**Section 697.120 Informed Consent**

a) *No person may* *order* *an HIV test without first providing pre-test information and receiving the* documented *informed consent of the subject of the test or the subject's legally authorized representative*, except as provided in subsection (b). (Section 4 of the Act)

1) *A health care provider, health care professional, or health care facility undertaking an informed consent process for HIV testing may combine* *a* *form used to obtain informed consent for HIV testing with forms used to obtain written consent for general medical care or any other medical test or procedure, provided that the forms make it clear that the subject may consent to general medical care, tests, or procedures without being required to consent to HIV testing, and clearly explain how the subject may decline HIV testing*. *Health facility clerical staff or other staff members may obtain consent for HIV testing through a general consent form.* (Section 3(q) of the Act)

2) *A health care provider, health care professional, or health care facility conducting opt-in testing and obtaining informed consent shall document verbal or written consent in the general consent for medical care, a separate consent form, or elsewhere in the medical record.*

3) *A health care provider, health care professional, or health care facility conducting opt-out testing shall document the subject's or the subject's legally authorized representative's declination of the test in the medical record. Individual documentation of the provision of pre-test information to each test subject is not required. A health care provider, health care professional, or health care facility conducting opt-out testing shall establish and implement a written procedure for conducting opt-out testing and for providing pre-test information.* (Section 4 of the Act)

4) When *the person providing informed consent is a participant in an HIE, informed consent requires a fair explanation that the results of the patient's HIV test will be accessible through an HIE and meaningful disclosure of the patient's opt-out right.* (Section 3(q) of the Act)

b) Informed consent to perform an HIV test is not required in the following situations:

1) *When the health care* professional *or health care facility procures, processes, distributes or uses a human body part donated for a purpose specified under the Illinois Anatomical Gift Act* or the Organ Donation Request Act, *and the test is necessary to assure the medical acceptability of the gift*. (Section 7 of the Act)

2) *When the health care professional or health care facility procures, processes, distributes or uses semen provided prior to September 21, 1987, for the purpose of artificial insemination and* the *test is necessary to assure medical acceptability of* the *semen*. (Section 7 of the Act)

3) When the testing is *for the purpose of research* and *performed in such a way that the identity of the test subject is not known and may not be retrieved by the researcher, and in such a way that the test subject is not informed of the results of the testing*. (Section 8 of the Act)

4) When an HIV test is performed *upon a person who is specifically required by* state or federal *law to be tested*, such as blood, plasma, semen and human tissue donors and persons required to be tested pursuant to Section 5-5-3 of the Unified Code of Corrections. (Section 11 of the Act)

5) *When an insurance company,* fraternal benefit society, health services corporation, health maintenance organization, or any other insurer subject to regulation under the Illinois Insurance Code *requires any insured patient or applicant for new or continued insurance or coverage to be tested for infection with HIV* *or any other identified causative agent of AIDS*. (Section 3 of the Medical Patient Rights Act) (See Section 697.160.)

6) *When a health care provider or employee of a health facility, or a firefighter or an EMR, EMT, EMT‑I, A-EMT, paramedic, or PHRN, is involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his or her medical judgment. Should such test prove to be positive, the patient and the health care provider, health facility employee, firefighter, EMR, EMT, EMT-I, A-EMT, paramedic, or PHRN shall be provided appropriate counseling consistent with* the *Act.* (Section 7 of the Act)

7) *When in the judgment of the physician, such testing is medically indicated to provide appropriate diagnosis and treatment to the subject of the test, provided that the subject of the test has otherwise provided his or her consent to such physician for medical treatment.* (Section 8 of the Act)

8) *For a health care* professional *or health care facility to perform a test when a law enforcement officer is involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his* or her *medical judgment. Should such test prove to be positive, the patient shall be provided appropriate counseling consistent with* the *Act. For purposes of* Section 7*(c)* of the Act*, "law enforcement officer" means any person employed by the State, a county or a municipality as a policeman, peace officer, auxiliary-policeman, correctional officer or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life.* (Section 7 of the Act)

9) When an individual is charged with a sex crime in accordance with the Criminal Code of 2012.

(Source: Amended at 42 Ill. Reg. 6425, effective March 21, 2018)