

ACT 377

H.B. NO. 1847

A Bill for an Act Relating to Communicable Diseases.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person which 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, 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 which identifies any individual who has HIV infection, ARC, or AIDS. [Such] 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 [information] records protected under this part shall be permitted under the following circumstances:

- (1) Release is made [of specific medical or epidemiological information] to the department of health [for statistical purposes in such a way that no person can be identified;] 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 are 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 [to the specific information to be released] of the person or persons [identified therein;] to whom the records pertain;
- (3) Release is made [of medical or epidemiological information] 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 to or by the department of health is necessary to protect the health and well-being of the general public; provided that release is made in such a way that no person can be identified, except as specified in paragraph (5);
- (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 the provisions of this part and to enforce rules adopted by the department of health concerning the control and treatment of HIV infection, ARC, and AIDS; provided that release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance of the provisions of this part;
- (6) Release is made for the purpose of enforcing the provisions of chapter 350;
- (7) 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;
- (8) Release is made by the patient's health care provider to another health care provider for the purpose of continued care [of] or treatment of the patient; or
- (9) Release is made pursuant to a court order, after an in camera review of the [information,] records, upon a showing of good cause by the party seeking the release of the records.

[For the purpose of] As used in this part, [the term "medical] unless the context requires otherwise;

"Medical emergency" means any disease-related situation which threatens life or limb[, and the term "medical"].

"Medical personnel" means any health care provider[, in the State, as provided in section 323D-2, [in the State,] 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."

SECTION 2. Section 325-102, Hawaii Revised Statutes, is amended to read as follows:

"[**§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 as determined by the court, which penalty and costs shall be paid to the person or persons whose records were released.”

SECTION 3. Section 325-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Anatomical gifts. A health care provider or organ donor center which procures, processes, distributes, or uses human body parts donated for scientific purposes may, without obtaining consent to the testing, test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended.
- (2) Research. The department, 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 HIV 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 HIV test sites established by the department provided that informed verbal consent is obtained.
- (4) Testing of body fluids or tissue which is ordered by a third party, so long as that third party, including but not limited to 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 provider prior to any release of the requested test results to the third party.
- (5) Patient diagnosis or treatment. 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 HIV status is necessary (A) to make a diagnosis, or (B) to 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 HIV has been performed pursuant to the provisions of this paragraph and the patient shall be provided the opportunity to obtain the test results and appropriate counseling.
- (6) Protection of health care workers. A treating physician may order an HIV 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 [providers] worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV 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 HIV has been performed pursuant to the provisions of this paragraph, and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 26, 1989.)