

AN ACT concerning health.

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

Section 5. The State Finance Act is amended by changing Section 5.666 as follows:

(30 ILCS 105/5.666)

(Section scheduled to be repealed on July 1, 2016)

Sec. 5.666. The African-American HIV/AIDS Response Fund.
This Section is repealed on July 1, 2026 ~~2016~~.

(Source: P.A. 94-797, eff. 1-1-07; 95-331, eff. 8-21-07.)

Section 10. The African-American HIV/AIDS Response Act is amended by changing Section 27 as follows:

(410 ILCS 303/27)

(Section scheduled to be repealed on July 1, 2016)

Sec. 27. African-American HIV/AIDS Response Fund.

(a) The African-American HIV/AIDS Response Fund is created as a special fund in the State treasury. Moneys deposited into the Fund shall, subject to appropriation, be used for grants for programs to prevent the transmission of HIV and other programs and activities consistent with the purposes of this Act, including, but not limited to, preventing and treating

HIV/AIDS, the creation of an HIV/AIDS service delivery system, and the administration of the Act. Moneys for the Fund shall come from appropriations by the General Assembly, federal funds, and other public resources.

(b) The Fund shall provide resources for communities in Illinois to create an HIV/AIDS service delivery system that reduces the disparity of HIV infection and AIDS cases between African-Americans and other population groups in Illinois that may be impacted by the disease by, including but, not limited to:

(1) developing, implementing, and maintaining a comprehensive, culturally sensitive HIV Prevention Plan targeting communities that are identified as high-risk in terms of the impact of the disease on African-Americans;

(2) developing, implementing, and maintaining a stable HIV/AIDS service delivery infrastructure in Illinois communities that will meet the needs of African-Americans;

(3) developing, implementing, and maintaining a statewide HIV/AIDS testing program;

(4) providing funding for HIV/AIDS social and scientific research to improve prevention and treatment;

(5) providing comprehensive technical and other assistance to African-American community service organizations that are involved in HIV/AIDS prevention and treatment;

(6) developing, implementing, and maintaining an

infrastructure for African-American community service organizations to make them less dependent on government resources; and

(7) creating and maintaining at least 17 one-stop shopping HIV/AIDS facilities across the State.

(c) When providing grants pursuant to this Fund, the Department of Public Health shall give priority to the development of comprehensive medical and social services to African-Americans at risk of infection from or infected with HIV/AIDS in areas of the State determined to have the greatest geographic prevalence of HIV/AIDS in the African-American population.

(d) The Section is repealed on July 1, 2026 ~~2016~~.

(Source: P.A. 94-797, eff. 1-1-07.)

Section 15. The AIDS Confidentiality Act is amended by changing Sections 3, 4, and 9 as follows:

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

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

(a) "AIDS" means acquired immunodeficiency syndrome.

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

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

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

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

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

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

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

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

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

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

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

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

(n) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-05, and any subsequent

amendments thereto and any regulations promulgated thereunder.

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

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

(q) "Informed consent" means:

(1) where a health care provider, health care professional, or health facility has implemented opt-in testing, a process by which an individual or their legal representative receives pre-test information, has an opportunity to ask questions, and consents verbally or in writing to the test without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion; or

(2) where a health care provider, health care professional, or health facility has implemented opt-out testing, the individual or their legal representative has been notified verbally or in writing that the test is planned, has received pre-test information, has been given the opportunity to ask questions and the opportunity to decline testing, and has not declined testing; where such notice is provided, consent for opt-out HIV testing may be

incorporated into the patient's general consent for medical care on the same basis as are other screening or diagnostic tests; a separate consent for opt-out HIV testing is not required. ~~a written or verbal agreement by the subject of a test or the subject's legally authorized representative without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, which entails at least the following pre test information:~~

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

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

In addition, ~~(3)~~ where 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 under Section 9.6 of this Act.

A health care provider, health care professional, or health

facility undertaking an informed consent process for HIV testing under this subsection 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 responsible for the consent form for general medical care may obtain consent for HIV testing through a general consent form.

~~Pre-test information may be provided in writing, verbally, or by video, electronic, or other means. The subject must be offered an opportunity to ask questions about the HIV test and decline testing. Nothing in this Act shall prohibit a health care provider or health care professional from combining 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 medical procedures without being required to consent to HIV testing and clearly explain how the subject may opt out of HIV testing.~~

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

(s) "Minimum necessary" means the HIPAA standard for using,

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

(s-1) "Opt-in testing" means an approach where an HIV test is presented by offering the test and the patient accepts or declines testing.

(s-3) "Opt-out testing" means an approach where an HIV test is presented such that a patient is notified that HIV testing may occur unless the patient declines.

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

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

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

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

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

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

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

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

Pre-test information may be provided in writing, verbally, or by video, electronic, or other means and may be provided as designated by the supervising health care professional or the health facility.

For the purposes of this definition, a qualified person to answer questions is a health care professional or, when acting under the supervision of a health care professional, a registered nurse, medical assistant, or other person determined to be sufficiently knowledgeable about HIV testing, its purpose, potential uses, limitations, the meaning of the test results, and the testing procedures in the professional judgment of a supervising health care professional or as designated by a health care facility.

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

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

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

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

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

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

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

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

Sec. 4. Informed consent. No person may order an HIV test without first providing pre-test information, as defined under subsection (w-5) of Section 3 of this Act, and receiving the documented informed consent of the subject of the test or the subject's legally authorized representative in accordance with paragraph (1) or (2) of subsection (q) of Section 3 of this Act.

A health care provider, health care professional, or health care facility conducting opt-in testing and obtaining informed consent pursuant to paragraph (1) of subsection (q) of Section 3 shall document verbal or written consent in the general consent for medical care, a separate consent form, or elsewhere in the medical record.

A health care provider, health care professional, or health care facility conducting opt-out testing pursuant to paragraph (2) of subsection (q) of Section 3 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 facility conducting opt-out testing and shall establish and implement a written procedure for conducting opt-out testing pursuant to paragraph (2) of subsection (q) of Section 3 and for providing pre-test information, as that term is defined under subsection (w-5) of Section 3 of this Act. ~~A health care facility or provider may offer opt-out HIV testing where the subject or the subject's legally authorized representative is informed that the subject will be tested for HIV unless he or she refuses. The health care facility or provider must document the provision of informed consent, including pre-test information, and whether the subject or the subject's legally authorized representative declined the offer of HIV testing.~~

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

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

Sec. 9. (1) No person may disclose or be compelled to disclose HIV-related information, except to the following persons:

(a) The subject of an HIV test or the subject's legally authorized representative. A physician may notify the spouse or civil union partner of the test subject, if the

test result is positive and has been confirmed pursuant to rules adopted by the Department, provided that the physician has first sought unsuccessfully to persuade the patient to notify the spouse or civil union partner or that, a reasonable time after the patient has agreed to make the notification, the physician has reason to believe that the patient has not provided the notification. This paragraph shall not create a duty or obligation under which a physician must notify the spouse or civil union partner of the test results, nor shall such duty or obligation be implied. No civil liability or criminal sanction under this Act shall be imposed for any disclosure or non-disclosure of a test result to a spouse or civil union partner by a physician acting in good faith under this paragraph. For the purpose of any proceedings, civil or criminal, the good faith of any physician acting under this paragraph shall be presumed.

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

(c) An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or

tissues, and the agent or employee has a need to know such information.

(d) The Department and local health authorities serving a population of over 1,000,000 residents or other local health authorities as designated by the Department, in accordance with rules for reporting, preventing, and controlling the spread of disease and the conduct of public health surveillance, public health investigations, and public health interventions, as otherwise provided by State law. The Department, local health authorities, and authorized representatives shall not disclose HIV test results and HIV-related information, publicly or in any action of any kind in any court or before any tribunal, board, or agency. HIV test results and HIV-related information shall be protected from disclosure in accordance with the provisions of Sections 8-2101 through 8-2105 of the Code of Civil Procedure.

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

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

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

(g) (Blank).

(h) Any health care provider, health care professional, or employee of a health facility, and any firefighter or EMR, EMT, A-EMT, paramedic, PHRN, or EMT-I, 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 medical judgment.

(i) Any law enforcement officer, as defined in subsection (c) of Section 7, 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 medical judgment.

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

(k) In the case of a minor under 18 years of age whose test result is positive and has been confirmed pursuant to rules adopted by the Department, the health care professional who ordered the test shall make a reasonable effort to notify the minor's parent or legal guardian if, in the professional judgment of the health care

professional, notification would be in the best interest of the child and the health care professional has first sought unsuccessfully to persuade the minor to notify the parent or legal guardian or a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care professional has reason to believe that the minor has not made the notification. This subsection shall not create a duty or obligation under which a health care professional must notify the minor's parent or legal guardian of the test results, nor shall a duty or obligation be implied. No civil liability or criminal sanction under this Act shall be imposed for any notification or non-notification of a minor's test result by a health care professional acting in good faith under this subsection. For the purpose of any proceeding, civil or criminal, the good faith of any health care professional acting under this subsection shall be presumed.

(2) All information and records held by a State agency, local health authority, or health oversight agency pertaining to HIV-related information shall be strictly confidential and exempt from copying and inspection under the Freedom of Information Act. The information and records shall not be released or made public by the State agency, local health authority, or health oversight agency, shall not be admissible as evidence nor discoverable in any action of any kind in any court or before any tribunal, board, agency, or person, and

shall be treated in the same manner as the information and those records subject to the provisions of Part 21 of Article VIII of the Code of Civil Procedure, except under the following circumstances:

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

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

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

(Source: P.A. 97-1046, eff. 8-21-12; 97-1150, eff. 1-25-13; 98-973, eff. 8-15-14; 98-1046, eff. 1-1-15; revised 10-1-14.)

(410 ILCS 305/5 rep.)

Section 20. The AIDS Confidentiality Act is amended by repealing Section 5.