



Rep. La Shawn K. Ford

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LRB099 07179 JLK 32896 a

1 AMENDMENT TO HOUSE BILL 1431

2 AMENDMENT NO. _____. Amend House Bill 1431 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The AIDS Confidentiality Act is amended by
5 changing Sections 3 and 4 as follows:

6 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

7 Sec. 3. Definitions. When used in this Act:

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

9 (b) "Authority" means the Illinois Health Information
10 Exchange Authority established pursuant to the Illinois Health
11 Information Exchange and Technology Act.

12 (c) "Business associate" has the meaning ascribed to it
13 under HIPAA, as specified in 45 CFR 160.103.

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

16 (e) "De-identified information" means health information

1 that is not individually identifiable as described under HIPAA,
2 as specified in 45 CFR 164.514(b).

3 (f) "Department" means the Illinois Department of Public
4 Health or its designated agents.

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

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

9 (i) "Health care professional" means (i) a licensed
10 physician, (ii) a physician assistant to whom the physician
11 assistant's supervising physician has delegated the provision
12 of AIDS and HIV-related health services, (iii) an advanced
13 practice registered nurse who has a written collaborative
14 agreement with a collaborating physician which authorizes the
15 provision of AIDS and HIV-related health services, (iv) an
16 advanced practice nurse or physician assistant who practices in
17 a hospital or ambulatory surgical treatment center and
18 possesses appropriate clinical privileges, (v) a licensed
19 dentist, (vi) ~~(v)~~ a licensed podiatric physician, or (vii) ~~(vi)~~
20 an individual certified to provide HIV testing and counseling
21 by a state or local public health department.

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

24 (k) "Health facility" means a hospital, nursing home, blood
25 bank, blood center, sperm bank, or other health care
26 institution, including any "health facility" as that term is

1 defined in the Illinois Finance Authority Act.

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

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

20 (n) "HIPAA" means the Health Insurance Portability and
21 Accountability Act of 1996, Public Law 104-191, as amended by
22 the Health Information Technology for Economic and Clinical
23 Health Act of 2009, Public Law 111-05, and any subsequent
24 amendments thereto and any regulations promulgated thereunder.

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

26 (p) "HIV-related information" means the identity of a

1 person upon whom an HIV test is performed, the results of an
2 HIV test, as well as diagnosis, treatment, and prescription
3 information that reveals a patient is HIV-positive, including
4 such information contained in a limited data set. "HIV-related
5 information" does not include information that has been
6 de-identified in accordance with HIPAA.

7 (q) "Informed consent" means:

8 (1) a process by which an individual or their legal
9 representative receives pre-test information, has an
10 opportunity to ask questions, and consents verbally or in
11 writing to the test; or

12 (2) where a health facility has implemented opt-out
13 testing, the individual or their legal representative has
14 received pre-test information and been given the
15 opportunity to ask questions and the opportunity to decline
16 testing, and has not declined testing. ~~a written or verbal~~
17 agreement by the subject of a test or the subject's legally
18 authorized representative without undue inducement or any
19 element of force, fraud, deceit, duress, or other form of
20 constraint or coercion, which entails at least the
21 following pre-test information:

22 ~~(1) a fair explanation of the test, including its~~
23 ~~purpose, potential uses, limitations, and the meaning of~~
24 ~~its results;~~

25 ~~(2) a fair explanation of the procedures to be~~
26 ~~followed, including the voluntary nature of the test, the~~

1 ~~right to withdraw consent to the testing process at any~~
2 ~~time, the right to anonymity to the extent provided by law~~
3 ~~with respect to participation in the test and disclosure of~~
4 ~~test results, and the right to confidential treatment of~~
5 ~~information identifying the subject of the test and the~~
6 ~~results of the test, to the extent provided by law; and~~

7 In addition, ~~(3)~~ where the person providing informed
8 consent is a participant in an HIE, informed consent requires a
9 fair explanation that the results of the patient's HIV test
10 will be accessible through an HIE and meaningful disclosure of
11 the patient's opt-out right under Section 9.6 of this Act.

12 Consent must occur without undue inducement or any element
13 of force, fraud, deceit, duress, or other form of constraint or
14 coercion.

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

1 testing. Health facility clerical staff responsible for the
2 consent form for general medical care may obtain consent for
3 HIV testing through a general consent form.

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

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

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

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

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

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

18 (w-5) "Pre-test information" means:

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

22 (2) a reasonable explanation of the procedures to be
23 followed, including the voluntary nature of the test, the
24 availability of an appropriate person to answer questions,
25 the right to withdraw consent to the testing process at any
26 time, the right to anonymity to the extent provided by law

1 with respect to participation in the test and disclosure of
2 test results, and the right to confidential treatment of
3 information identifying the subject of the test and the
4 results of the test, to the extent provided by law.

5 The pre-test information required as part of the informed
6 consent may be provided in writing, verbally, or by video,
7 electronic, or other means and may be provided as designated by
8 the supervising health care professional or the health
9 facility. For the purposes of this definition and Section 5 of
10 this Act, an appropriate person to answer questions is someone
11 determined to be sufficiently knowledgeable in the
12 professional judgment of a supervising health care
13 professional or as designated by a health facility.

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

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

18 (z) "State agency" means an instrumentality of the State of
19 Illinois and any instrumentality of another state that,
20 pursuant to applicable law or a written undertaking with an
21 instrumentality of the State of Illinois, is bound to protect
22 the privacy of HIV-related information of Illinois persons.

23 (aa) "Test" or "HIV test" means a test to determine the
24 presence of the antibody or antigen to HIV, or of HIV
25 infection.

26 (bb) "Treatment" has the meaning ascribed to it under

1 HIPAA, as specified in 45 CFR 164.501.

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

4 (Source: P.A. 98-214, eff. 8-9-13; 98-1046, eff. 1-1-15.)

5 (410 ILCS 305/4) (from Ch. 111 1/2, par. 7304)

6 Sec. 4. Informed consent. No person may order an HIV test
7 without first receiving the ~~documented~~ informed consent of the
8 subject of the test or the subject's legally authorized
9 representative. A health care facility or provider may provide
10 ~~offer~~ opt-out HIV testing where the subject or the subject's
11 legally authorized representative is informed that the subject
12 may will be tested for HIV unless he or she refuses. The
13 subject's or the subject's legally authorized representative's
14 verbal or written consent, or declination of opt-out HIV
15 testing, must be documented by the health facility or provider
16 in the general consent for medical care, a separate consent
17 form, or elsewhere in the medical record. ~~The health care~~
18 ~~facility or provider must document the provision of informed~~
19 ~~consent, including pre-test information, and whether the~~
20 ~~subject or the subject's legally authorized representative~~
21 ~~declined the offer of HIV testing.~~

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

23 (410 ILCS 305/5 rep.)

24 Section 10. The AIDS Confidentiality Act is amended by

1 repealing Section 5."