

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Clinical Laboratory and Blood Bank
5 Act is amended by adding Sections 2-134, 2-135, 2-136, and
6 2-137 and by changing Section 7-102 as follows:

7 (210 ILCS 25/2-134 new)

8 Sec. 2-134. Health care operations. "Health care
9 operations" has the meaning ascribed to it under HIPAA, as
10 specified in 45 CFR 164.501.

11 (210 ILCS 25/2-135 new)

12 Sec. 2-135. HIPAA. "HIPAA" means the Health Insurance
13 Portability and Accountability Act of 1996, Public Law 104-191,
14 as amended by the Health Information and Technology for
15 Economic and Clinical Health Act of 2009, Public Law 111-05,
16 and any subsequent amendments thereto and any regulations
17 promulgated thereunder.

18 (210 ILCS 25/2-136 new)

19 Sec. 2-136. Payment. "Payment" has the meaning ascribed to
20 it under HIPAA, as specified in 45 CFR 164.501.

1 (210 ILCS 25/2-137 new)

2 Sec. 2-137. Treatment. "Treatment" has the meaning
3 ascribed to it under HIPAA, as specified in 45 CFR 164.501.

4 (210 ILCS 25/7-102) (from Ch. 111 1/2, par. 627-102)

5 Sec. 7-102. Reports of test results.

6 (a) Clinical laboratory test results may be reported or
7 transmitted to:

8 (1) the licensed physician or other authorized person
9 who requested the test, their designee, or both;

10 (2) any health care provider who is providing treatment
11 to the patient;

12 (3) an electronic health information exchange for the
13 purposes of transmitting, using, or disclosing clinical
14 laboratory test results in any manner required or permitted
15 by HIPAA. ~~The result of a test shall be reported directly~~
16 ~~to the licensed physician or other authorized person who~~
17 ~~requested it.~~

18 (b) No interpretation, diagnosis, or prognosis or
19 suggested treatment shall appear on the laboratory report form,
20 except that a report made by a physician licensed to practice
21 medicine in Illinois, a dentist licensed in Illinois, or an
22 optometrist licensed in Illinois may include such information.

23 (c) Nothing in this Act prohibits the sharing of
24 information as authorized in Section 2.1 of the Department of
25 Public Health Act.

1 (Source: P.A. 98-185, eff. 1-1-14.)

2 Section 10. The AIDS Confidentiality Act is amended by
3 changing Sections 2, 3, 9, 10, and 16 and by adding Sections
4 9.1, 9.2, 9.3, 9.4, 9.4a, 9.6, 9.7, 9.8, 9.9, and 9.10 as
5 follows:

6 (410 ILCS 305/2) (from Ch. 111 1/2, par. 7302)

7 Sec. 2. The General Assembly finds that:

8 (1) The use of tests designed to reveal a condition
9 indicative of Human Immunodeficiency Virus (HIV) infection can
10 be a valuable tool in protecting the public health.

11 (2) Despite existing laws, regulations and professional
12 standards which require or promote the informed, voluntary and
13 confidential use of tests designed to reveal HIV infection,
14 many members of the public are deterred from seeking such
15 testing because they misunderstand the nature of the test or
16 fear that test results or other health information that reveals
17 their HIV status will be disclosed without their consent.

18 (3) The public health will be served by facilitating
19 informed, voluntary and confidential use of tests designed to
20 reveal HIV infection and appropriately protecting the health
21 information privacy of patients who are HIV-positive.

22 (4) The public health will also be served by expanding the
23 availability of informed, voluntary, and confidential HIV
24 testing and treatment and making HIV testing a routine part of

1 general medical care, as recommended by the United States
2 Centers for Disease Control and Prevention.

3 (5) The use of electronic health record systems and the
4 exchange of electronic patient records, both paper and
5 electronic, through secure means, including through secure
6 health information exchanges, should be encouraged to improve
7 patient health care and care coordination, facilitate public
8 health reporting, and control health care costs, among other
9 purposes.

10 (6) Limiting the use or disclosure of, and requests for,
11 protected health information to the minimum necessary to
12 accomplish an intended purpose, when being transmitted by or on
13 behalf of a covered entity under HIPAA, is a key component of
14 health information privacy. The disclosure of HIV-related
15 information, when allowed by this Act, shall be performed in
16 accordance with the minimum necessary standard when required
17 under HIPAA.

18 (Source: P.A. 95-7, eff. 6-1-08.)

19 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

20 Sec. 3. When used in this Act:

21 (a) "AIDS" means acquired immunodeficiency syndrome.

22 (b) "Authority" means the Illinois Health Information
23 Exchange Authority established pursuant to the Illinois Health
24 Information Exchange and Technology Act.

25 (c) "Business associate" has the meaning ascribed to it

1 under HIPAA, as specified in 45 CFR 160.103.

2 (d) "Covered entity" has the meaning ascribed to it under
3 HIPAA, as specified in 45 CFR 160.103.

4 (e) "De-identified information" means health information
5 that is not individually identifiable as described under HIPAA,
6 as specified in 45 CFR 164.514(b).

7 (f) ~~(a)~~ "Department" means the Illinois Department of
8 Public Health or its designated agents.

9 (g) "Disclosure" has the meaning ascribed to it under
10 HIPAA, as specified in 45 CFR 160.103.

11 (h) "Health care operations" has the meaning ascribed to it
12 under HIPAA, as specified in 45 CFR 164.501.

13 (i) "Health care professional" means (i) a licensed
14 physician, (ii) a physician assistant to whom the physician
15 assistant's supervising physician has delegated the provision
16 of AIDS and HIV-related health services, (iii) an advanced
17 practice registered nurse who has a written collaborative
18 agreement with a collaborating physician which authorizes the
19 provision of AIDS and HIV-related health services, (iv) a
20 licensed dentist, (v) a licensed podiatric physician, or (vi)
21 an individual certified to provide HIV testing and counseling
22 by a state or local public health department.

23 (j) "Health care provider" has the meaning ascribed to it
24 under HIPAA, as specified in 45 CFR 160.103.

25 ~~(b) "AIDS" means acquired immunodeficiency syndrome.~~

26 ~~(c) "HIV" means the Human Immunodeficiency Virus or any~~

1 ~~other identified causative agent of AIDS.~~

2 ~~(d) "Informed consent" means a written or verbal agreement~~
3 ~~by the subject of a test or the subject's legally authorized~~
4 ~~representative without undue inducement or any element of~~
5 ~~force, fraud, deceit, duress or other form of constraint or~~
6 ~~coercion, which entails at least the following pre test~~
7 ~~information:~~

8 ~~(1) a fair explanation of the test, including its~~
9 ~~purpose, potential uses, limitations and the meaning of its~~
10 ~~results; and~~

11 ~~(2) a fair explanation of the procedures to be~~
12 ~~followed, including the voluntary nature of the test, the~~
13 ~~right to withdraw consent to the testing process at any~~
14 ~~time, the right to anonymity to the extent provided by law~~
15 ~~with respect to participation in the test and disclosure of~~
16 ~~test results, and the right to confidential treatment of~~
17 ~~information identifying the subject of the test and the~~
18 ~~results of the test, to the extent provided by law.~~

19 ~~Pre test information may be provided in writing, verbally,~~
20 ~~or by video, electronic, or other means. The subject must be~~
21 ~~offered an opportunity to ask questions about the HIV test and~~
22 ~~decline testing. Nothing in this Act shall prohibit a health~~
23 ~~care provider from combining a form used to obtain informed~~
24 ~~consent for HIV testing with forms used to obtain written~~
25 ~~consent for general medical care or any other medical test or~~
26 ~~procedure provided that the forms make it clear that the~~

1 ~~subject may consent to general medical care, tests, or medical~~
2 ~~procedures without being required to consent to HIV testing and~~
3 ~~clearly explain how the subject may opt out of HIV testing.~~

4 (k) (e) "Health facility" means a hospital, nursing home,
5 blood bank, blood center, sperm bank, or other health care
6 institution, including any "health facility" as that term is
7 defined in the Illinois Finance Authority Act.

8 (l) "Health information exchange" or "HIE" means a health
9 information exchange or health information organization that
10 oversees and governs the electronic exchange of health
11 information that (i) is established pursuant to the Illinois
12 Health Information Exchange and Technology Act, or any
13 subsequent amendments thereto, and any administrative rules
14 adopted thereunder; (ii) has established a data sharing
15 arrangement with the Authority; or (iii) as of August 16, 2013,
16 was designated by the Authority Board as a member of, or was
17 represented on, the Authority Board's Regional Health
18 Information Exchange Workgroup; provided that such designation
19 shall not require the establishment of a data sharing
20 arrangement or other participation with the Illinois Health
21 Information Exchange or the payment of any fee. In certain
22 circumstances, in accordance with HIPAA, an HIE will be a
23 business associate.

24 (m) "Health oversight agency" has the meaning ascribed to
25 it under HIPAA, as specified in 45 CFR 164.501.

26 (n) "HIPAA" means the Health Insurance Portability and

1 Accountability Act of 1996, Public Law 104-191, as amended by
2 the Health Information Technology for Economic and Clinical
3 Health Act of 2009, Public Law 111-05, and any subsequent
4 amendments thereto and any regulations promulgated thereunder.

5 (o) "HIV" means the human immunodeficiency virus.

6 (p) "HIV-related information" means the identity of a
7 person upon whom an HIV test is performed, the results of an
8 HIV test, as well as diagnosis, treatment, and prescription
9 information that reveals a patient is HIV-positive, including
10 such information contained in a limited data set. "HIV-related
11 information" does not include information that has been
12 de-identified in accordance with HIPAA.

13 (q) "Informed consent" means a written or verbal agreement
14 by the subject of a test or the subject's legally authorized
15 representative without undue inducement or any element of
16 force, fraud, deceit, duress, or other form of constraint or
17 coercion, which entails at least the following pre-test
18 information:

19 (1) a fair explanation of the test, including its
20 purpose, potential uses, limitations, and the meaning of
21 its results;

22 (2) a fair explanation of the procedures to be
23 followed, including the voluntary nature of the test, the
24 right to withdraw consent to the testing process at any
25 time, the right to anonymity to the extent provided by law
26 with respect to participation in the test and disclosure of

1 test results, and the right to confidential treatment of
2 information identifying the subject of the test and the
3 results of the test, to the extent provided by law; and

4 (3) where the entity providing the test is a
5 participant in an HIE, a fair explanation that the results
6 of the patient's HIV test will be accessible through an HIE
7 and meaningful disclosure of the patient's opt-out right
8 under Section 9.6 of this Act.

9 Pre-test information may be provided in writing, verbally,
10 or by video, electronic, or other means. The subject must be
11 offered an opportunity to ask questions about the HIV test and
12 decline testing. Nothing in this Act shall prohibit a health
13 care provider from combining a form used to obtain informed
14 consent for HIV testing with forms used to obtain written
15 consent for general medical care or any other medical test or
16 procedure provided that the forms make it clear that the
17 subject may consent to general medical care, tests, or medical
18 procedures without being required to consent to HIV testing and
19 clearly explain how the subject may opt out of HIV testing.

20 (r) "Limited data set" has the meaning ascribed to it under
21 HIPAA, as described in 45 CFR 164.514(e) (2).

22 (s) "Minimum necessary" means the HIPAA standard for using,
23 disclosing, and requesting protected health information found
24 in 45 CFR 164.502(b) and 164.514(d).

25 (t) "Organized health care arrangement" has the meaning
26 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

1 (u) "Patient safety activities" has the meaning ascribed to
2 it under 42 CFR 3.20.

3 (v) "Payment" has the meaning ascribed to it under HIPAA,
4 as specified in 45 CFR 164.501.

5 (w) "Person" includes any natural person, partnership,
6 association, joint venture, trust, governmental entity, public
7 or private corporation, health facility, or other legal entity.

8 (x) "Protected health information" has the meaning
9 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

10 (y) "Research" has the meaning ascribed to it under HIPAA,
11 as specified in 45 CFR 164.501.

12 (z) "State agency" means an instrumentality of the State of
13 Illinois and any instrumentality of another state that,
14 pursuant to applicable law or a written undertaking with an
15 instrumentality of the State of Illinois, is bound to protect
16 the privacy of HIV-related information of Illinois persons.

17 ~~(f) "Health care provider" means any health care~~
18 ~~professional, nurse, paramedic, psychologist or other person~~
19 ~~providing medical, nursing, psychological, or other health~~
20 ~~care services of any kind.~~

21 ~~(f-5) "Health care professional" means (i) a licensed~~
22 ~~physician, (ii) a physician assistant to whom the physician~~
23 ~~assistant's supervising physician has delegated the provision~~
24 ~~of AIDS and HIV-related health services, (iii) an advanced~~
25 ~~practice registered nurse who has a written collaborative~~
26 ~~agreement with a collaborating physician which authorizes the~~

1 ~~provision of AIDS and HIV-related health services, (iv) a~~
2 ~~licensed dentist, (v) a licensed podiatric physician, or (vi)~~
3 ~~an individual certified to provide HIV testing and counseling~~
4 ~~by a state or local public health department.~~

5 (aa) ~~(g)~~ "Test" or "HIV test" means a test to determine the
6 presence of the antibody or antigen to HIV, or of HIV
7 infection.

8 (bb) "Treatment" has the meaning ascribed to it under
9 HIPAA, as specified in 45 CFR 164.501.

10 (cc) "Use" has the meaning ascribed to it under HIPAA, as
11 specified in 45 CFR 160.103, where context dictates.

12 ~~(h) "Person" includes any natural person, partnership,~~
13 ~~association, joint venture, trust, governmental entity, public~~
14 ~~or private corporation, health facility or other legal entity.~~

15 (Source: P.A. 98-214, eff. 8-9-13.)

16 (410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

17 Sec. 9. (1) No person may disclose or be compelled to
18 disclose HIV-related information ~~the identity of any person~~
19 ~~upon whom a test is performed, or the results of such a test in~~
20 ~~a manner which permits identification of the subject of the~~
21 ~~test~~, except to the following persons:

22 (a) The subject of an HIV ~~the~~ test or the subject's legally
23 authorized representative. A physician may notify the spouse of
24 the test subject, if the test result is positive and has been
25 confirmed pursuant to rules adopted by the Department, provided

1 that the physician has first sought unsuccessfully to persuade
2 the patient to notify the spouse or that, a reasonable time
3 after the patient has agreed to make the notification, the
4 physician has reason to believe that the patient has not
5 provided the notification. This paragraph shall not create a
6 duty or obligation under which a physician must notify the
7 spouse of the test results, nor shall such duty or obligation
8 be implied. No civil liability or criminal sanction under this
9 Act shall be imposed for any disclosure or non-disclosure of a
10 test result to a spouse by a physician acting in good faith
11 under this paragraph. For the purpose of any proceedings, civil
12 or criminal, the good faith of any physician acting under this
13 paragraph shall be presumed.

14 (b) Any person designated in a legally effective
15 authorization for release of the HIV-related information ~~test~~
16 ~~results~~ executed by the subject of the HIV-related information
17 ~~test~~ or the subject's legally authorized representative.

18 (c) An authorized agent or employee of a health facility or
19 health care provider if the health facility or health care
20 provider itself is authorized to obtain the test results, the
21 agent or employee provides patient care or handles or processes
22 specimens of body fluids or tissues, and the agent or employee
23 has a need to know such information.

24 (d) The Department and local health authorities serving a
25 population of over 1,000,000 residents or other local health
26 authorities as designated by the Department, in accordance with

1 rules for reporting, preventing, and controlling the spread of
2 disease and the conduct of public health surveillance, public
3 health investigations, and public health interventions, as
4 otherwise provided by State law. The Department, local health
5 authorities, and authorized representatives shall not disclose
6 HIV test results and HIV-related information ~~and records held~~
7 ~~by them relating to known or suspected cases of AIDS or HIV~~
8 ~~infection~~, publicly or in any action of any kind in any court
9 or before any tribunal, board, or agency. HIV test results and
10 HIV-related information ~~AIDS and HIV infection data~~ shall be
11 protected from disclosure in accordance with the provisions of
12 Sections 8-2101 through 8-2105 of the Code of Civil Procedure.

13 (e) A health facility, ~~or~~ health care provider, or health
14 care professional which procures, processes, distributes or
15 uses: (i) a human body part from a deceased person with respect
16 to medical information regarding that person; or (ii) semen
17 provided prior to the effective date of this Act for the
18 purpose of artificial insemination.

19 (f) Health facility staff committees for the purposes of
20 conducting program monitoring, program evaluation or service
21 reviews.

22 (f-5) A court in accordance with the provisions of Section
23 12-5.01 of the Criminal Code of 2012.

24 (g) (Blank).

25 (h) Any health care provider or employee of a health
26 facility, and any firefighter or EMT-A, EMT-P, or EMT-I,

1 involved in an accidental direct skin or mucous membrane
2 contact with the blood or bodily fluids of an individual which
3 is of a nature that may transmit HIV, as determined by a
4 physician in his medical judgment.

5 (i) Any law enforcement officer, as defined in subsection
6 (c) of Section 7, involved in the line of duty in a direct skin
7 or mucous membrane contact with the blood or bodily fluids of
8 an individual which is of a nature that may transmit HIV, as
9 determined by a physician in his medical judgment.

10 (j) A temporary caretaker of a child taken into temporary
11 protective custody by the Department of Children and Family
12 Services pursuant to Section 5 of the Abused and Neglected
13 Child Reporting Act, as now or hereafter amended.

14 (k) In the case of a minor under 18 years of age whose test
15 result is positive and has been confirmed pursuant to rules
16 adopted by the Department, the health care professional
17 ~~provider~~ who ordered the test shall make a reasonable effort to
18 notify the minor's parent or legal guardian if, in the
19 professional judgment of the health care professional
20 ~~provider~~, notification would be in the best interest of the
21 child and the health care professional ~~provider~~ has first
22 sought unsuccessfully to persuade the minor to notify the
23 parent or legal guardian or a reasonable time after the minor
24 has agreed to notify the parent or legal guardian, the health
25 care professional ~~provider~~ has reason to believe that the minor
26 has not made the notification. This subsection shall not create

1 a duty or obligation under which a health care professional
2 ~~provider~~ must notify the minor's parent or legal guardian of
3 the test results, nor shall a duty or obligation be implied. No
4 civil liability or criminal sanction under this Act shall be
5 imposed for any notification or non-notification of a minor's
6 test result by a health care professional ~~provider~~ acting in
7 good faith under this subsection. For the purpose of any
8 proceeding, civil or criminal, the good faith of any health
9 care professional ~~provider~~ acting under this subsection shall
10 be presumed.

11 (2) All information and records held by a State agency,
12 local health authority, or health oversight agency pertaining
13 to HIV-related information shall be strictly confidential and
14 exempt from copying and inspection under the Freedom of
15 Information Act. The information and records shall not be
16 released or made public by the State agency, local health
17 authority, or health oversight agency, shall not be admissible
18 as evidence nor discoverable in any action of any kind in any
19 court or before any tribunal, board, agency, or person, and
20 shall be treated in the same manner as the information and
21 those records subject to the provisions of Part 21 of Article
22 VIII of the Code of Civil Procedure, except under the following
23 circumstances:

24 (A) when made with the written consent of all persons
25 to whom the information pertains; or

26 (B) when authorized by Section 5-4-3 of the Unified

1 Code of Corrections.

2 Disclosure shall be limited to those who have a need to
3 know the information, and no additional disclosures may be
4 made.

5 (Source: P.A. 96-328, eff. 8-11-09; 97-1046, eff. 8-21-12;
6 97-1150, eff. 1-25-13.)

7 (410 ILCS 305/9.1 new)

8 Sec. 9.1. Uses and disclosures for treatment, payment, and
9 health care operations. Notwithstanding Sections 9 and 10 of
10 this Act, a covered entity may, without a patient's consent:

11 (1) use or disclose HIV-related information for its own
12 treatment, payment, or health care operations;

13 (2) disclose HIV-related information for treatment
14 activities of a health care provider;

15 (3) disclose HIV-related information to another
16 covered entity or health care provider for the payment
17 activities of the entity that receives the information;

18 (4) disclose HIV-related information to another
19 covered entity for health care operations activities of the
20 entity that receives the information, if each entity has or
21 had a relationship with the individual who is the subject
22 of the HIV-related information being requested, the
23 HIV-related information pertains to such relationship, and
24 the disclosure is for the purpose of (A) conducting quality
25 assessment and improvement activities, including outcomes

1 evaluation and development of clinical guidelines,
2 provided that the obtaining of generalizable knowledge is
3 not the primary purpose of any studies resulting from such
4 activities; patient safety activities; population-based
5 activities relating to improving health or reducing health
6 care costs, protocol development, case management, and
7 care coordination, contacting of health care providers and
8 patients with information about treatment alternatives;
9 and related functions that do not include treatment; (B)
10 reviewing the competence or qualifications of health care
11 professionals, evaluating practitioner and provider
12 performance, health plan performance, conducting training
13 programs in which students, trainees, or practitioners in
14 areas of health care learn under supervision to practice or
15 improve their skills as health care providers, training of
16 non-health care professionals, accreditation,
17 certification, licensing, or credentialing activities; or
18 (C) health care fraud and abuse detection or compliance;
19 and

20 (5) disclose HIV-related information to other
21 participants in an organized health care arrangement in
22 which the covered entity is also a participant for any
23 health care operations activities of the organized health
24 care arrangement.

25 (410 ILCS 305/9.2 new)

1 Sec. 9.2. Uses and disclosures for health oversight
2 activities.

3 (a) Notwithstanding Sections 9 and 10 of this Act, a
4 covered entity may disclose HIV-related information, without a
5 patient's consent, to a health oversight agency for health
6 oversight activities authorized by law, including audits,
7 civil, administrative, or criminal investigations;
8 inspections; licensure or disciplinary actions; civil
9 administrative or criminal proceedings or actions; or other
10 activities necessary for appropriate oversight of (i) the
11 health care system; (ii) government benefit programs for which
12 health information is relevant to beneficiary eligibility;
13 (iii) entities subject to government regulatory programs for
14 which health information is necessary for determining
15 compliance with program standards; or (iv) entities subject to
16 civil rights laws for which health information is necessary for
17 determining compliance.

18 (b) For purposes of the disclosures permitted by this
19 Section, a health oversight activity does not include an
20 investigation or other activity in which the individual is the
21 subject of the investigation or activity and such investigation
22 or other activity does not arise out of and is not directly
23 related to (i) the receipt of health care; (ii) a claim for
24 public benefits related to health; or (iii) qualification for,
25 or receipt of, public benefits or services when a patient's
26 health is integral to the claim for public benefits or

1 services, except that, if a health oversight activity or
2 investigation is conducted in conjunction with an oversight
3 activity or investigation relating to a claim for public
4 benefits not related to health, the joint activity or
5 investigation is considered a health oversight activity for
6 purposes of this Section.

7 (c) If a covered entity is also a health oversight agency,
8 the covered entity may use HIV-related information for health
9 oversight activities permitted by this Section.

10 (410 ILCS 305/9.3 new)

11 Sec. 9.3. Business associates.

12 (a) Notwithstanding Sections 9 and 10 of this Act, a
13 covered entity may, without a patient's consent, disclose a
14 patient's HIV-related information to a business associate and
15 may allow a business associate to create, receive, maintain, or
16 transmit protected health information on its behalf, if the
17 covered entity obtains, through a written contract or other
18 written agreement or arrangement that meets the applicable
19 requirements of 45 CFR 164.504(e), satisfactory assurance that
20 the business associate will appropriately safeguard the
21 information. A covered entity is not required to obtain such
22 satisfactory assurances from a business associate that is a
23 subcontractor.

24 (b) A business associate may disclose protected health
25 information to a business associate that is a subcontractor and

1 may allow the subcontractor to create, receive, maintain, or
2 transmit protected health information on its behalf, if the
3 business associate obtains satisfactory assurances, in
4 accordance with 45 CFR 164.504(e)(1)(i), that the
5 subcontractor will appropriately safeguard the information.

6 (410 ILCS 305/9.4 new)

7 Sec. 9.4. Use and disclosure of information to an HIE.
8 Notwithstanding the provisions of Sections 9 and 10 of this
9 Act, a covered entity may, without a patient's consent,
10 disclose the identity of any patient upon whom a test is
11 performed and such patient's HIV-related information from a
12 patient's record to an HIE if the disclosure is a required or
13 permitted disclosure to a business associate or is a disclosure
14 otherwise required or permitted under this Act. An HIE may,
15 without a patient's consent, use or disclose such information
16 to the extent it is allowed to use or disclose such information
17 as a business associate in compliance with 45 CFR 164.502(e) or
18 for such other purposes as are specifically allowed under this
19 Act.

20 (410 ILCS 305/9.4a new)

21 Sec. 9.4a. Other disclosures. Nothing in this Act shall be
22 construed (1) to limit the use of an HIE to facilitate
23 disclosures permitted by this Act or (2) to allow for the
24 disclosure of information from a patient's record to law

1 enforcement or for law enforcement purposes.

2 (410 ILCS 305/9.6 new)

3 Sec. 9.6. HIE opt out. Section 9.6 of the Mental Health and
4 Developmental Disabilities Confidentiality Act is incorporated
5 herein by reference. In addition to the requirements set out in
6 Section 9.6 of the Mental Health and Developmental Disabilities
7 Confidentiality Act, at the time of a patient's first encounter
8 for HIV-related care with a health care provider, health care
9 professional, or health facility that participates in an HIE,
10 or, in the event of a medical emergency that makes it
11 impossible, as soon thereafter as is practicable, the patient
12 shall receive meaningful disclosure regarding the HIE in which
13 the health care provider, health care professional, or health
14 facility participates and shall be afforded an opportunity to
15 opt out of disclosure of the patient's health information
16 through the HIE.

17 (410 ILCS 305/9.7 new)

18 Sec. 9.7. Record locator service to support HIE. Section
19 9.9 of the Mental Health and Developmental Disabilities and
20 Confidentiality Act is herein incorporated by reference.

21 (410 ILCS 305/9.8 new)

22 Sec. 9.8. Disclosure of limited data sets and de-identified
23 information. Notwithstanding the provisions of Sections 9 and

1 10 of this Act:

2 (1) a covered entity may, without a patient's consent,
3 create, use, and disclose a limited data set using
4 HIV-related information from a patient's record or
5 disclose HIV-related information from a patient's record
6 to a business associate for the purpose of establishing a
7 limited data set; the creation, use, and disclosure of such
8 a limited data set must comply with the requirements set
9 forth under HIPAA;

10 (2) a covered entity may, without a patient's consent,
11 create, use, and disclose de-identified information using
12 information from a patient's record that is subject to this
13 Act or disclose HIV-related information from a patient's
14 record to a business associate for the purpose of
15 de-identifying the information; the creation, use, and
16 disclosure of such de-identified data must comply with the
17 requirements set forth under HIPAA. A covered entity or a
18 business associate may disclose information that is
19 de-identified; and

20 (3) the recipient of de-identified information shall
21 not re-identify de-identified information using any public
22 or private data source.

23 (410 ILCS 305/9.9 new)

24 Sec. 9.9. Research. HIV-related information may be
25 disclosed for research in accordance with the requirements set

1 forth under HIPAA.

2 (410 ILCS 305/9.10 new)

3 Sec. 9.10. Minimum necessary. When using and disclosing
4 HIV-related information under this Act, a covered entity shall
5 do so in accordance with the minimum necessary standard under
6 HIPAA.

7 (410 ILCS 305/10) (from Ch. 111 1/2, par. 7310)

8 Sec. 10. No person to whom the results of a test have been
9 disclosed may disclose the test results to another person
10 except as authorized under this Act ~~by Section 9.~~

11 (Source: P.A. 85-677; 85-679.)

12 (410 ILCS 305/16) (from Ch. 111 1/2, par. 7316)

13 Sec. 16. The Department shall promulgate rules and
14 regulations concerning implementation and enforcement of this
15 Act, except to the extent that this Act delegates to the
16 Authority the promulgation or adoption of any rules,
17 regulations, standards, or contractual obligations. The rules
18 and regulations promulgated by the Department pursuant to this
19 Act may include procedures for taking appropriate action with
20 regard to health care facilities or health care providers which
21 violate this Act or the regulations promulgated hereunder. The
22 provisions of The Illinois Administrative Procedure Act shall
23 apply to all administrative rules and procedures of the

1 Department pursuant to this Act, except that in case of
2 conflict between The Illinois Administrative Procedure Act and
3 this Act, the provisions of this Act shall control. The
4 Department shall conduct training, technical assistance, and
5 outreach activities, as needed, to implement routine HIV
6 testing in healthcare medical settings.

7 (Source: P.A. 95-7, eff. 6-1-08.)

8 Section 15. The Genetic Information Privacy Act is amended
9 by changing Sections 5, 10, 20, 25, 30, 35, and 40 and by
10 adding Sections 31, 31.1, 31.2, 31.3, 31.4, 31.5, 31.6, 31.7,
11 31.8, 31.9, and 31.10 as follows:

12 (410 ILCS 513/5)

13 Sec. 5. Legislative findings; intent. The General Assembly
14 finds that:

15 (1) The use of genetic testing can be valuable to an
16 individual.

17 (2) Despite existing laws, regulations, and
18 professional standards which require or promote voluntary
19 and confidential use of genetic testing information, many
20 members of the public are deterred from seeking genetic
21 testing because of fear that test results will be disclosed
22 without consent in a manner not permitted by law or will be
23 used in a discriminatory manner.

24 (3) The public health will be served by facilitating

1 voluntary and confidential nondiscriminatory use of
2 genetic testing information.

3 (4) The use of electronic health record systems and the
4 exchange of patient records, both paper and electronic,
5 through secure means, including through secure health
6 information exchanges, should be encouraged to improve
7 patient health care and care coordination, facilitate
8 public health reporting, and control health care costs,
9 among other purposes.

10 (5) Limiting the use or disclosure of, and requests
11 for, protected health information to the minimum necessary
12 to accomplish an intended purpose, when being transmitted
13 by or on behalf of a covered entity under HIPAA, is a key
14 component of health information privacy. The disclosure of
15 genetic information, when allowed by this Act, shall be
16 performed in accordance with the minimum necessary
17 standard when required under HIPAA.

18 (Source: P.A. 90-25, eff. 1-1-98.)

19 (410 ILCS 513/10)

20 Sec. 10. Definitions. As used in this Act:

21 "Authority" means the Illinois Health Information Exchange
22 Authority established pursuant to the Illinois Health
23 Information Exchange and Technology Act.

24 "Business associate" has the meaning ascribed to it under
25 HIPAA, as specified in 45 CFR 160.103.

1 "Covered entity" has the meaning ascribed to it under
2 HIPAA, as specified in 45 CFR 160.103.

3 "De-identified information" means health information that
4 is not individually identifiable as described under HIPAA, as
5 specified in 45 CFR 164.514 (b).

6 "Disclosure" has the meaning ascribed to it under HIPAA, as
7 specified in 45 CFR 160.103.

8 "Employer" means the State of Illinois, any unit of local
9 government, and any board, commission, department,
10 institution, or school district, any party to a public
11 contract, any joint apprenticeship or training committee
12 within the State, and every other person employing employees
13 within the State.

14 "Employment agency" means both public and private
15 employment agencies and any person, labor organization, or
16 labor union having a hiring hall or hiring office regularly
17 undertaking, with or without compensation, to procure
18 opportunities to work, or to procure, recruit, refer, or place
19 employees.

20 "Family member" means, with respect to an individual, (i)
21 the spouse of the individual; (ii) a dependent child of the
22 individual, including a child who is born to or placed for
23 adoption with the individual; (iii) any other person qualifying
24 as a covered dependent under a managed care plan; and (iv) all
25 other individuals related by blood or law to the individual or
26 the spouse or child described in subsections (i) through (iii)

1 of this definition.

2 "Genetic information" has the meaning ascribed to it under
3 HIPAA, as specified in 45 CFR 160.103. ~~means, with respect to~~
4 ~~any individual, information about (i) the individual's genetic~~
5 ~~tests; (ii) the genetic tests of a family member of the~~
6 ~~individual; and (iii) the manifestation or possible~~
7 ~~manifestation of a disease or disorder in a family member of~~
8 ~~the individual. Genetic information does not include~~
9 ~~information about the sex or age of any individual.~~

10 "Genetic monitoring" means the periodic examination of
11 employees to evaluate acquired modifications to their genetic
12 material, such as chromosomal damage or evidence of increased
13 occurrence of mutations that may have developed in the course
14 of employment due to exposure to toxic substances in the
15 workplace in order to identify, evaluate, and respond to
16 effects of or control adverse environmental exposures in the
17 workplace.

18 "Genetic services" has the meaning ascribed to it under
19 HIPAA, as specified in 45 CFR 160.103 ~~means a genetic test,~~
20 ~~genetic counseling, including obtaining, interpreting, or~~
21 ~~assessing genetic information, or genetic education.~~

22 "Genetic testing" and "genetic test" have the meaning
23 ascribed to "genetic test" under HIPAA, as specified in 45 CFR
24 160.103. ~~mean a test or analysis of human genes, gene products,~~
25 ~~DNA, RNA, chromosomes, proteins, or metabolites that detect~~
26 ~~genotypes, mutations, chromosomal changes, abnormalities, or~~

1 ~~deficiencies, including carrier status, that (i) are linked to~~
2 ~~physical or mental disorders or impairments, (ii) indicate a~~
3 ~~susceptibility to illness, disease, impairment, or other~~
4 ~~disorders, whether physical or mental, or (iii) demonstrate~~
5 ~~genetic or chromosomal damage due to environmental factors.~~
6 ~~Genetic testing and genetic tests do not include routine~~
7 ~~physical measurements; chemical, blood and urine analyses that~~
8 ~~are widely accepted and in use in clinical practice; tests for~~
9 ~~use of drugs; tests for the presence of the human~~
10 ~~immunodeficiency virus; analyses of proteins or metabolites~~
11 ~~that do not detect genotypes, mutations, chromosomal changes,~~
12 ~~abnormalities, or deficiencies; or analyses of proteins or~~
13 ~~metabolites that are directly related to a manifested disease,~~
14 ~~disorder, or pathological condition that could reasonably be~~
15 ~~detected by a health care professional with appropriate~~
16 ~~training and expertise in the field of medicine involved.~~

17 "Health care operations" has the meaning ascribed to it
18 under HIPAA, as specified in 45 CFR 164.501.

19 "Health care professional" means (i) a licensed physician,
20 (ii) a physician assistant to whom the physician assistant's
21 supervising physician has delegated the provision of genetic
22 testing or genetic counseling-related services, (iii) an
23 advanced practice registered nurse who has a written
24 collaborative agreement with a collaborating physician which
25 authorizes the provision of genetic testing or genetic
26 counseling-related health services, (iv) a licensed dentist,

1 (v) a licensed podiatrist, (vi) a licensed genetic counselor,
2 or (vii) an individual certified to provide genetic testing by
3 a state or local public health department.

4 "Health care provider" has the meaning ascribed to it under
5 HIPAA, as specified in 45 CFR 160.103.

6 "Health facility" means a hospital, blood bank, blood
7 center, sperm bank, or other health care institution, including
8 any "health facility" as that term is defined in the Illinois
9 Finance Authority Act.

10 "Health information exchange" or "HIE" means a health
11 information exchange or health information organization that
12 exchanges health information electronically that (i) is
13 established pursuant to the Illinois Health Information
14 Exchange and Technology Act, or any subsequent amendments
15 thereto, and any administrative rules promulgated thereunder;
16 (ii) has established a data sharing arrangement with the
17 Authority; or (iii) as of August 16, 2013, was designated by
18 the Authority Board as a member of, or was represented on, the
19 Authority Board's Regional Health Information Exchange
20 Workgroup; provided that such designation shall not require the
21 establishment of a data sharing arrangement or other
22 participation with the Illinois Health Information Exchange or
23 the payment of any fee. In certain circumstances, in accordance
24 with HIPAA, an HIE will be a business associate.

25 "Health oversight agency" has the meaning ascribed to it
26 under HIPAA, as specified in 45 CFR 164.501.

1 "HIPAA" means the Health Insurance Portability and
2 Accountability Act of 1996, Public Law 104-191, as amended by
3 the Health Information Technology for Economic and Clinical
4 Health Act of 2009, Public Law 111-05, and any subsequent
5 amendments thereto and any regulations promulgated thereunder.

6 "Insurer" means (i) an entity that is subject to the
7 jurisdiction of the Director of Insurance ~~transacts an~~
8 ~~insurance business~~ and (ii) a managed care plan.

9 "Labor organization" includes any organization, labor
10 union, craft union, or any voluntary unincorporated
11 association designed to further the cause of the rights of
12 union labor that is constituted for the purpose, in whole or in
13 part, of collective bargaining or of dealing with employers
14 concerning grievances, terms or conditions of employment, or
15 apprenticeships or applications for apprenticeships, or of
16 other mutual aid or protection in connection with employment,
17 including apprenticeships or applications for apprenticeships.

18 "Licensing agency" means a board, commission, committee,
19 council, department, or officers, except a judicial officer, in
20 this State or any political subdivision authorized to grant,
21 deny, renew, revoke, suspend, annul, withdraw, or amend a
22 license or certificate of registration.

23 "Limited data set" has the meaning ascribed to it under
24 HIPAA, as described in 45 CFR 164.514(e) (2).

25 ~~"Labor organization" includes any organization, labor~~
26 ~~union, craft union, or any voluntary unincorporated~~

1 ~~association designed to further the cause of the rights of~~
2 ~~union labor that is constituted for the purpose, in whole or in~~
3 ~~part, of collective bargaining or of dealing with employers~~
4 ~~concerning grievances, terms or conditions of employment, or~~
5 ~~apprenticeships or applications for apprenticeships, or of~~
6 ~~other mutual aid or protection in connection with employment,~~
7 ~~including apprenticeships or applications for apprenticeships.~~

8 "Managed care plan" means a plan that establishes,
9 operates, or maintains a network of health care providers that
10 have entered into agreements with the plan to provide health
11 care services to enrollees where the plan has the ultimate and
12 direct contractual obligation to the enrollee to arrange for
13 the provision of or pay for services through:

14 (1) organizational arrangements for ongoing quality
15 assurance, utilization review programs, or dispute
16 resolution; or

17 (2) financial incentives for persons enrolled in the
18 plan to use the participating providers and procedures
19 covered by the plan.

20 A managed care plan may be established or operated by any
21 entity including a licensed insurance company, hospital or
22 medical service plan, health maintenance organization, limited
23 health service organization, preferred provider organization,
24 third party administrator, or an employer or employee
25 organization.

26 "Minimum necessary" means HIPAA's standard for using,

1 disclosing, and requesting protected health information found
2 in 45 CFR 164.502(b) and 164.514(d).

3 "Nontherapeutic purpose" means a purpose that is not
4 intended to improve or preserve the life or health of the
5 individual whom the information concerns.

6 "Organized health care arrangement" has the meaning
7 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

8 "Patient safety activities" has the meaning ascribed to it
9 under 42 CFR 3.20.

10 "Payment" has the meaning ascribed to it under HIPAA, as
11 specified in 45 CFR 164.501.

12 "Person" includes any natural person, partnership,
13 association, joint venture, trust, governmental entity, public
14 or private corporation, health facility, or other legal entity.

15 "Protected health information" has the meaning ascribed to
16 it under HIPAA, as specified in 45 CFR 164.103.

17 "Research" has the meaning ascribed to it under HIPAA, as
18 specified in 45 CFR 164.501.

19 "State agency" means an instrumentality of the State of
20 Illinois and any instrumentality of another state which
21 pursuant to applicable law or a written undertaking with an
22 instrumentality of the State of Illinois is bound to protect
23 the privacy of genetic information of Illinois persons.

24 "Treatment" has the meaning ascribed to it under HIPAA, as
25 specified in 45 CFR 164.501.

26 "Use" has the meaning ascribed to it under HIPAA, as

1 specified in 45 CFR 160.103, where context dictates.

2 (Source: P.A. 95-927, eff. 1-1-09.)

3 (410 ILCS 513/20)

4 Sec. 20. Use of genetic testing information for insurance
5 purposes.

6 (a) An insurer may not seek information derived from
7 genetic testing for use in connection with a policy of accident
8 and health insurance. Except as provided in subsection (c) ~~(b)~~,
9 an insurer that receives information derived from genetic
10 testing, regardless of the source of that information, may not
11 use the information for a nontherapeutic purpose as it relates
12 to a policy of accident and health insurance.

13 (b) An insurer shall not use or disclose protected health
14 information that is genetic information for underwriting
15 purposes. For purposes of this Section, "underwriting
16 purposes" means, with respect to an insurer:

17 (1) rules for, or determination of, eligibility
18 (including enrollment and continued eligibility) for, or
19 determination of, benefits under the plan, coverage, or
20 policy (including changes in deductibles or other
21 cost-sharing mechanisms in return for activities such as
22 completing a health risk assessment or participating in a
23 wellness program);

24 (2) the computation of premium or contribution amounts
25 under the plan, coverage, or policy (including discounts,

1 rebates, payments in kind, or other premium differential
2 mechanisms in return for activities, such as completing a
3 health risk assessment or participating in a wellness
4 program);

5 (3) the application of any pre-existing condition
6 exclusion under the plan, coverage, or policy; and

7 (4) other activities related to the creation, renewal,
8 or replacement of a contract of health insurance or health
9 benefits.

10 "Underwriting purposes" does not include determinations of
11 medical appropriateness where an individual seeks a benefit
12 under the plan, coverage, or policy.

13 This subsection (b) does not apply to insurers that are
14 issuing a long-term care policy, excluding a nursing home fixed
15 indemnity plan.

16 (c) ~~(b)~~ An insurer may consider the results of genetic
17 testing in connection with a policy of accident and health
18 insurance if the individual voluntarily submits the results and
19 the results are favorable to the individual.

20 (d) ~~(e)~~ An insurer that possesses information derived from
21 genetic testing may not release the information to a third
22 party, except as specified in this Act ~~Section 30~~.

23 (Source: P.A. 92-430, eff. 8-17-01.)

24 (410 ILCS 513/25)

25 Sec. 25. Use of genetic testing information by employers.

1 (a) An employer, employment agency, labor organization,
2 and licensing agency shall treat genetic testing and genetic
3 information in such a manner that is consistent with the
4 requirements of federal law, including but not limited to the
5 Genetic Information Nondiscrimination Act of 2008, the
6 Americans with Disabilities Act, Title VII of the Civil Rights
7 Act of 1964, the Family and Medical Leave Act of 1993, the
8 Occupational Safety and Health Act of 1970, the Federal Mine
9 Safety and Health Act of 1977, or the Atomic Energy Act of
10 1954.

11 (b) An employer may release genetic testing information
12 only in accordance with ~~Sections 15 and 30 of~~ this Act.

13 (c) An employer, employment agency, labor organization,
14 and licensing agency shall not directly or indirectly do any of
15 the following:

16 (1) solicit, request, require or purchase genetic
17 testing or genetic information of a person or a family
18 member of the person, or administer a genetic test to a
19 person or a family member of the person as a condition of
20 employment, preemployment application, labor organization
21 membership, or licensure;

22 (2) affect the terms, conditions, or privileges of
23 employment, preemployment application, labor organization
24 membership, or licensure, or terminate the employment,
25 labor organization membership, or licensure of any person
26 because of genetic testing or genetic information with

1 respect to the employee or family member, or information
2 about a request for or the receipt of genetic testing by
3 such employee or family member of such employee;

4 (3) limit, segregate, or classify employees in any way
5 that would deprive or tend to deprive any employee of
6 employment opportunities or otherwise adversely affect the
7 status of the employee as an employee because of genetic
8 testing or genetic information with respect to the employee
9 or a family member, or information about a request for or
10 the receipt of genetic testing or genetic information by
11 such employee or family member of such employee; and

12 (4) retaliate through discharge or in any other manner
13 against any person alleging a violation of this Act or
14 participating in any manner in a proceeding under this Act.

15 (d) An agreement between a person and an employer,
16 prospective employer, employment agency, labor organization,
17 or licensing agency, or its employees, agents, or members
18 offering the person employment, labor organization membership,
19 licensure, or any pay or benefit in return for taking a genetic
20 test is prohibited.

21 (e) An employer shall not use genetic information or
22 genetic testing in furtherance of a workplace wellness program
23 benefiting employees unless (1) health or genetic services are
24 offered by the employer, (2) the employee provides written
25 authorization ~~and informed consent~~ in accordance with Section
26 30 of this Act, (3) only the employee or family member if the

1 family member is receiving genetic services and the licensed
2 health care professional or licensed genetic counselor
3 involved in providing such services receive individually
4 identifiable information concerning the results of such
5 services, and (4) any individually identifiable information is
6 only available for purposes of such services and shall not be
7 disclosed to the employer except in aggregate terms that do not
8 disclose the identity of specific employees.

9 (f) Nothing in this Act shall be construed to prohibit
10 genetic testing of an employee who requests a genetic test and
11 who provides written authorization ~~and informed consent~~, in
12 accordance with Section 30 of this Act, from taking a genetic
13 test for the purpose of initiating a workers' compensation
14 claim under the Workers' Compensation Act.

15 (g) A purchase of commercially and publicly available
16 documents, including newspapers, magazines, periodicals, and
17 books but not including medical databases or court records or
18 inadvertently requesting family medical history by an
19 employer, employment agency, labor organization, and licensing
20 agency does not violate this Act.

21 (h) Nothing in this Act shall be construed to prohibit an
22 employer that conducts DNA analysis for law enforcement
23 purposes as a forensic laboratory and that includes such
24 analysis in the Combined DNA Index System pursuant to the
25 federal Violent Crime Control and Law Enforcement Act of 1994
26 from requesting or requiring genetic testing or genetic

1 information of such employer's employees, but only to the
2 extent that such genetic testing or genetic information is used
3 for analysis of DNA identification markers for quality control
4 to detect sample contamination.

5 (i) Nothing in this Act shall be construed to prohibit an
6 employer from requesting or requiring genetic information to be
7 used for genetic monitoring of the biological effects of toxic
8 substances in the workplace, but only if (1) the employer
9 provides written notice of the genetic monitoring to the
10 employee; (2) the employee provides written authorization ~~and~~
11 ~~informed consent~~ under Section 30 of this Act or the genetic
12 monitoring is required by federal or State law; (3) the
13 employee is informed of individual monitoring results; (4) the
14 monitoring is in compliance with any federal genetic monitoring
15 regulations or State genetic monitoring regulations under the
16 authority of the federal Occupational Safety and Health Act of
17 1970; and (5) the employer, excluding any health care provider,
18 ~~licensed health care professional,~~ or health facility ~~licensed~~
19 ~~genetic counselor~~ that is involved in the genetic monitoring
20 program, receives the results of the monitoring only in
21 aggregate terms that do not disclose the identity of specific
22 employees.

23 (j) Despite lawful acquisition of genetic testing or
24 genetic information under subsections (e) through (i) of this
25 Section, an employer, employment agency, labor organization,
26 and licensing agency still may not use or disclose the genetic

1 test or genetic information in violation of this Act.

2 (k) Except as provided in subsections (e), (f), (h), and
3 (i) of this Section, a person shall not knowingly sell to or
4 interpret for an employer, employment agency, labor
5 organization, or licensing agency, or its employees, agents, or
6 members, a genetic test of an employee, labor organization
7 member, or license holder, or of a prospective employee,
8 member, or license holder.

9 (Source: P.A. 95-927, eff. 1-1-09.)

10 (410 ILCS 513/30)

11 Sec. 30. Disclosure of person tested and test results.

12 (a) No person may disclose or be compelled to disclose the
13 identity of any person upon whom a genetic test is performed or
14 the results of a genetic test in a manner that permits
15 identification of the subject of the test, except to the
16 following persons:

17 (1) The subject of the test or the subject's legally
18 authorized representative. This paragraph does not create
19 a duty or obligation under which a health care provider
20 must notify the subject's spouse or legal guardian of the
21 test results, and no such duty or obligation shall be
22 implied. No civil liability or criminal sanction under this
23 Act shall be imposed for any disclosure or nondisclosure of
24 a test result to a spouse by a physician acting in good
25 faith under this paragraph. For the purpose of any

1 proceedings, civil or criminal, the good faith of any
2 physician acting under this paragraph shall be presumed.

3 (2) Any person designated in a specific written legally
4 effective authorization for release ~~release~~ of the test
5 results executed by the subject of the test or the
6 subject's legally authorized representative.

7 (3) An authorized agent or employee of a health
8 facility or health care provider if the health facility or
9 health care provider itself is authorized to obtain the
10 test results, the agent or employee provides patient care,
11 and the agent or employee has a need to know the
12 information in order to conduct the tests or provide care
13 or treatment.

14 (4) A health facility, ~~or~~ health care provider, or
15 health care professional that procures, processes,
16 distributes, or uses:

17 (A) a human body part from a deceased person with
18 respect to medical information regarding that person;
19 or

20 (B) semen provided prior to the effective date of
21 this Act for the purpose of artificial insemination.

22 (5) Health facility staff committees for the purposes
23 of conducting program monitoring, program evaluation, or
24 service reviews.

25 (6) In the case of a minor under 18 years of age, the
26 health care provider, health care professional, or health

1 facility who ordered the test shall make a reasonable
2 effort to notify the minor's parent or legal guardian if,
3 in the professional judgment of the health care provider,
4 health care professional, or health facility, notification
5 would be in the best interest of the minor and the health
6 care provider, health care professional, or health
7 facility has first sought unsuccessfully to persuade the
8 minor to notify the parent or legal guardian or after a
9 reasonable time after the minor has agreed to notify the
10 parent or legal guardian, the health care provider, health
11 care professional, or health facility has reason to believe
12 that the minor has not made the notification. This
13 paragraph shall not create a duty or obligation under which
14 a health care provider, health care professional, or health
15 facility must notify the minor's parent or legal guardian
16 of the test results, nor shall a duty or obligation be
17 implied. No civil liability or criminal sanction under this
18 Act shall be imposed for any notification or
19 non-notification of a minor's test result by a health care
20 provider, health care professional, or health facility
21 acting in good faith under this paragraph. For the purpose
22 of any proceeding, civil or criminal, the good faith of any
23 health care provider, health care professional, or health
24 facility acting under this paragraph shall be presumed.

25 (b) ~~(7)~~ All information and records held by a State agency,
26 ~~or~~ local health authority, or health oversight agency

1 pertaining to genetic information shall be strictly
2 confidential and exempt from copying and inspection under the
3 Freedom of Information Act. The information and records shall
4 not be released or made public by the State agency, ~~or~~ local
5 health authority, or health oversight agency and shall not be
6 admissible as evidence nor discoverable in any action of any
7 kind in any court or before any tribunal, board, agency, or
8 person and shall be treated in the same manner as the
9 information and those records subject to the provisions of Part
10 21 of Article VIII of the Code of Civil Procedure except under
11 the following circumstances:

12 (A) when made with the written consent of all
13 persons to whom the information pertains;

14 (B) when authorized by Section 5-4-3 of the Unified
15 Code of Corrections;

16 (C) when made for the sole purpose of implementing
17 the Newborn Metabolic Screening Act and rules; or

18 (D) when made under the authorization of the
19 Illinois Parentage Act of 1984.

20 Disclosure shall be limited to those who have a need to
21 know the information, and no additional disclosures may be
22 made.

23 (c) ~~(b)~~ Disclosure by an insurer in accordance with the
24 requirements of the Article XL of the Illinois Insurance Code
25 shall be deemed compliance with this Section.

26 (Source: P.A. 96-328, eff. 8-11-09.)

1 (410 ILCS 513/31 new)

2 Sec. 31. Uses and disclosures for treatment, payment, and
3 health care operations. Notwithstanding Sections 30 and 35 of
4 this Act, a covered entity may, without a patient's consent:

5 (1) use or disclose genetic information for its own
6 treatment, payment, or health care operations;

7 (2) disclose genetic information for treatment activities
8 of a health care provider;

9 (3) disclose genetic information to another covered entity
10 or health care provider for the payment activities of the
11 entity that receives the information;

12 (4) disclose genetic information to another covered entity
13 for health care operations activities of the entity that
14 receives the information, if each entity has or had a
15 relationship with the individual who is the subject of the
16 genetic information being requested, the genetic information
17 pertains to such relationship, and the disclosure is for the
18 purpose of (A) conducting quality assessment and improvement
19 activities, including outcomes evaluation and development of
20 clinical guidelines, provided that the obtaining of
21 generalizable knowledge is not the primary purpose of any
22 studies resulting from such activities; patient safety
23 activities; population-based activities relating to improving
24 health or reducing health care costs, protocol development,
25 case management, and care coordination, contacting of health

1 care providers and patients with information about treatment
2 alternatives; and related functions that do not include
3 treatment; (B) reviewing the competence or qualifications of
4 health care professionals, evaluating practitioner and
5 provider performance, health plan performance, conducting
6 training programs in which students, trainees, or
7 practitioners in areas of health care learn under supervision
8 to practice or improve their skills as health care providers,
9 training of non-health care professionals, accreditation,
10 certification, licensing, or credentialing activities; or (C)
11 health care fraud and abuse detection or compliance; and

12 (5) disclose genetic information to other participants in
13 an organized health care arrangement in which the covered
14 entity is also a participant for any health care operations
15 activities of the organized health care arrangement.

16 (410 ILCS 513/31.1 new)

17 Sec. 31.1. Uses and disclosures for health oversight
18 activities.

19 (a) Notwithstanding Sections 30 and 35 of this Act, a
20 covered entity may disclose genetic information, without a
21 patient's consent, to a health oversight agency for health
22 oversight activities authorized by law, including audits,
23 civil, administrative, or criminal investigations;
24 inspections; licensure or disciplinary actions; civil
25 administrative or criminal proceedings or actions; or other

1 activities necessary for appropriate oversight of (i) the
2 health care system; (ii) government benefit programs for which
3 health information is relevant to beneficiary eligibility;
4 (iii) entities subject to government regulatory programs for
5 which health information is necessary for determining
6 compliance with program standards; or (iv) entities subject to
7 civil rights laws for which health information is necessary for
8 determining compliance.

9 (b) For purposes of the disclosures permitted by this
10 Section, a health oversight activity does not include an
11 investigation or other activity in which the individual is the
12 subject of the investigation or activity and such investigation
13 or other activity does not arise out of and is not directly
14 related to (i) the receipt of health care; (ii) a claim for
15 public benefits related to health; or (iii) qualification for,
16 or receipt of, public benefits or services when a patient's
17 health is integral to the claim for public benefits or
18 services, except that, if a health oversight activity or
19 investigation is conducted in conjunction with an oversight
20 activity or investigation relating to a claim for public
21 benefits not related to health, the joint activity or
22 investigation is considered a health oversight activity for
23 purposes of this Section.

24 (c) If a covered entity is also a health oversight agency,
25 the covered entity may use genetic information for health
26 oversight activities permitted by this Section.

1 (410 ILCS 513/31.2 new)

2 Sec. 31.2. Uses and disclosures for public health
3 activities. Notwithstanding Sections 30 and 35 of this Act,
4 genetic information may be disclosed without a patient's
5 consent for public health activities and purposes to the
6 Department, when the Department is authorized by law to collect
7 or receive such information for the purpose of preventing or
8 controlling disease, injury, or disability, including, but not
9 limited to, the reporting of disease, injury, vital events such
10 as birth or death, and the conduct of public health
11 surveillance, public health investigations, and public health
12 interventions.

13 (410 ILCS 513/31.3 new)

14 Sec. 31.3. Business associates.

15 (a) Notwithstanding Sections 30 and 35 of this Act, a
16 covered entity may, without a patient's consent, disclose a
17 patient's genetic information to a business associate and may
18 allow a business associate to create, receive, maintain, or
19 transmit protected health information on its behalf, if the
20 covered entity obtains, through a written contract or other
21 written agreement or arrangement that meets the applicable
22 requirements of 45 CFR 164.504(e), satisfactory assurance that
23 the business associate will appropriately safeguard the
24 information. A covered entity is not required to obtain such

1 satisfactory assurances from a business associate that is a
2 subcontractor.

3 (b) A business associate may disclose protected health
4 information to a business associate that is a subcontractor and
5 may allow the subcontractor to create, receive, maintain, or
6 transmit protected health information on its behalf, if the
7 business associate obtains satisfactory assurances, in
8 accordance with 45 CFR 164.504(e)(1)(i), that the
9 subcontractor will appropriately safeguard the information.

10 (410 ILCS 513/31.4 new)

11 Sec. 31.4. Record locator service to support HIE. Section
12 9.9 of the Mental Health and Developmental Disabilities
13 Confidentiality Act is herein incorporated by reference.

14 (410 ILCS 513/31.5 new)

15 Sec. 31.5. Use and disclosure of information to an HIE.
16 Notwithstanding the provisions of Section 30 and 35 of this
17 Act, a covered entity may, without a patient's consent,
18 disclose the identity of any patient upon whom a test is
19 performed and such patient's genetic information from a
20 patient's record to a HIE if the disclosure is a required or
21 permitted disclosure to a business associate or is a disclosure
22 otherwise required or permitted under this Act. An HIE may,
23 without a patient's consent, use or disclose such information
24 to the extent it is allowed to use or disclose such information

1 as a business associate in compliance with 45 CFR 164.502(e) or
2 for such other purposes as are specifically allowed under this
3 Act.

4 (410 ILCS 513/31.6 new)

5 Sec. 31.6. Other disclosures. Nothing in this Act shall be
6 construed (1) to limit the use of an HIE to facilitate
7 disclosures permitted by this Act or (2) to allow for the
8 disclosure of information from a patient's record to law
9 enforcement or for law enforcement purposes.

10 (410 ILCS 513/31.7 new)

11 Sec. 31.7. Establishment and disclosure of limited data
12 sets and de-identified information.

13 (a) A covered entity may, without a genetic information
14 test subject's consent, create, use, and disclose a limited
15 data set using information subject to this Act or disclose
16 information subject to this Act to a business associate for the
17 purpose of establishing a limited data set. The creation, use,
18 and disclosure of such a limited data set must comply with the
19 requirements set forth under HIPAA.

20 (b) A covered entity may, without a genetic information
21 test subject's consent, create, use, and disclose
22 de-identified information using information subject to this
23 Act or disclose information subject to this Act to a business
24 associate for the purpose of de-identifying the information.

1 The creation, use, and disclosure of such de-identified
2 information must comply with the requirements set forth under
3 HIPAA. A covered entity or a business associate may disclose
4 information that is de-identified in accordance with HIPAA.

5 (c) The recipient of de-identified information shall not
6 re-identify de-identified information using any public or
7 private data source.

8 (410 ILCS 513/31.8 new)

9 Sec. 31.8. HIE opt out. Section 9.6 of the Mental Health
10 and Developmental Disabilities Confidentiality Act is
11 incorporated herein by reference. In addition to the
12 requirements set out in Section 9.6 of the Mental Health and
13 Developmental Disabilities Confidentiality Act, at the time of
14 a patient's first encounter for genetic testing with a health
15 care provider, health care professional, or health facility
16 that participates in an HIE, or, in the event of a medical
17 emergency that makes it impossible, as soon thereafter as is
18 practicable, the patient shall receive meaningful disclosure
19 regarding the HIE in which the health care provider, health
20 care professional, or health facility participates and shall be
21 afforded an opportunity to opt out of disclosure of the
22 patient's health information through the HIE.

23 (410 ILCS 513/31.9 new)

24 Sec. 31.9. Research. Genetic information may be disclosed

1 for research, in accordance with the requirements set forth
2 under HIPAA.

3 (410 ILCS 513/31.10 new)

4 Sec. 31.10. Minimum necessary. When using or disclosing
5 genetic-related information under this Act, a covered entity
6 shall do so in accordance with the minimum necessary standard
7 under HIPAA.

8 (410 ILCS 513/35)

9 Sec. 35. Disclosure by person to whom results have been
10 disclosed. No person to whom the results of a test have been
11 disclosed may disclose the test results to another person
12 except as authorized under this Act ~~by Section 30.~~

13 (Source: P.A. 90-25, eff. 1-1-98.)

14 (410 ILCS 513/40)

15 Sec. 40. Right of action.

16 (a) Any person aggrieved by a violation of this Act shall
17 have a right of action in a State circuit court or as a
18 supplemental claim in a federal district court against an
19 offending party. A prevailing party may recover for each
20 violation:

21 (1) Against any party who negligently violates a
22 provision of this Act, liquidated damages of \$2,500 or
23 actual damages, whichever is greater.

1 (2) Against any party who intentionally or recklessly
2 violates a provision of this Act, liquidated damages of
3 \$15,000 or actual damages, whichever is greater.

4 (3) Reasonable attorney's fees and costs, including
5 expert witness fees and other litigation expenses.

6 (4) Such other relief, including an injunction, as the
7 State or federal court may deem appropriate.

8 (b) Article XL of the Illinois Insurance Code shall provide
9 the exclusive remedy for violations of Section 30 by insurers.

10 (c) Notwithstanding any provisions of the law to the
11 contrary, any person alleging a violation of subsection (a) of
12 Section 15, subsection (b) of Section 25, Section 30, Section
13 31, or Section 35 of this Act shall have a right of action in a
14 State circuit court or as a supplemental claim in a federal
15 district court to seek a preliminary injunction preventing the
16 release or disclosure of genetic testing or genetic information
17 pending the final resolution of any action under this Act.

18 (Source: P.A. 95-927, eff. 1-1-09.)

19 Section 20. The Unified Code of Corrections is amended by
20 changing Sections 3-8-2 and 3-10-2 as follows:

21 (730 ILCS 5/3-8-2) (from Ch. 38, par. 1003-8-2)

22 Sec. 3-8-2. Social Evaluation; physical examination;
23 HIV/AIDS.

24 (a) A social evaluation shall be made of a committed

1 person's medical, psychological, educational and vocational
2 condition and history, including the use of alcohol and other
3 drugs, the circumstances of his offense, and such other
4 information as the Department may determine. The committed
5 person shall be assigned to an institution or facility in so
6 far as practicable in accordance with the social evaluation.
7 Recommendations shall be made for medical, dental,
8 psychiatric, psychological and social service treatment.

9 (b) A record of the social evaluation shall be entered in
10 the committed person's master record file and shall be
11 forwarded to the institution or facility to which the person is
12 assigned.

13 (c) Upon admission to a correctional institution each
14 committed person shall be given a physical examination. If he
15 is suspected of having a communicable disease that in the
16 judgment of the Department medical personnel requires medical
17 isolation, the committed person shall remain in medical
18 isolation until it is no longer deemed medically necessary.

19 (d) Upon arrival at a reception and classification center
20 or an inmate's final destination, the Department must provide
21 the committed person with appropriate information in writing,
22 verbally, by video or other electronic means concerning HIV and
23 AIDS. The Department shall develop the informational materials
24 in consultation with the Department of Public Health. At the
25 same time, the Department also must offer the committed person
26 the option of being tested, with no copayment, for infection

1 with human immunodeficiency virus (HIV). Pre-test information
2 shall be provided to the committed person and informed consent
3 obtained as required in subsection (g) ~~(d)~~ of Section 3 and
4 Section 5 of the AIDS Confidentiality Act. The Department may
5 conduct opt-out HIV testing as defined in Section 4 of the AIDS
6 Confidentiality Act. If the Department conducts opt-out HIV
7 testing, the Department shall place signs in English, Spanish
8 and other languages as needed in multiple, highly visible
9 locations in the area where HIV testing is conducted informing
10 inmates that they will be tested for HIV unless they refuse,
11 and refusal or acceptance of testing shall be documented in the
12 inmate's medical record. The Department shall follow
13 procedures established by the Department of Public Health to
14 conduct HIV testing and testing to confirm positive HIV test
15 results. All testing must be conducted by medical personnel,
16 but pre-test and other information may be provided by committed
17 persons who have received appropriate training. The
18 Department, in conjunction with the Department of Public
19 Health, shall develop a plan that complies with the AIDS
20 Confidentiality Act to deliver confidentially all positive or
21 negative HIV test results to inmates or former inmates. Nothing
22 in this Section shall require the Department to offer HIV
23 testing to an inmate who is known to be infected with HIV, or
24 who has been tested for HIV within the previous 180 days and
25 whose documented HIV test result is available to the Department
26 electronically. The testing provided under this subsection (d)

1 shall consist of a test approved by the Illinois Department of
2 Public Health to determine the presence of HIV infection, based
3 upon recommendations of the United States Centers for Disease
4 Control and Prevention. If the test result is positive, a
5 reliable supplemental test based upon recommendations of the
6 United States Centers for Disease Control and Prevention shall
7 be administered.

8 (Source: P.A. 97-244, eff. 8-4-11; 97-323, eff. 8-12-11;
9 97-813, eff. 7-13-12.)

10 (730 ILCS 5/3-10-2) (from Ch. 38, par. 1003-10-2)

11 Sec. 3-10-2. Examination of Persons Committed to the
12 Department of Juvenile Justice.

13 (a) A person committed to the Department of Juvenile
14 Justice shall be examined in regard to his medical,
15 psychological, social, educational and vocational condition
16 and history, including the use of alcohol and other drugs, the
17 circumstances of his offense and any other information as the
18 Department of Juvenile Justice may determine.

19 (a-5) Upon admission of a person committed to the
20 Department of Juvenile Justice, the Department of Juvenile
21 Justice must provide the person with appropriate information
22 concerning HIV and AIDS in writing, verbally, or by video or
23 other electronic means. The Department of Juvenile Justice
24 shall develop the informational materials in consultation with
25 the Department of Public Health. At the same time, the

1 Department of Juvenile Justice also must offer the person the
2 option of being tested, at no charge to the person, for
3 infection with human immunodeficiency virus (HIV). Pre-test
4 information shall be provided to the committed person and
5 informed consent obtained as required in subsection (g) ~~(d)~~ of
6 Section 3 and Section 5 of the AIDS Confidentiality Act. The
7 Department of Juvenile Justice may conduct opt-out HIV testing
8 as defined in Section 4 of the AIDS Confidentiality Act. If the
9 Department conducts opt-out HIV testing, the Department shall
10 place signs in English, Spanish and other languages as needed
11 in multiple, highly visible locations in the area where HIV
12 testing is conducted informing inmates that they will be tested
13 for HIV unless they refuse, and refusal or acceptance of
14 testing shall be documented in the inmate's medical record. The
15 Department shall follow procedures established by the
16 Department of Public Health to conduct HIV testing and testing
17 to confirm positive HIV test results. All testing must be
18 conducted by medical personnel, but pre-test and other
19 information may be provided by committed persons who have
20 received appropriate training. The Department, in conjunction
21 with the Department of Public Health, shall develop a plan that
22 complies with the AIDS Confidentiality Act to deliver
23 confidentially all positive or negative HIV test results to
24 inmates or former inmates. Nothing in this Section shall
25 require the Department to offer HIV testing to an inmate who is
26 known to be infected with HIV, or who has been tested for HIV

1 within the previous 180 days and whose documented HIV test
2 result is available to the Department electronically. The
3 testing provided under this subsection (a-5) shall consist of a
4 test approved by the Illinois Department of Public Health to
5 determine the presence of HIV infection, based upon
6 recommendations of the United States Centers for Disease
7 Control and Prevention. If the test result is positive, a
8 reliable supplemental test based upon recommendations of the
9 United States Centers for Disease Control and Prevention shall
10 be administered.

11 Also upon admission of a person committed to the Department
12 of Juvenile Justice, the Department of Juvenile Justice must
13 inform the person of the Department's obligation to provide the
14 person with medical care.

15 (b) Based on its examination, the Department of Juvenile
16 Justice may exercise the following powers in developing a
17 treatment program of any person committed to the Department of
18 Juvenile Justice:

19 (1) Require participation by him in vocational,
20 physical, educational and corrective training and
21 activities to return him to the community.

22 (2) Place him in any institution or facility of the
23 Department of Juvenile Justice.

24 (3) Order replacement or referral to the Parole and
25 Pardon Board as often as it deems desirable. The Department
26 of Juvenile Justice shall refer the person to the Parole

1 and Pardon Board as required under Section 3-3-4.

2 (4) Enter into agreements with the Secretary of Human
3 Services and the Director of Children and Family Services,
4 with courts having probation officers, and with private
5 agencies or institutions for separate care or special
6 treatment of persons subject to the control of the
7 Department of Juvenile Justice.

8 (c) The Department of Juvenile Justice shall make periodic
9 reexamination of all persons under the control of the
10 Department of Juvenile Justice to determine whether existing
11 orders in individual cases should be modified or continued.
12 This examination shall be made with respect to every person at
13 least once annually.

14 (d) A record of the treatment decision including any
15 modification thereof and the reason therefor, shall be part of
16 the committed person's master record file.

17 (e) The Department of Juvenile Justice shall by certified
18 mail, return receipt requested, notify the parent, guardian or
19 nearest relative of any person committed to the Department of
20 Juvenile Justice of his physical location and any change
21 thereof.

22 (Source: P.A. 97-244, eff. 8-4-11; 97-323, eff. 8-12-11;
23 97-813, eff. 7-13-12.)

24 Section 25. The County Jail Act is amended by changing
25 Section 17.10 as follows:

1 (730 ILCS 125/17.10)

2 Sec. 17.10. Requirements in connection with HIV/AIDS.

3 (a) In each county other than Cook, during the medical
4 admissions exam, the warden of the jail, a correctional officer
5 at the jail, or a member of the jail medical staff must provide
6 the prisoner with appropriate written information concerning
7 human immunodeficiency virus (HIV) and acquired
8 immunodeficiency syndrome (AIDS). The Department of Public
9 Health and community-based organizations certified to provide
10 HIV/AIDS testing must provide these informational materials to
11 the warden at no cost to the county. The warden, a correctional
12 officer, or a member of the jail medical staff must inform the
13 prisoner of the option of being tested for infection with HIV
14 by a certified local community-based agency or other available
15 medical provider at no charge to the prisoner.

16 (b) In Cook County, during the medical admissions exam, an
17 employee of the Cook County Health & Hospitals System must
18 provide the prisoner with appropriate information in writing,
19 verbally or by video or other electronic means concerning human
20 immunodeficiency virus (HIV) and acquired immunodeficiency
21 syndrome (AIDS) and must also provide the prisoner with option
22 of testing for infection with HIV or any other identified
23 causative agent of AIDS, as well as counseling in connection
24 with such testing. The Cook County Health & Hospitals System
25 may provide the inmate with opt-out human immunodeficiency

1 virus (HIV) testing, as defined in Section 4 of the AIDS
2 Confidentiality Act, unless the inmate refuses. If opt-out HIV
3 testing is conducted, the Cook County Health & Hospitals System
4 shall place signs in English, Spanish, and other languages as
5 needed in multiple, highly visible locations in the area where
6 HIV testing is conducted informing inmates that they will be
7 tested for HIV unless they refuse, and refusal or acceptance of
8 testing shall be documented in the inmate's medical record.
9 Pre-test information shall be provided to the inmate and
10 informed consent obtained from the inmate as required in
11 subsection (g) ~~(d)~~ of Section 3 and Section 5 of the AIDS
12 Confidentiality Act. The Cook County Health & Hospitals System
13 shall follow procedures established by the Department of Public
14 Health to conduct HIV testing and testing to confirm positive
15 HIV test results. All aspects of HIV testing shall comply with
16 the requirements of the AIDS Confidentiality Act, including
17 delivery of test results, as determined by the Cook County
18 Health & Hospitals System in consultation with the Illinois
19 Department of Public Health. Nothing in this Section shall
20 require the Cook County Health & Hospitals System to offer HIV
21 testing to inmates who are known to be infected with HIV. The
22 Department of Public Health and community-based organizations
23 certified to provide HIV/AIDS testing may provide these
24 informational materials to the Bureau at no cost to the county.
25 The testing provided under this subsection (b) shall consist of
26 a test approved by the Illinois Department of Public Health to

1 determine the presence of HIV infection, based upon
2 recommendations of the United States Centers for Disease
3 Control and Prevention. If the test result is positive, a
4 reliable supplemental test based upon recommendations of the
5 United States Centers for Disease Control and Prevention shall
6 be administered.

7 (c) In each county, the warden of the jail must make
8 appropriate written information concerning HIV/AIDS available
9 to every visitor to the jail. This information must include
10 information concerning persons or entities to contact for local
11 counseling and testing. The Department of Public Health and
12 community-based organizations certified to provide HIV/AIDS
13 testing must provide these informational materials to the
14 warden at no cost to the office of the county sheriff.

15 (d) Implementation of this Section is subject to
16 appropriation.

17 (Source: P.A. 97-244, eff. 8-4-11; 97-323, eff. 8-12-11;
18 97-813, eff. 7-13-12.)