

Assembly Bill No. 221

CHAPTER 421

An act to amend Section 120917 of the Health and Safety Code, relating to public health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 221, Portantino. HIV testing: skin punctures.

Existing law provides for various programs relating to treatment of persons with the human immunodeficiency virus (HIV) and the acquired immunodeficiency syndrome (AIDS).

Existing law permits the Office of AIDS in the department to participate in a rapid HIV test research program conducted with the federal Centers for Disease Control and Prevention.

This bill would repeal this authority.

Existing law also authorizes HIV counselors trained by the office to perform skin punctures for purposes of withdrawing blood for HIV test purposes, if the HIV counselor meets prescribed requirements. One of these requirements is that the HIV counselor must hold a valid certification as a phlebotomist technician by the department.

This bill would exempt an HIV counselor who works under a licensed physician and surgeon, and who is trained in rapid HIV test proficiency and universal infection control precautions, as specified, from the requirement that he or she hold a valid certification as a phlebotomist technician.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States Centers for Disease Control and Prevention estimates that HIV incidence is 40 percent higher than previously thought.

(b) The Office of AIDS in the State Department of Public Health estimates that between 30,000 and 40,000 Californians are unaware that they are HIV-positive and, therefore, are not receiving appropriate HIV treatment and are possibly jeopardizing their own health, and that of their sex partners and intravenous drug-using partners.

(c) It is therefore in the interest of the people of the State of California to take steps to ensure that people have greater access to HIV testing.

SEC. 2. Section 120917 of the Health and Safety Code is amended to read:

120917. (a) An HIV counselor who is trained by the Office of AIDS and working in an HIV counseling and testing site funded by the department through a local health jurisdiction, or its agents, may do all of the following:

(1) Perform any HIV test that is classified as waived under the federal Clinical Laboratory Improvement Act (CLIA) (42 U.S.C. Sec. 263a and following) if all of the following conditions exist:

(A) The performance of the HIV test meets the requirements of CLIA and, subject to subparagraph (B), Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(B) Notwithstanding Section 1246 of the Business and Professions Code, an HIV counselor may perform skin punctures for the purpose of withdrawing blood for HIV testing, upon specific authorization from a licensed physician and surgeon, provided that the person meets both of the following requirements:

(i) He or she works under the direction of a licensed physician and surgeon.

(ii) He or she has been trained in both rapid HIV test proficiency for skin puncture blood tests and oral swab tests and in universal infection control precautions, consistent with best infection control practices established by the Division of Occupational Safety and Health in the Department of Industrial Relations and the federal Centers for Disease Control and Prevention.

(C) The person performing the HIV test meets the requirements for the performance of waived laboratory testing pursuant to subdivision (a) of Section 1206.5 of the Business and Professions Code. For purposes of this subdivision and subdivision (a) of Section 1206.5 of the Business and Professions Code, an HIV counselor trained by the Office of AIDS shall be “other health care personnel providing direct patient care” as referred to in paragraph (12) of subdivision (a) of Section 1206.5 of the Business and Professions Code.

(D) The patient is informed that the preliminary result of the test is indicative of the likelihood of HIV infection and that the result must be confirmed by an additional more specific test, or, if approved by the federal Centers for Disease Control and Prevention for that purpose, a second different rapid HIV test. Nothing in this subdivision shall be construed to allow an HIV counselor trained by the Office of AIDS to perform any HIV test that is not classified as waived under the CLIA.

(2) Notwithstanding Sections 1246.5 and 2053 of the Business and Professions Code, order and report HIV test results from tests performed pursuant to paragraph (1) to patients without authorization from a licensed health care professional or his or her authorized representative. Patients with indeterminate or positive test results from tests performed pursuant to paragraph (1) shall be referred to a licensed health care provider whose scope of practice includes the authority to refer patients for laboratory testing for further evaluation.

(b) An HIV counselor who has been certified pursuant to subdivision (b) of Section 120871 prior to September 1, 2009, and who will administer rapid HIV skin puncture tests shall obtain training required by clause (ii) of subparagraph (B) of paragraph (1) of subdivision (a) prior to September 1, 2011. The HIV counselor shall not, unless also certified as a limited phlebotomist technician, perform a skin puncture pursuant to this section until he or she has completed the training required by that clause.

(c) An HIV counselor who meets the requirements of this section with respect to performing any HIV test that is classified as waived under the CLIA may not perform any other test unless that person meets the statutory and regulatory requirements for performing that other test.

(d) This section shall not be construed to certify an HIV counselor as a phlebotomy technician or a limited phlebotomy technician, or to fulfill any requirements for certification as a phlebotomy technician or a limited phlebotomy technician, unless the HIV counselor has otherwise satisfied the certification requirements imposed pursuant to Section 1246 of the Business and Professions Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because HIV screening is so critical to containing the AIDS epidemic, and therefore, persons who can administer rapid HIV testing must be employed as soon as possible, it is necessary that this act go into immediate effect.