



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1286

Introduced 2/20/2007, by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

410 ILCS 305/3	from Ch. 111 1/2, par. 7303
410 ILCS 305/5	from Ch. 111 1/2, par. 7305
410 ILCS 305/7	from Ch. 111 1/2, par. 7307
410 ILCS 305/9	from Ch. 111 1/2, par. 7309
410 ILCS 305/9.5 new	
410 ILCS 305/17 new	

Amends the AIDS Confidentiality Act. Provides that information concerning testing for HIV infection in subjects may be provided according to guidelines. Provides that a health facility may combine the form used to obtain written informed consent for HIV testing with forms used to obtain written informed consent for general medical care or any other medical test or procedure. Provides that no health care provider or professional may order an HIV test without making available to the person tested information about the meaning of the test results, the availability of additional or confirmatory testing, if appropriate, and the availability of referrals for further information or counseling (now, the provision only applies to a health care professional). Includes provisions concerning informed consent by health care providers and professionals (now, provisions only apply to health care providers). Makes corresponding changes in provisions concerning the disclosure of test results. Contains provisions concerning the delivery of test results. Provides that the Department of Public Health shall provide grants to expand voluntary routine HIV testing in health facilities.

LRB095 07327 MJR 27468 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 AIDS Confidentiality Act is amended by
5 changing Sections 3, 5, 7, and 9 and by adding Sections 9.5 and
6 17 as follows:

7 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

8 Sec. 3. When used in this Act:

9 (a) "Department" means the Illinois Department of Public
10 Health.

11 (b) "AIDS" means acquired immunodeficiency syndrome.

12 (c) "HIV" means the Human Immunodeficiency Virus or any
13 other identified causative agent of AIDS.

14 (d) "Written informed consent" means an agreement in
15 writing executed by the subject of a test or the subject's
16 legally authorized representative without undue inducement or
17 any element of force, fraud, deceit, duress or other form of
18 constraint or coercion, which entails at least the following:

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

21 (2) a fair explanation of the procedures to be followed,
22 including the voluntary nature of the test, the right to
23 withdraw consent to the testing process at any time, the right

1 to anonymity to the extent provided by law with respect to
2 participation in the test and disclosure of test results, and
3 the right to confidential treatment of information identifying
4 the subject of the test and the results of the test, to the
5 extent provided by law. Information may be provided in writing,
6 verbally, or by video, electronic, or other means that is
7 easily understandable by the subject and meets the requirements
8 of the Language Assistance Services Act. The subject must be
9 offered an opportunity to ask questions about the HIV test and
10 decline testing. Nothing in this Act shall prohibit a health
11 facility from combining the form used to obtain written
12 informed consent for HIV testing with forms used to obtain
13 written informed consent for general medical care or any other
14 medical test or procedure.

15 (e) "Health facility" means a hospital, nursing home, blood
16 bank, blood center, sperm bank, or other health care
17 institution, including any "health facility" as that term is
18 defined in the Illinois Finance Authority Act.

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

23 (f-5) "Health care professional" means (i) a licensed
24 physician, (ii) a physician assistant to whom the physician
25 assistant's supervising physician has delegated the provision
26 of AIDS and HIV-related health services, (iii) an advanced

1 practice registered nurse who has a written collaborative
2 agreement with a collaborating physician which authorizes the
3 provision of AIDS and HIV-related health services, (iv) a
4 licensed dentist, (v) a licensed podiatrist, or (vi) an
5 individual certified to provide HIV testing and counseling by a
6 state or local public health department.

7 (g) "Test" or "HIV test" means a test to determine the
8 presence of the antibody or antigen to HIV, or of HIV
9 infection.

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

13 (Source: P.A. 93-205, eff. 1-1-04; 93-482, eff. 8-8-03; revised
14 9-12-03.)

15 (410 ILCS 305/5) (from Ch. 111 1/2, par. 7305)

16 Sec. 5. No health care provider or professional may order
17 an HIV test without making available to the person tested
18 information about the meaning of the test results, the
19 availability of additional or confirmatory testing, if
20 appropriate, and the availability of referrals for further
21 information or counseling.

22 (Source: P.A. 93-482, eff. 8-8-03.)

23 (410 ILCS 305/7) (from Ch. 111 1/2, par. 7307)

24 Sec. 7. (a) Notwithstanding the provisions of Sections 4, 5

1 and 6 of this Act, written informed consent is not required for
2 a health care provider or professional or health facility to
3 perform a test when the health care provider or professional or
4 health facility procures, processes, distributes or uses a
5 human body part donated for a purpose specified under the
6 Illinois Anatomical Gift Act, or semen provided prior to the
7 effective date of this Act for the purpose of artificial
8 insemination, and such a test is necessary to assure medical
9 acceptability of such gift or semen for the purposes intended.

10 (b) Written informed consent is not required for a health
11 care provider or professional or health facility to perform a
12 test when a health care provider or employee of a health
13 facility, or a firefighter or an EMT-A, EMT-I or EMT-P, is
14 involved in an accidental direct skin or mucous membrane
15 contact with the blood or bodily fluids of an individual which
16 is of a nature that may transmit HIV, as determined by a
17 physician in his medical judgment. Should such test prove to be
18 positive, the patient and the health care provider or
19 professional, health facility employee, firefighter, EMT-A,
20 EMT-I, or EMT-P shall be provided appropriate counseling
21 consistent with this Act.

22 (c) Written informed consent is not required for a health
23 care provider or professional or health facility to perform a
24 test when a law enforcement officer is involved in the line of
25 duty in a direct skin or mucous membrane contact with the blood
26 or bodily fluids of an individual which is of a nature that may

1 transmit HIV, as determined by a physician in his medical
2 judgment. Should such test prove to be positive, the patient
3 shall be provided appropriate counseling consistent with this
4 Act. For purposes of this subsection (c), "law enforcement
5 officer" means any person employed by the State, a county or a
6 municipality as a policeman, peace officer, auxiliary
7 policeman, correctional officer or in some like position
8 involving the enforcement of the law and protection of the
9 public interest at the risk of that person's life.

10 (Source: P.A. 93-794, eff. 7-22-04.)

11 (410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

12 Sec. 9. No person may disclose or be compelled to disclose
13 the identity of any person upon whom a test is performed, or
14 the results of such a test in a manner which permits
15 identification of the subject of the test, except to the
16 following persons:

17 (a) The subject of the test or the subject's legally
18 authorized representative. A physician may notify the spouse of
19 the test subject, if the test result is positive and has been
20 confirmed pursuant to rules adopted by the Department, provided
21 that the physician has first sought unsuccessfully to persuade
22 the patient to notify the spouse or that, a reasonable time
23 after the patient has agreed to make the notification, the
24 physician has reason to believe that the patient has not
25 provided the notification. This paragraph shall not create a

1 duty or obligation under which a physician must notify the
2 spouse of the test results, nor shall such duty or obligation
3 be implied. No civil liability or criminal sanction under this
4 Act shall be imposed for any disclosure or non-disclosure of a
5 test result to a spouse by a physician acting in good faith
6 under this paragraph. For the purpose of any proceedings, civil
7 or criminal, the good faith of any physician acting under this
8 paragraph shall be presumed.

9 (b) Any person designated in a legally effective release of
10 the test results executed by the subject of the test or the
11 subject's legally authorized representative.

12 (c) An authorized agent or employee of a health facility or
13 health care provider or professional if the health facility or
14 health care provider or professional itself is authorized to
15 obtain the test results, the agent or employee provides patient
16 care or handles or processes specimens of body fluids or
17 tissues, and the agent or employee has a need to know such
18 information.

19 (d) The Department and local health authorities serving a
20 population of over 1,000,000 residents or other local health
21 authorities as designated by the Department, in accordance with
22 rules for reporting and controlling the spread of disease, as
23 otherwise provided by State law. The Department, local health
24 authorities, and authorized representatives shall not disclose
25 information and records held by them relating to known or
26 suspected cases of AIDS or HIV infection, publicly or in any

1 action of any kind in any court or before any tribunal, board,
2 or agency. AIDS and HIV infection data shall be protected from
3 disclosure in accordance with the provisions of Sections 8-2101
4 through 8-2105 of the Code of Civil Procedure.

5 (e) A health facility or health care provider or
6 professional which procures, processes, distributes or uses:

7 (i) a human body part from a deceased person with respect to
8 medical information regarding that person; or (ii) semen
9 provided prior to the effective date of this Act for the
10 purpose of artificial insemination.

11 (f) Health facility staff committees for the purposes of
12 conducting program monitoring, program evaluation or service
13 reviews.

14 (g) (Blank).

15 (h) Any health care provider or professional or employee of
16 a health facility, and any firefighter or EMT-A, EMT-P, or
17 EMT-I, involved in an accidental direct skin or mucous membrane
18 contact with the blood or bodily fluids of an individual which
19 is of a nature that may transmit HIV, as determined by a
20 physician in his medical judgment.

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

26 (j) A temporary caretaker of a child taken into temporary

1 protective custody by the Department of Children and Family
2 Services pursuant to Section 5 of the Abused and Neglected
3 Child Reporting Act, as now or hereafter amended.

4 (k) In the case of a minor under 18 years of age whose test
5 result is positive and has been confirmed pursuant to rules
6 adopted by the Department, the health care provider or
7 professional who ordered the test shall make a reasonable
8 effort to notify the minor's parent or legal guardian if, in
9 the professional judgement of the health care provider or
10 professional, notification would be in the best interest of the
11 child and the health care provider or professional has first
12 sought unsuccessfully to persuade the minor to notify the
13 parent or legal guardian or a reasonable time after the minor
14 has agreed to notify the parent or legal guardian, the health
15 care provider or professional has reason to believe that the
16 minor has not made the notification. This subsection shall not
17 create a duty or obligation under which a health care provider
18 must notify the minor's parent or legal guardian of the test
19 results, nor shall a duty or obligation be implied. No civil
20 liability or criminal sanction under this Act shall be imposed
21 for any notification or non-notification of a minor's test
22 result by a health care provider acting in good faith under
23 this subsection. For the purpose of any proceeding, civil or
24 criminal, the good faith of any health care provider acting
25 under this subsection shall be presumed.

26 (Source: P.A. 93-482, eff. 8-8-03; 94-102, eff. 1-1-06.)

1 (410 ILCS 305/9.5 new)

2 Sec. 9.5. Delivery of test results.

3 (a) The subject of the test or the subject's legally
4 authorized representative may be notified of the results of a
5 negative HIV test in writing, by telephone, or by any other
6 means that maintains the confidentiality of the test result as
7 set forth in Section 9 of this Act.

8 (b) The subject of the test or the subject's legally
9 authorized representative shall be notified by personal
10 contact of the indeterminate result of an HIV test and the need
11 for repeat testing.

12 If the subject is known to be at high risk of HIV infection
13 and the subject has negative or indeterminate test results, the
14 subject or the subject's legally authorized representative
15 shall be advised of the need for repeat testing and offered
16 counseling to prevent HIV infection or offered a referral to
17 counseling to prevent HIV infection.

18 (c) The subject of the test or the subject's legally
19 authorized representative shall be notified by personal
20 contact of the positive or preliminary positive result of an
21 HIV test. When the subject or the subject's legally authorized
22 representative is notified of a positive or preliminary
23 positive test result, the health care provider or professional
24 shall provide the subject or the subject's legally authorized
25 representative with a referral to counseling in connection with

1 the positive or preliminary positive test result and a referral
2 to an appropriate medical facility for the treatment and
3 management of HIV, and shall provide assistance in making an
4 appointment to visit that facility for medical care.

5 (410 ILCS 305/17 new)

6 Sec. 17. Grants and training. The Department shall make
7 grants to expand voluntary routine HIV testing in health
8 facilities, including, but not limited to, grants for: the
9 purchase and distribution of rapid HIV test kits; the hiring of
10 staff to conduct health education activities related to routine
11 HIV testing; the training of healthcare providers and
12 professionals; the provision of technical assistance for
13 health facilities; the development and widespread
14 dissemination of written, video, electronic, and other
15 materials containing information required when conducting
16 voluntary HIV testing with written informed consent; the
17 development and dissemination of consent forms that contain a
18 written consent for general medical treatment and a written
19 consent for HIV testing; development and dissemination of
20 materials including model scripts that health care
21 professionals or providers may use to conduct HIV testing and
22 deliver test results, including brief HIV prevention
23 information for HIV-negative individuals; and research
24 conducted for the evaluation of the effectiveness of such
25 grants in expanding the availability of HIV testing. When

1 making these grants to a health facility, the Department shall
2 give priority to health facilities or activities set forth in
3 this Section that shall identify the greatest number of
4 HIV-positive individuals.