeficiency virus test results;

- (6) A treating physician may order a human immunodeficiency virus test without the patient's informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible human immunodeficiency virus infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient's health care insurer. The patient and the health care worker shall be informed in a timely manner that a test for the presence of human immunodeficiency virus has been performed pursuant to the provisions of this paragraph. The health care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer appropriate post-test counseling to the individual being tested and afford the health care worker the opportunity to obtain the test results and appropriate post-test counseling;
- (7) A person who has been charged, or a juvenile who has been charged, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be tested to determine the person's human immunodeficiency virus status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17; and
- (8) A person who has been convicted, or a juvenile who has been adjudicated, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be tested to determine the person's human immunodeficiency virus status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17.
- (d) The confidentiality of all records held pursuant to this section is governed by section 325-101.

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

(f) The department of health shall make available to health care providers current information on accessing anonymous human immunodeficiency virus testing for the purpose of providing that information to patients.

(g) The department may adopt rules, pursuant to chapter 91, to establish procedures and standards to implement this section.

(h) As used in this section, "health care provider" means a physician or surgeon licensed under chapter 453, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and their employees. "Health care provider" shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such an institution or service. [L 1987, c 308, §1; am L 1988, c 192, §1; am L 1989, c 376, §1 and c 377, §3; am L 1998, c 238, §3; am L 2002, c 238, §2; am L 2006, c 60, §2; am L 2009, c 116, §2]

### **Law Journals and Reviews**

Reconsidering Hawai'i's HIV Statute: The Need to Protect an Individual's Basic Liberties. 28 UH L. Rev. 169.

### **Case Notes**

Sentencing court had no authority to order defendant to undergo a human immunodeficiency virus test without defendant's informed consent, and defendant could not reasonably have expected that State would request such testing as a condition of probation. 79 H. 317 (App.), 901 P.2d 1296.

" **§325-16.5 Counseling and testing of sexual assault victims; testing of sex offenders upon request of victim.** (a) Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after the assault, of the availability of human immunodeficiency virus testing for the victim, the availability of counseling for the victim, and the right of the victim to request that the person charged with an offense listed in section 325-16(c)(7), involving the victim, be tested for human



immunodeficiency virus. The victim, or the parent or guardian of a minor or incapacitated victim, and the charged person shall be provided human immunodeficiency virus counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the charged person.

Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after a conviction, of the availability of human immunodeficiency virus testing for the victim, the availability of counseling for the victim, and the right of the victim to demand that the person convicted of an offense listed in section 325-16(c) (8), involving the victim, be tested for human immunodeficiency virus. The victim, or the parent or guardian of a minor or incapacitated victim, and the convicted person shall be provided human immunodeficiency virus counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the convicted person.

(b) The court shall order a charged person to be tested for the etiological agent for the human immunodeficiency virus (HIV) if the victim has requested that the person be tested for HIV. The following procedures shall be used when ordering the test:

- (1) The victim or the parent or guardian of a minor or incapacitated victim shall be informed, as soon as practicable, of the right to request that the charged person be tested for HIV, the availability of department of health funded HIV testing for the victim, and the availability of HIV counseling for the victim. If the victim or parent or guardian of a minor or incapacitated victim requests the HIV status of a charged person, the victim, parent, or guardian shall designate a physician or a certified HIV counselor to receive the test result, provide counseling, and notify the victim, parent, or guardian of the test result;
- (2) If the victim or parent or guardian of a minor or incapacitated victim requests, in writing, that the charged person be tested for HIV, the court shall order the person to submit to an HIV test subject to a showing of probable cause. Notwithstanding any law to the contrary, for purposes of determining probable cause for this order, a court may consider all relevant facts indicating whether HIV transmission is demonstrated by the preponderance of the evidence.

The proceedings to determine whether or not such an order is issued shall be in camera.

Whenever practicable, blood samples taken for HIV testing under this section shall be taken in conjunction with samples taken for DNA testing under section 706-603; provided that the HIV test results shall not be disclosed to any person other than the physician or HIV counselor designated to receive the results by the victim or the parent or the guardian of a minor or incapacitated victim.

The HIV test results shall remain otherwise confidential and the court may fashion orders to effectuate the prohibition against dissemination of the information. The adult probation division shall not disclose the HIV test results obtained under this section through any report. The court shall not take into account the HIV test results obtained under this section for any purpose, including determination of pretrial release of defendants, trial and sentencing. The Hawaii paroling authority shall not take into account the HIV test results obtained under this section for any purpose, including determination of minimum terms of incarceration and granting or denying of parole.

(c) The court shall order a convicted person to be tested for the etiological agent for HIV. The procedures used when ordering the test shall be as follows:

- (1) The victim or the parent or guardian of a minor or incapacitated victim shall be informed, as soon as practicable, of the court order mandating the convicted person be tested for HIV, the availability of department of health funded HIV testing for the victim, and the availability of HIV counseling for the victim. The victim, parent, or guardian shall designate a physician or a certified HIV counselor to receive the test results of the convicted person, provide counseling, and notify the victim, parent, or guardian of the test results; and
- (2) The proceedings to issue such an order shall be in camera.

Whenever practicable, blood samples taken for HIV testing under this section shall be taken in conjunction with samples taken for DNA testing under section 706-603; provided that the HIV test results shall not be disclosed to any person other than the physician or HIV counselor designated to receive the results by the victim or the parent or the guardian of a minor or incapacitated victim.

The HIV test results shall remain otherwise confidential and the court may fashion orders to effectuate the prohibition against dissemination of the information. The adult probation division shall not disclose the HIV test results obtained under

this section through any report. The court shall not take into account the HIV test results obtained under this section for any purpose, including determination of pretrial release of defendants, trial and sentencing. The Hawaii paroling authority shall not take into account the HIV test results obtained under this section for any purpose, including determination of minimum terms of incarceration and granting or denying of parole.

(d) The results of the charged or convicted person's HIV test shall be forwarded by the laboratory to the designated physician or HIV counselor, and shall be released by the physician, in consultation with the department of health or the HIV counselor, to the charged or convicted person and the victim or the parent or guardian of a minor or incapacitated victim. Prior to such release, the victim or the parent or guardian shall be required to sign a notice of HIV status disclosure advising them of the confidentiality provisions regarding HIV test results and the penalties for unlawful disclosure pursuant to section 325-101.

(e) No person authorized under this paragraph to withdraw blood or assist in the performance of the HIV test, or any medical facility where the blood is drawn or tested that has been ordered by the court to withdraw or test blood, shall be liable in any civil or criminal action if the test is performed in a reasonable manner according to generally accepted medical practices.

(f) As used in this section, unless the context requires otherwise:

"Charged person" means a person who has been charged with an offense under section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741, including a juvenile charged of such an offense. A person is charged when a formal complaint, information, or indictment has been accepted by the court.

"Convicted person" means a person who has been convicted of an offense under section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741, including a juvenile adjudicated of such an offense. A person is convicted when a verdict or adjudication has been rendered by a judge or jury, or a plea of guilty or nolo contendere has been accepted by the court.

"HIV counseling" means HIV counseling which conforms to the guidelines of the department of health or the Centers for Disease Control and Prevention, and includes referral for appropriate health care and support services.

"HIV counselor" means any person who has been trained and certified in HIV counseling by the department of health or the Centers for Disease Control and Prevention and who is not a victim counselor employed by or a volunteer with any law

enforcement agency. [L 1998, c 238, §2; am L 2002, c 238, §3; am L 2006, c 60, §3; am L 2009, c 116, §3]

### **Law Journals and Reviews**

Reconsidering Hawai'i's HIV Statute: The Need to Protect an Individual's Basic Liberties. 28 UH L. Rev. 169.

" **§325-17 Quality assurance standards for HIV antibody testing.** (a) All laboratories performing screening and diagnostic tests for the presence of the antibody to HIV (human immunodeficiency virus) shall follow the recommended protocols as set forth below. Any test used for other than experimental purposes shall be approved by the Food and Drug Administration (FDA) of the United States for the use to which it is put. Any initially reactive FDA-approved screening test must be confirmed by a second test of the same type. Any specimen yielding reactive results to both FDA-approved screening tests must have a supplemental test performed such as a Western Blot, an IFA (immunofluorescence assay), or an antigen detection assay; provided that these standards may be superseded by rules adopted by the department pursuant to chapter 91.

(b) Any laboratory performing tests for the presence of HIV may be required by the department of health to refer a sample from any specimen yielding a reactive result to the department for the purpose of supplemental testing of some or all samples for quality assurance purposes. The department may specify the information which shall accompany the specimen for epidemiological purposes; provided that the information shall not include any personal identifiers.

(c) The penalty for any violation of this section shall be as specified in section 325-14. [L 1988, c 165, §2; am L 1997, c 217, §4]

" **[\$325-18] Advisory committees for health care workers infected with blood-borne infections.** (a) The director of health may appoint ad hoc advisory committees as needed to provide advice and recommendations to health care workers infected with HIV, HBV, or other blood-borne infections on the risks of blood-borne disease transmission through exposure-prone invasive procedures. An advisory committee may recommend changes in a health care worker's practice, including patient notification, to reduce the possibility of transmission to patients. Each committee shall include:

- (1) An infectious disease specialist with expertise appropriate to the case; and

- (2) A professional peer of the infected health care worker, who has expertise in the professional practice performed by that worker.

The committee may also include the health care worker's personal physician and, if the worker's practice is facility-based, members of the facility's infection control committee. The department of health shall provide oversight and necessary staff support to the advisory committees when resources permit.

(b) An advisory committee shall serve only as long as necessary for the particular case or cases for which the committee is appointed, but its members may be named to subsequent committees as needed. Members of advisory committees shall serve without compensation, but shall be reimbursed for travel expenses as necessary by the department of health for the performance of their duties.

(c) Notwithstanding any law to the contrary, work of the advisory committees, including records, shall be confidential, except that a summary of non-identifying information and general policy recommendations may be made available to the public. All committee meetings shall be closed to the public. [L 1994, c 265, §2]

" **[§325-19] Rubella testing of pregnant women.** Every person permitted by law to attend a pregnant woman in the State, during the period of gestation or at delivery, shall cause a blood specimen from that woman to be tested for immunity to rubella, except when the woman does not consent or there is documentation that the woman has been tested previously for immunity to rubella or has been immunized against rubella. [L 1995, c 153, §1]

" **[§325-20] Agreements; collaborative assistance in control of disease outbreaks.** (a) The director may enter into agreements for collaborative assistance with licensed health care facilities and health care providers in the State to control an epidemic of a dangerous disease, which requires more physical facilities, materials, or personnel than the department has available.

(b) Whenever used in this section, unless a different meaning clearly appears from the context:

"Dangerous disease" means any illness or health condition that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

"Department" means the department of health.

"Director" means the director of health.

"Epidemic" means the occurrence of cases of an illness clearly in excess of normal expectancy, as determined by the director.

"Health care facility" means a facility as defined in section 323D-2.

"Health care provider" means a provider as defined in section 323D-2.

(c) Under collaborative agreements, health care facilities or health care providers shall provide prophylactic and treatment services for the epidemic disease in collaboration with and under the general direction of the department and shall seek reimbursement from the individuals who receive medical care, the parties responsible for their care, or their health plans. Persons having health plan benefits shall be responsible for any copayments to the facilities or health care providers.

(d) The agreements may provide that the department shall use reasonable efforts to seek legislative appropriations to reimburse health care facilities and health care providers for the use of physical facilities, professional services, and materials provided to persons without health plan coverage.

(e) Except in cases of wilful misconduct, the following persons shall not be liable for the death of or injury to any person who is provided care pursuant to this section or for damage to property when resulting from any act or omission in the performance of such services:

- (1) The State or any political subdivision;
- (2) A health care facility or health care provider acting at the direction of the department under an agreement as provided in this section; and
- (3) Persons engaged in disease prevention and control functions pursuant to this section or sections 325-8 and 325-9, including volunteers whose services are accepted by any authorized person. [L 2002, c 169, §2]

" **[\$325-21] Sale of sterile syringes for the prevention of disease.** (a) The sale of sterile hypodermic syringes in a pharmacy, physician's office, or health care institution for the purpose of preventing the transmission of dangerous blood-borne diseases, may be made solely by:

- (1) A pharmacist licensed under chapter 461;
- (2) A physician as defined in section 327E-2;
- (3) A health care provider as defined in section 327E-2;  
or
- (4) An authorized agent of a pharmacy, as defined in section 461-1, or of a health care institution, as defined in section 327E-2, operating under the direction of a licensed pharmacist or physician.

(b) The seller under subsection (a) shall provide the purchaser written educational material approved by the department of health under subsection (e) about prevention of blood-borne diseases, drug treatment, and safe disposal of used syringes at sites where syringes are sold.

(c) The sale or purchase of sterile hypodermic syringes under subsection (a) shall not constitute an offense under section 329-43.5.

(d) Nothing in this section provides immunity from prosecution to any person who violates any law that prohibits or regulates the use, possession, dispensing, distribution, or promotion of controlled substances, dangerous drugs, detrimental drugs, or harmful drugs, including but not limited to violation of section 329-41, 329-42, or 712-1241 to 712-1249.6.

(e) The department of health shall produce and make available to pharmacies, physicians' offices, and health care institutions written educational material about prevention of blood-borne diseases, drug treatment, and safe disposal of used syringes for distribution under subsection (b).

(f) For purposes of this section, "sell" or "sale" means to transfer to another for value or consideration. [L 2001, c 292, §1; am L 2004, c 151, §2]

### **Cross References**

Needle exchange program, see §§325-111 to 117.

## **"PART II. VACCINATION AND IMMUNIZATION**

**§325-31 REPEALED.** L 1974, c 6, §1.

" **§325-32 Immunization against infectious diseases.** (a) The department of health may adopt rules requiring and governing immunization against typhoid fever, pertussis (whooping cough), diphtheria, tetanus, poliomyelitis, measles, mumps, hepatitis B, rubella, haemophilus influenzae type B, and any other communicable disease, if a suitable immunizing agent is available for the disease and a need for immunization against it exists within the State. The department may also provide vaccines and other immunizing agents to private and public health care providers for administration to the general public.

(b) The department may adopt, amend, or repeal rules pursuant to chapter 91 to establish a list of specific vaccines that are available or may become available. Notwithstanding the notice, public hearing, and comment requirements of chapter 91 and the provisions of chapter 201M, the director of health, in consultation with the state epidemiologist, may adopt, amend, or

repeal as rules, the immunization recommendations of the United States Department of Health and Human Services, Advisory Committee on Immunization Practices, including interim recommendations, as they apply to the list of specific vaccines, if any, described in this subsection. The department shall make the adoption, amendment, or repeal of rules regarding United States Department of Health and Human Services, Advisory Committee on Immunization Practices immunization recommendations known to the public by:

- (1) Giving public notice of the substance of the proposed rules at least once statewide; and
- (2) Posting the full text of the proposed rulemaking action on the Internet as provided in section 91-2.6.

The rules, when adopted or amended pursuant to chapter 91 as modified by this section, shall have the force and effect of law. The department may defer the effective date of adopted, amended, or repealed rules to allow sufficient time to ensure compliance with the new, amended, or repealed rules. [L 1945, c 171, pt of §1; RL 1955, §49-32; am L 1967, c 23, §2; HRS §325-32; am L 1974, c 6, §2(1); am L 1993, c 266, §2; am L 2013, c 231, §3]

#### **Cross References**

Insurance coverage for immunizations, see §431:10A-115.5; §431:10A-206.5; §432:1-602.5.

" **§325-33 Performance of vaccination and immunization.**

Vaccinations or immunizations required of any person under this chapter shall be performed by duly licensed physicians or paramedical personnel under their direction, advanced practice registered nurses, physician assistants, or by authorized representatives of the department of health. A record of the immunization shall be maintained by the physician, physician assistant, or advanced practice registered nurse and shall be available to the department of education for school entry requirements and the department of health. [L 1945, c 171, pt of §1; am L 1947, c 165, §1(a); RL 1955, §49-33; am L 1967, c 23, §3; HRS §325-33; am L 1998, c 60, §6; am L 2009, c 151, §12]

" **§325-34 Exemptions.** Section 325-32 shall be construed not to require the vaccination or immunization of any person for three months after a duly licensed physician, physician assistant, advanced practice registered nurse, or an authorized representative of the department of health has signed two copies of a certificate stating the name and address of the person and that because of a stated cause the health of the person would be



endangered by the vaccination or immunization, and has forwarded the original copy of the certificate to the person or, if the person is a minor or under guardianship, to the person's parent or guardian, and has forwarded the duplicate copy of the certificate to the department for its files.

No person shall be subjected to vaccination, revaccination or immunization, who shall in writing object thereto on the grounds that the requirements are not in accordance with the religious tenets of an established church of which the person is a member or adherent, or, if the person is a minor or under guardianship, whose parent or guardian shall in writing object thereto on such grounds, but no objection shall be recognized when, in the opinion of the director of health, there is danger of an epidemic from any communicable disease. [L 1945, c 171, pt of §1; am L 1947, c 165, §1(b); RL 1955, §49-34; am L Sp 1959 2d, c 1, §19; am L 1967, c 23, §4; HRS §325-34; am L 1974, c 6, §2(2); gen ch 1985; am L 2009, c 151, §13; am L 2014, c 45, §8]

" **§325-35 Forms and procedures.** The department of health may prescribe forms and procedures to achieve the purposes of sections 325-32 to 325-34 and shall maintain a complete roster of all exemptions from vaccination or immunization. [L 1945, c 171, pt of §1; am L 1947, c 165, §1(c); RL 1955, §49-35; am L 1967, c 23, §5; HRS §325-35; am L 1974, c 6, §2(3); am L 1997, c 217, §5]

" **§325-36 Duty of adult, or of parent, guardian, or caregiver.** (a) Every adult person required to be immunized, or to do any other act, unless the person is a minor or incompetent, shall cause the immunization or other act to be performed.

(b) If the person is a minor or incompetent, the person's parent, or guardian having the person's care, custody, and control, shall cause the immunization or other related act to be performed.

(c) If reasonable efforts have been made to obtain consent from the person's parent or guardian, and consent is not obtainable because the parent or guardian cannot be located or contacted, a caregiver with whom the minor or incompetent person lives, or a non-custodial parent, may cause the immunization or other related act to be performed. [L 1945, c 171, pt of §1; RL 1955, §49-36; HRS §325-36; gen ch 1985; am L 1993, c 266, §3]

" **§325-37 Fraud; wilful misrepresentation; failure to comply; penalties.** Any person who by fraud or wilful misrepresentation circumvents or defeats or attempts to circumvent or defeat any purpose or provision of any of sections

325-32 to 325-34 or who, required by any provision of section 325-32, to be vaccinated or immunized, fails to be so vaccinated or immunized shall be fined not more than \$25 or imprisoned not more than thirty days, or both. [L 1945, c 171, pt of §1; am L 1947, c 165, §1(d); RL 1955, §49-37; HRS §325-37; am L 1974, c 6, §2(4)]

" **§325-38 Immunization of indigent, medically indigent, and other persons.** (a) The department of health shall provide for the free immunization and vaccination of indigent and medically indigent persons and may provide such immunizations for others, especially children, of high risk and susceptibility as may be defined by the director through rules adopted pursuant to chapter 91, for their protection against the types of diseases that, in the discretion of the director, would be inimical to the health and lives of persons who may contract these diseases, including but not limited to diphtheria, pertussis, tetanus, polio, typhoid, measles, mumps, rubella, haemophilus influenza (systemic), hepatitis B, influenza, and pneumococcal disease, and against other diseases for which vaccines have and will have been developed in the future.

(b) As used in this section:

"Indigent person" means a person without adequate and proper means of subsistence to whom the department of human services is liable or responsible for support.

"Medically indigent person" means a person otherwise able to subsist but who, in the emergency of sickness, is not able to care for the extra expenses necessary to maintain or restore health.

(c) The director, through rules adopted in accordance with chapter 91, may define terms necessary to carry out the purposes of this section. [L 1965, c 128, §1; Supp, §49-38; HRS §325-38; am L 1970, c 105, §5; am L 1987, c 339, §4; am L 1993, c 362, §2]

### "PART III. CONGENITAL SYPHILIS

**§325-51 Blood samples of pregnant women required.** Every physician attending a pregnant woman in the State for conditions relating to the woman's pregnancy during the period of gestation or at delivery, shall, in the case of every woman so attended, take or cause to be taken one or more samples of the blood of the woman, except when the attending physician shall have evidence that a pregnant woman has met this requirement through a previous test for syphilis, and shall submit such samples to an approved laboratory for a standard serologic test for syphilis. Every other person permitted by law to attend

pregnant women in the State, but not permitted by law to take blood samples, shall cause one or more samples of the blood of every pregnant woman attended by the person to be taken by a duly licensed physician or state certified laboratory, or any other person permitted by law to withdraw blood and shall have the samples submitted to an approved laboratory for a standard serologic test for syphilis. The samples of blood shall be taken at such times during the period of gestation as are designated by rules adopted by the department of health. Every pregnant woman shall permit the sample of the woman's blood to be taken as hereinabove provided. [L 1943, c 219, §1; RL 1945, §2310; RL 1955, §49-50; HRS §325-51; am L 1983, c 82, §1; gen ch 1985]

" **§325-52 Serologic tests; reports.** For the purposes of this part a standard serologic test shall be a test for syphilis approved by the department of health and shall be made at a laboratory approved to make such tests by the department. Such laboratory tests as are required by this part shall be made on request without charge at the department laboratories. The department shall issue a "laboratory report form" to be distributed upon application to all laboratories approved to make tests called for in this section. Any laboratory making any such tests shall prepare the report thereof in triplicate. The original of the report shall be transmitted by the laboratory making the test to the certifying physician. The duplicate copy of such report shall be forwarded to the department. The triplicate shall be retained by the laboratory in its files and shall be open at any time for inspection by an authorized representative of the department. [L 1943, c 219, §2; RL 1945, §2311; am L 1945, c 105, §1; RL 1955, §49-51; am L Sp 1959 2d, c 1, §19; HRS §325-52]

" **§325-53 Reports of blood tests.** In reporting a birth or fetal death, every physician or other person required to make such reports shall state, in a report accompanying the certificate, whether, according to the physician's or other person's knowledge or information, a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which the birth or stillbirth certificate is filed and the approximate date when the specimen was taken. The department of health may investigate the circumstances surrounding the birth of any baby on whose mother no serologic test, as required by this part, appears to have been taken. Failure on the part of any physician or other person permitted by law to attend pregnant women to comply with this part may be punished by an administrative fine in an amount not to exceed

\$1,000 per violation, to be assessed by the director of health. The director of health is authorized to impose the penalty pursuant to this section. [L 1943, c 219, §3; RL 1945, §2312; RL 1955, §49-52; am L Sp 1959 2d, c 1, §19; HRS §325-53; gen ch 1985; am L 1988, c 158, §2]

" **§325-54 Reports confidential; penalty.** Any information secured from the tests or the reports in this part required to be made by persons having access to such tests or reports shall be used only in connection with their professional duties or within the scope and course of their employment, but not otherwise, and except to the extent required in connection with enforcement of the laws and ordinances of the State, and its political subdivisions, and valid rules and regulations adopted thereunder, which are for the protection of the public health, shall not be divulged to others than the doctor and other person permitted by law to attend and attending a pregnant woman, laboratory technicians, or the department of health and its duly authorized representatives. Any person violating this section shall be fined \$500, or imprisoned not more than ninety days, or both. [L 1943, c 219, §4; RL 1945, §2313; RL 1955, §49-53; am L Sp 1959 2d, c 1, §19; HRS §325-54]

#### **Cross References**

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§325-55 Rules and regulations.** The department of health may, subject to the approval of the governor, adopt, promulgate, and enforce rules and regulations for the more effective enforcement of this part. [L 1943, c 219, §5; RL 1945, §2314; RL 1955, §49-54; am L Sp 1959 2d, c 1, §19; HRS §325-55]

#### **Cross References**

Rulemaking, see chapter 91.

" **§325-56 Penalty.** Any physician or other person permitted by law to attend pregnant women, and any other person, who violates this part or any rule of the department of health adopted pursuant to this part, may be fined in an amount not to exceed \$1,000 per violation, to be assessed by the director of health. The director of health is authorized to impose the penalty pursuant to this section. [L 1943, c 219, §6; RL 1945, §2315; RL 1955, §49-55; am L Sp 1959 2d, c 1, §19; HRS §325-56; am L 1988, c 158, §3]

## "PART IV. TUBERCULOSIS

**§325-71 Reports by physicians and others.** (a) Every physician, and every individual in charge of an inpatient or outpatient health care facility, shall report in writing to the department of health the identity of and epidemiologic information concerning every person known or suspected to have tuberculosis and shall, upon request, provide to the department x-ray films and medical information from the record of any person known or suspected by the department to have tuberculosis.

(b) Every director of a laboratory identifying mycobacterium tuberculosis or organisms which may be mycobacterium tuberculosis in the sputum, body fluids, or tissues of any person, living or dead, shall submit a report of such examination in writing to the department of health.

(c) Release of information to the department of health pursuant to this section may be made without the prior informed consent of the individual to whom the information pertains.

(d) A report made by one of the above charged individuals does not absolve the others from their individual reporting responsibilities.

(e) The director of health may adopt rules pursuant to chapter 91 necessary for the purposes of this part. [L 1911, c 118, §7; RL 1925, §944; RL 1935, §1104; RL 1945, §2322; RL 1955, §49-60; am L Sp 1959 2d, c 1, §19; HRS §325-71; am L 1983, c 81, §1; gen ch 1985; am L 1989, c 95, §1]

" **§325-72 Examination of sputum.** The bacteriologist of the department of health, when so requested by any physician, or by the authorities of any hospital or dispensary, shall make, or cause to be made, a microscopical examination of the sputum forwarded to the bacteriologist as that of a person having symptoms of tuberculosis, which shall be forwarded to the officer accompanied by a blank giving name, age, sex, nationality, occupation, place where last employed, if known, and address of the person whose sputum it is. The bacteriologist shall promptly make a report of the results of the examination, free of charge, to the physician or person upon whose application the same is made. [L 1911, c 118, §8; RL 1925, §945; RL 1935, §1105; RL 1945, §2323; RL 1955, §49-61; am L Sp 1959 2d, c 1, §19; HRS §325-72]

" **§325-73 Protection of record; penalty.** The department of health shall cause all reports made in accordance with the provisions of section 325-71, and also all results of

examinations showing the presence of the bacilli of tuberculosis, made in accordance with section 325-72, to be recorded in a register. The register shall remain in the care, custody, and control of the department. The department may disclose the contents of any such report or record to relatives or officials of social and welfare organizations in the State. The information disclosed to such officials shall not be divulged by them so as to disclose the identity of any person to whom it relates.

Any person who violates this section shall be fined not more than \$1,000. [L 1911, c 118, §9; RL 1925, §946; am L 1929, c 202, §1; RL 1935, §1106; RL 1945, §2324; RL 1955, §49-62; am L Sp 1959 2d, c 1, §19; HRS §325-73]

" **§325-74 Physicians; precautions; instructions.** A physician attending a patient having tuberculosis shall take all proper precautions and give proper instructions to provide for the safety of all individuals occupying the same house or apartment. [L 1911, c 118, §13; RL 1925, §950; RL 1935, §1110; RL 1945, §2328; RL 1955, §49-66; HRS §325-74]

" **§325-75 Reporting recovery of patient.** Upon the recovery of any person having tuberculosis, the attending physician shall make a report of this fact to the department of health or its agent, who shall record the same, and shall relieve the person from further liability to any requirement imposed by this part. [L 1911, c 118, §15; RL 1925, §952; RL 1935, §1112; RL 1945, §2330; RL 1955, §49-68; am L Sp 1959 2d, c 1, §19; HRS §325-75]

" **§325-76 Examinations for tuberculosis.** (a) Examinations for tuberculosis required or recommended by the department of health, including skin tests, x-rays, and other tests as may be appropriate for tuberculosis control purposes, shall be provided by the department at no charge.

(b) If any person suspected of having communicable tuberculosis by the department of health refuses to complete the examinations ordered by the department after having been notified by the department that such examinations are necessary, any court of competent jurisdiction, upon application to the court by the department, may order the person to be examined in a manner and by a facility acceptable to the department of health. [L 1947, c 79, §1; RL 1955, §49-69; am L Sp 1959 2d, c 1, §19; HRS §325-76; am L 1986, c 117, §1]

" **§325-77 Notice.** The department of health shall conduct such examinations at such places throughout the State as it deems advisable after the giving of a public notice of the time

and place the examinations are to be held. [L 1947, c 79, §2; am L 1949, c 60, §1; RL 1955, §49-70; am L Sp 1959 2d, c 1, §19; HRS §325-77]

" **§325-78 Test and treatment for tuberculosis.** (a) The department of health may establish charges and collect fees for any diagnostic, medical, or treatment services relating to tuberculosis treatment or control; provided that the department shall not refuse to provide diagnostic, medical, or treatment services relating to tuberculosis treatment or control to any patient due to the patient's inability to pay for the service relating to tuberculosis treatment or control. Voluntary payments, contributions, or gifts for such purposes may be received, but shall not be requested or solicited from any patient or any of the patient's relatives, by the department.

(b) This section shall not prohibit the department from contracting with one or more other public or private agencies or persons for tests, diagnostic procedures, medical care, chemotherapy, or hospitalization of persons in reference to tuberculosis for specified fees or charges, or from accepting, holding, expending, or using voluntary payments, assignment of medical insurance payments, contributions, or gifts for purposes consistent with the terms or conditions of the payments, contributions, or gifts. [L 1949, c 90, §1; RL 1955, §49-71; am L Sp 1959 1st, c 13, §2; am L Sp 1959 2d, c 1, §19; am imp L 1961, c 26, §1; HRS §325-78; am L 1976, c 8, §2; gen ch 1985; am L 1992, c 28, §1]

#### **Cross References**

Rulemaking, see chapter 91.

" **§§325-79 to 84 REPEALED.** L 2002, c 169, §§6 to 11.

#### **"[PART V. HEPATITIS]**

**[§325-91 Blood transfusion; hepatitis.]** In the procuring, furnishing, donating, processing, distributing or using of human whole blood, plasma, blood products or blood derivatives for the purpose of injecting or transfusing in the human body, there shall be no implied warranty that the blood, plasma, products or derivatives are free from the virus of serum hepatitis as long as there is no known scientific test to detect the virus of serum hepatitis. [L 1969, c 185, §1]

#### **Cross References**

Advisory committees for infected health care workers, see §325-18.

" **[§325-92] Prenatal hepatitis B screening and treatment of newborns.** The department of health may adopt rules necessary to provide appropriate hepatitis B screening of pregnant women, including reporting and follow-up procedures for newborns of hepatitis B carrier mothers. The department may provide medications necessary for the treatment of newborns of indigent and medically indigent carrier mothers. [L 1987, c 13, §1]

## "PART VI. HIV INFECTION, ARC, AND AIDS

### Note

Part heading amended by L 1988, c 290, §1.

### Cross References

Informed consent for testing or disclosure, see §325-16.  
Quality assurance standards for HIV antibody testing, see §325-17.

**§325-101 Confidentiality of records and information.** (a)  
The records of any person that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, osteopathic physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term "records" shall be broadly construed to include all communication that identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records is protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with



the prior written consent of the person or persons to whom the records pertain;

- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release is made from a physician or osteopathic physician licensed pursuant to chapter 453 to the department of health to inform the sexual or needle sharing contact of an HIV seropositive patient where:
  - (A) There is reason for the physician or osteopathic physician to believe that the contact is or has been at risk of HIV transmission as a result of the index patient having engaged in conduct which is likely to transmit HIV; and
  - (B) The index patient has first been counseled by the physician or osteopathic physician of the need for disclosure and the patient is unwilling to inform the contact directly or is unwilling to consent to the disclosure of the index patient's HIV status by the physician, the osteopathic physician, or the department of health; provided that the identity of the index patient is not disclosed; and provided further that there is no obligation to identify or locate any contact. Any determination by a physician or osteopathic physician to disclose or withhold disclosure of an index patient's sexual contacts to the department of health pursuant to this subsection which is made in good faith shall not be subject to penalties under this part or otherwise subject to civil or criminal liability for damages under the laws of the State;
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce this part and to enforce rules adopted by the department concerning the control and treatment of HIV infection, ARC, and AIDS, or to the sexual or needle sharing contacts of an HIV seropositive index patient for purposes of contact notification as provided in paragraph (4); provided that the identity of the index patient, if known, shall not be disclosed; provided further that release of information under this paragraph shall only

- be made by confidential communication to a designated individual charged with compliance with this part;
- (6) Release of a child's records is made to the department of human services for the purpose of enforcing chapters 350 and 587A;
  - (7) Release of a child's records is made within the department of human services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587A on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;
  - (8) Release of a child's records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for twenty-four hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child's natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587A solely on the basis of the HIV seropositivity of a child or the child's natural parents;
  - (9) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
  - (10) Release is made by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient;
  - (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking release of the records;

- (12) Disclosure by a physician or osteopathic physician, on a confidential basis, of the identity of a person who is HIV seropositive and who also shows evidence of tuberculosis infection, to a person within the department of health as designated by the director of health for purposes of evaluating the need for or the monitoring of tuberculosis chemotherapy for the person and the person's contacts who are at risk of developing tuberculosis; or
- (13) Release is made for the purpose of complying with sections 325-16.5 and 801D-4(b). Nothing in this section shall be construed to prohibit a victim to whom information is released pursuant to section 325-16.5 from requesting the release of information by a physician, osteopathic physician, or HIV counselor to a person with whom the victim shares a privileged relationship recognized by chapter 626; provided that prior to such release, the person to whom the information is to be released shall be required to sign a notice of HIV status disclosure advising them of the confidentiality provisions regarding HIV test results and the penalties for unlawful disclosure to any person other than a designated physician, osteopathic physician, or HIV counselor.

As used in this part, unless the context requires otherwise:

"Medical emergency" means any disease-related situation that threatens life or limb.

"Medical personnel" means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient's contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director.

(b) Recording or maintaining information protected under this part in a separate portion of an individual's file which is clearly designated as confidential shall not be construed as a breach per se of that individual's confidentiality.

(c) No person shall be compelled to consent to the release of information protected under this part or to disclose whether the person has been tested for the presence of HIV infection in order to obtain or maintain housing, employment, or education.

(d) Any person who receives or comes into possession of any record or information released or disclosed pursuant to subsection (a) shall be subject to the same obligation of confidentiality as the party from whom the record or information

was received. [L 1986, c 161, pt of §1; am L 1987, c 238, §1; am L 1988, c 290, §§2, 3; am L 1989, c 377, §1; am L 1991, c 141, §2; am L 1992, c 162, §1; am L 1998, c 238, §4; am L 2009, c 11, §38; am L 2010, c 135, §7]

### **Cross References**

Advisory committees for infected health care workers, see §325-18.

" **§325-102 Civil penalty.** Any person or institution who wilfully violates any provision of this part shall be fined not less than \$1,000 nor more than \$10,000 for each violation plus reasonable court costs and attorney's fees as determined by the court, which penalty and costs shall be paid to the person or persons whose records were released. [L 1986, c 161, pt of §1; am L 1989, c 377, §2; am L 1992, c 162, §2]

" **[§325-103] Custodian of records.** No officer or employee of the department of health shall be examined in any civil, criminal, special, or other proceeding as to the existence or content of any individual's records retained by the department pursuant to this part, or as to the existence or contents of such reports received from any private physician or private health facility, without written consent of the affected individual. [L 1986, c 161, pt of §1]

" **§325-104 Responsibility to report.** Notwithstanding any other law to the contrary, no provision in this part shall be construed so as to diminish, limit, or eliminate the responsibility of any person to report HIV infection, ARC, or AIDS to the proper authorities pursuant to section 325-2. [L 1986, c 161, pt of §1; am L 1988, c 290, §4]

## **"[PART VII.] NEEDLE EXCHANGE PROGRAM**

### **Cross References**

Sale of sterile syringes for prevention of disease, see §325-21.

**[§325-111] Definitions.** As used in this part, unless the context otherwise requires:

"Department" means the department of health.

"Director" means the director of health.

"Participant" means an injection drug user who exchanges a sterile needle and syringe unit pursuant to the program.

"Program" means the sterile needle and syringe exchange program. [L 1992, c 152, pt of §2]

" **[\$325-112] Sterile needle and syringe exchange program established.** The director of health may establish a sterile needle and syringe exchange program. The program shall be administered by the director or the director's designees. The director is authorized to designate private providers of service to operate the program. [L 1992, c 152, pt of §2]

" **[\$325-113] Operation of the program.** (a) The program shall be operated for the purpose of:

- (1) Preventing the transmission of the human immunodeficiency virus, the hepatitis B virus, and other blood borne diseases; and
- (2) Providing injection drug users with referrals to appropriate health and social services.

(b) The program shall provide for maximum security of exchange sites and equipment, including a full accounting of the number of needles and syringes in use, the number in storage, and any other measure that may be required to control the use and dispersal of sterile needles and syringes; provided that a participant may exchange used needles and syringes at any exchange site if more than one site is available.

(c) The program shall provide for a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

(d) The program shall provide procedures for the screening of participants to prevent non-injection drug users from participating in the programs.

(e) The department shall keep records to identify and authorize persons employed by the department or its designees to have access to needles, syringes, or the program's records.

(f) The program shall include services to:

- (1) Educate the participant about the dangers of contracting HIV infection through needle-sharing practices; and
- (2) Offer substance abuse treatment referral and counseling services to all participants.

(g) The program shall compile research data on behavioral changes, enrollment in drug abuse treatment, counseling, and education programs, disease transmission, and other information that may be relevant and useful to assist in the planning and evaluation of efforts to combat the spread of blood borne diseases. [L 1992, c 152, pt of §2]

" **[\$325-114] Criminal liability.** (a) Exchanges under the sterile needle and syringe exchange program shall not constitute an offense under section 329-43.5 for the participant or for the employees of the department or its designees.

(b) Nothing in this part provides immunity from prosecution to any person for violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled substances, dangerous drugs, detrimental drugs, or harmful drugs. Nothing in this part provides immunity from prosecution to any person for violation of sections 329-41, 329-42, or 712-1241 through 712-1249.6. [L 1992, c 152, pt of §2]

" **[\$325-115] Program oversight committee.** The director shall appoint a sterile needle exchange program oversight committee to provide assistance and advice in the oversight of the program. The committee shall meet periodically with the director to monitor the progress and effectiveness of the program and to examine available data compiled by the program. [L 1992, c 152, pt of §2]

" **[\$325-116] Reports.** The department, on or before January 1 of each year, shall submit a report to the oversight committee. The report shall include:

- (1) Information as to the number of participants served and the number of needles and syringes distributed;
- (2) A demographic profile of the participants served, including but not limited to: age, sex, ethnicity, area of residence, occupation, types of drugs used, length of drug use, and frequency of injection;
- (3) Impact of the program on needle and syringe sharing and other high risk behavior;
- (4) Data on participants regarding HIV testing, counseling, drug treatment, and other social services, including referrals for HIV testing and counseling and for drug abuse treatment;
- (5) Impact on the transmission of HIV infection among injection drug users;
- (6) Impact on behaviors that caused participants to be at risk for HIV transmission such as frequency of drug use and needle sharing;
- (7) An assessment of the cost-effectiveness of the program versus direct and indirect costs of HIV infection; and
- (8) Information on the percentage of persons served through treatment programs for injection drug users funded through the department that were attributed to needle exchange referrals.

The report shall address the strengths and weaknesses of the program, the advisability of its continuation, amendments to the law, if appropriate, and other matters that may be helpful to the oversight committee in evaluating the program's efficacy. [L 1992, c 152, pt of §2]

" **§325-117 Termination of the program.** The director may terminate the program at any time if the program does not serve its intended purpose, presents a risk to the public health, safety, or welfare, or is no longer necessary. [L 1992, c 152, pt of §2]

**"[PART VIII. IMMUNIZATION REGISTRY]**

**§325-121 Definitions.** As used in this part:

"Health care provider" means a program, agency, clinic, health care center, physician licensed under the provisions of chapter 453, advanced practice registered nurse licensed under the provisions of chapter 457, pharmacist licensed under the provisions of chapter 461, physician's assistant licensed under the provisions of chapter 453, person authorized to practice medicine as a physician or physician's assistant, or nursing as an advanced practice registered nurse, in federal facilities located in the State, that administers immunizations in Hawaii, or any other person authorized to prescribe vaccinations in Hawaii.

"Health organization" means a health insurance company, fraternal benefit society governed by article 2 of chapter 432, mutual benefit society governed by article 1 of chapter 432, health care service plan or health maintenance organization governed by chapter 432D, or any other entity delivering or issuing for delivery in the State accident and health or sickness insurance as defined in section 431:1-205.

"Immunization assessment report" means any registry-produced report designed to provide a detailed listing of the immunizations an individual has received as well as immunizations that are currently due or overdue. Immunization assessment reports may also include aggregate reports produced to monitor and improve the health of a specific population or public health in general.

"Post-secondary school" means any adult education school, business school, trade school, community college, college, or university enrolling or registering students above the age of compulsory attendance.

"Registry" means the Hawaii immunization registry.

"School" means any child care center, preschool, day care center, day nursery, head start program, group child care home,

kindergarten, elementary, intermediate, middle, or secondary school that is responsible for ensuring student compliance with mandatory school immunization entrance requirements.

"Student" means any child or adult enrolled in any school or post-secondary school in the State. [L 2010, c 113, pt of §1; am L 2012, c 275, §1; am L 2015, c 35, §42]

" **[§325-122] Hawaii immunization registry; establishment and purposes.** The department of health may establish and maintain an immunization information system to be designated as the Hawaii immunization registry. The purposes of the registry shall be to maintain a single statewide repository of immunization records to aid, coordinate, and help promote efficient and cost-effective screening, prevention, and control of vaccine-preventable diseases, including pandemic influenza. [L 2010, c 113, pt of §1]

" **§325-123 Confidentiality and content of registry records.**

(a) All immunization records and reports made for the purposes of this part that directly or indirectly identify a person shall be kept confidential and shall not be disclosed by any person unless:

- (1) The person identified, the person's legal guardian, or in the case of a minor, the minor's parent or legal guardian consents;
- (2) Disclosure is deemed necessary by the director of health to carry out this chapter;
- (3) A court directs upon its determination that disclosure is necessary for the conduct of proceedings before it;
- (4) The disclosure is made between the person's health care provider and payor to obtain reimbursement for services rendered to the person; provided that disclosure shall be made only if the provider informs the person that a reimbursement claim will be made to the person's payor, the person is afforded an opportunity to pay the reimbursement directly, and the person does not pay; or
- (5) The department of health releases aggregate immunization information that does not disclose any identifying information of persons whose information is maintained in the registry.

(b) Registry information shall be limited to patient name, demographic information, and contact information; information specific to immunizations or medications received by the patient, including types, manufacturers, lot numbers, expiration dates, anatomical sites of administration, routes of administration, vaccine information statement publication dates,



doses, dates administered, the patient's history of vaccine-preventable diseases, and contraindications, precautions, adverse reactions to, or comments regarding immunizations or medications; and the name and contact information of the vaccination administrator or medication provider and the patient's health care provider.

(c) The department of health shall adopt administrative, physical, and technical measures to ensure the security of the registry; protect the confidentiality, integrity, and availability of registry data; and prevent unauthorized access to registry information. [L 2010, c 113, pt of §1; am L 2012, c 275, §2]

" **§325-124 Purposes for access to registry information; access not a disclosure.** (a) Notwithstanding section 325-123, it shall not be a disclosure for the persons listed in subsections (b), (c), (d), and (e) to have limited access to registry information for the purposes specified in each subsection.

(b) Registry information regarding specific individuals in the registry may be accessed by authorized health care providers who are treating, have treated, or have been assigned to treat those individuals; by authorized employees of these health care providers; and by authorized department of health personnel assigned to monitor the immunization or health status of those individuals for the purposes of:

- (1) Recording the administration of any vaccination, including pandemic influenza vaccine;
- (2) Determining the immunization history of a patient to deliver health care treatment accordingly;
- (3) Notifying individuals or parents or legal guardians of the need to schedule a visit for an immunization;
- (4) Generating official immunization records;
- (5) Ensuring compliance with mandatory immunization requirements;
- (6) Recording the distribution of prophylactic and treatment medications administered or dispensed in preparation for and in response to a potentially catastrophic disease threat; or
- (7) Complying with Hawaii vaccines for children and other state-provided vaccine programs' vaccine ordering and accountability policies and procedures.

(c) Registry information regarding specific individuals in the registry may be accessed by school and post-secondary school personnel authorized by the director of health, the superintendent of education, or the administrator of a private

or post-secondary school for the purpose of ensuring compliance with mandatory student immunization requirements.

(d) Registry information regarding specific individuals in the registry may be accessed by authorized health organizations that have been contracted to provide health insurance or health plan coverage for those individuals; provided that access is limited to only the enrollees, members, subscribers, and insureds of the authorized health organization, and for the purpose of producing immunization assessment reports by the authorized health organization.

(e) Registry information regarding specific individuals in the registry may be accessed by the department of health or agents of the department of health for the purposes of:

- (1) Ensuring compliance with mandatory immunization requirements;
- (2) Performing immunization-related quality improvement or quality assessment activities;
- (3) Complying with Hawaii vaccines for children and other state-provided vaccine programs' vaccine ordering and accountability policies and procedures;
- (4) Producing aggregate immunization assessment reports to monitor and improve public health;
- (5) Supporting efforts to prevent and manage outbreaks of vaccine-preventable diseases, including pandemic influenza;
- (6) Assisting the department of health in the event of a public health emergency; or
- (7) Managing and maintaining the Hawaii immunization registry system.

(f) The use of registry information accessed pursuant to this section shall be limited to the purposes for which access is granted. [L 2010, c 113, pt of §1; am L 2012, c 275, §3]

**"§325-125 Registry record requirements; duration of retention.** (a) The establishment of an individual's record in the registry shall not require the prior consent of a patient or the consent of a patient's parent or legal guardian in the case of a minor or dependent.

(b) The department of health shall make available to the patient or the patient's parent or legal guardian in the case of a minor or dependent, via the patient's health care provider or birthing hospital, a written description of the purpose and benefits of the registry as well as the procedure for refusing inclusion in the registry.

(c) A patient's, or in the case of a minor, the minor's parent's or legal guardian's, choice to refuse inclusion in the

registry shall be documented in writing on a form or in a format approved by the department of health.

(d) Each health care provider or birthing hospital shall maintain the records of refusal of inclusion and shall report any refusal to the department of health in a manner specified by rule.

(e) When a patient, or in the case of a minor, the minor's parent or legal guardian, chooses to refuse inclusion in the registry, minimal demographic information, including the patient's name and date of birth, shall be maintained within the registry system to identify the patient as having elected to refuse inclusion in the registry. If the patient has an existing record in the registry at the time that the refusal documentation is submitted, all other patient demographic and immunization information shall be removed from the registry.

(f) All registry authorized users shall make available for inspection by the department of health all medical records relating to patient demographic and immunization information recorded in the registry or documentation of the patient's, or in the case of a minor, the minor's parent's or legal guardian's refusal of inclusion in the registry for the purposes of performing registry-related quality improvement or quality assessment activities.

(g) Registry information for any individual included within the registry shall be retained as a part of the registry for twenty-five years after the last entry, except in the case of minors, whose records shall be retained during the period of minority plus twenty-five years after the minor reaches the age of majority. At the conclusion of the retention period, the data stored in the registry for that individual shall be archived. [L 2010, c 113, pt of §1; am L 2012, c 275, §4]

" **[§325-126] Civil and criminal liability.** (a) Authorized users of the registry shall not be subject to civil liability for damages by reason of:

- (1) Providing information to the registry in good faith;  
or
- (2) Accessing and using information from the registry in good faith for the purposes specified in section 325-124.

(b) Any person who intentionally or knowingly discloses registry information contrary to the confidentiality provisions of this part shall be guilty of a misdemeanor. [L 2010, c 113, pt of §1]