

AMENDED IN ASSEMBLY APRIL 15, 2011

AMENDED IN ASSEMBLY APRIL 5, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Portantino

February 15, 2011

An act to amend ~~Sections 120990 and 123148~~ *Section 120990* of, and to add Section 120889 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Portantino. HIV testing.

Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, administration of a program to provide information, establish testing sites, and award contracts for AIDS early intervention projects to provide appropriate medical treatment to prevent or delay the progression of disease that results from HIV infection, to coordinate related services, and to provide information and education to prevent the spread of the infection to others. Existing law sets forth the powers and duties of an HIV counselor in a project HIV counseling and testing site funded by the department through a local health jurisdiction or its agents.

This bill would require the department to, upon appropriation by the Legislature, allocate state and federal funds that are intended to be used to test persons for HIV to a local health jurisdiction in accordance with the prevalence of HIV and AIDS in the local jurisdiction.

Existing law requires a medical care provider, prior to ordering an HIV test, to provide information about the test to the patient, to inform

the patient that there are numerous treatment options available, and to inform the patient that a person who tests negative for HIV should continue to be routinely tested.

This bill would ~~delete this provision, and would specify that an HIV counselor is a medical care provider for the purposes of related provisions. The bill would make related changes.~~

~~Existing law specifies the manner in which a health care professional at whose request a test is performed for HIV provides results.~~

~~This bill would authorize a clinical laboratory test result of a negative HIV antibody test to be posted on a secure Internet Web site if specified conditions are met.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all the
- 2 following:
- 3 (a) HIV testing has entered a new era as policymakers have
- 4 begun to understand that ensuring that more people know their
- 5 HIV status is critical to maintaining health and reducing the spread
- 6 of the virus. A person’s awareness of his or her HIV status leads
- 7 to treatment, better survival rates, and preventing transmission.
- 8 (b) The California Office of AIDS estimates that up to 39,000
- 9 Californians have HIV and do not know it. People who do not
- 10 know their HIV status do not begin life-prolonging treatments,
- 11 and they continue to expose others to HIV through unprotected
- 12 risk behaviors.
- 13 (c) Research shows that when people learn they are infected
- 14 with HIV, they take steps to protect their health and the health of
- 15 their partners. In a 2005 meta-analysis of sexual behaviors, persons
- 16 who knew their HIV status were 68 percent less likely to engage
- 17 in unprotected intercourse with uninfected partners.
- 18 (d) According to the federal Centers for Disease Control and
- 19 Prevention, cohort studies have demonstrated that HIV-infected
- 20 persons who are unaware of their infection do not reduce risk
- 21 behaviors. Persons tested for HIV who do not return for test results
- 22 might even increase their risk for transmitting HIV to partners.

1 (e) Additionally, the earlier a person is diagnosed, the sooner
2 he or she can access medical care and other prevention services
3 to further prevent transmission and disease progression.

4 (f) Because medical treatment that lowers HIV viral load might
5 also reduce risk for transmission to others, early referral to medical
6 care could prevent HIV transmission in communities while
7 reducing a person’s risk for HIV-related illness and death.

8 (g) For all of these reasons, routine HIV testing is essential to
9 any comprehensive HIV prevention program.

10 (h) With an eye toward making HIV testing more routine, the
11 federal government has adopted a national goal of six million HIV
12 tests each year.

13 (i) It is the intent of the Legislature that the State of California
14 accomplish both of the following:

15 (1) Make every effort to ensure that HIV testing is routinely
16 available in physicians’ offices, hospitals, clinics, and every other
17 public and private medical and nonmedical setting in which HIV
18 testing is administered.

19 (2) Fulfill its fair share of the national testing goal by seeking
20 to test 550,000 Californians each year.

21 SEC. 2. Section 120889 is added to the Health and Safety Code,
22 to read:

23 120889. The department shall, upon appropriation by the
24 Legislature, allocate state and federal funds that are intended to
25 be used to test persons for HIV to a local health jurisdiction in
26 accordance with the prevalence of HIV and AIDS in the jurisdiction
27 at the time of the allocation decision.

28 SEC. 3. Section 120990 of the Health and Safety Code is
29 amended to read:

30 120990. (a) Prior to ordering a test that identifies infection
31 with HIV, a medical care provider shall inform the patient that the
32 test is planned, provide information about the test, inform the
33 patient that there are numerous treatment options available for a
34 patient who tests positive for HIV and that a person who tests
35 negative for HIV should continue to be routinely tested, and advise
36 the patient that he or she has the right to decline the test. If a patient
37 declines the test, the medical care provider shall note that fact in
38 the patient’s medical file. For the purposes of this subdivision, “a
39 medical care provider” includes, but is not limited to, a person
40 who is authorized to administer an HIV test pursuant to Section

1 120917. This subdivision shall apply to testing in a clinical or
2 nonclinical setting, provided that ~~for a~~ *the* test performed in a
3 nonclinical setting ~~the setting has a certificate of waiver is classified~~
4 *as waived* under the federal Clinical Laboratory Improvement Act
5 (CLIA) (42 U.S.C. Sec. 263a).

6 (b) Subdivision (a) shall not apply when a person independently
7 requests an HIV test from the provider.

8 (c) Except as provided in subdivision (a), no person shall
9 administer an HIV antibody test unless the person being tested or
10 his or her parent, guardian, conservator, or other person specified
11 in Section 121020, signs a written statement documenting the
12 person's informed consent to the test. This requirement does not
13 apply to a test performed at an alternative site pursuant to Sections
14 120890 or 120895. Nothing in this section shall be construed to
15 allow a person to administer a test for HIV unless that person is
16 otherwise permitted under current law to administer an HIV test.

17 (d) Nothing in this section shall preclude a medical examiner
18 or other physician from ordering or performing a test to detect
19 HIV on a cadaver when an autopsy is performed or body parts are
20 donated pursuant to the Uniform Anatomical Gift Act (Chapter
21 3.5 (commencing with Section 7150) of Part 1 of Division 7).

22 (e) (1) *The requirements of subdivision (c) do not apply when*
23 *blood is tested as part of a scientific investigation conducted either*
24 *by a medical researcher operating under the approval of an*
25 *institutional review board or by the department, in accordance*
26 *with a protocol for unlinked testing.*

27 (2) *For purposes of this subdivision, "unlinked testing" means*
28 *blood samples that are obtained anonymously, or that have the*
29 *name or identifying information of the individual who provided*
30 *the sample removed in a manner that prevents the test results from*
31 *ever being linked to a particular individual who participated in*
32 *the research or study.*

33 (e)

34 (f) Nothing in this section shall be construed to permit any
35 person to unlawfully disclose an individual's HIV status, or to
36 otherwise violate provisions of Section 54 of the Civil Code, the
37 Americans With Disabilities Act of 1990 (Public Law 101-336),
38 or the California Fair Employment and Housing Act (Part 2.8
39 (commencing with Section 12900) of Division 3 of Title 2 of the
40 Government Code), which prohibit discrimination against

1 individuals who are living with HIV, or who test positive for HIV,
2 or are presumed to be HIV-positive.

3 ~~SEC. 4. Section 123148 of the Health and Safety Code is~~
4 ~~amended to read:~~

5 ~~123148. (a) Notwithstanding any other provision of law, a~~
6 ~~health care professional at whose request a test is performed shall~~
7 ~~provide or arrange for the provision of the results of a clinical~~
8 ~~laboratory test to the patient who is the subject of the test if so~~
9 ~~requested by the patient, in oral or written form. The results shall~~
10 ~~be conveyed in plain language and in oral or written form, except~~
11 ~~the results may be conveyed in electronic form if requested by the~~
12 ~~patient and if deemed most appropriate by the health care~~
13 ~~professional who requested the test.~~

14 ~~(b) (1) Consent of the patient to receive his or her laboratory~~
15 ~~results by Internet posting or other electronic means shall be~~
16 ~~obtained in a manner consistent with the requirements of Section~~
17 ~~56.10 or 56.11 of the Civil Code. In the event that a health care~~
18 ~~professional arranges for the provision of test results by Internet~~
19 ~~posting or other electronic manner, the results shall be delivered~~
20 ~~to a patient in a reasonable time period, but only after the results~~
21 ~~have been reviewed by the health care professional. Access to~~
22 ~~clinical laboratory test results shall be restricted by the use of a~~
23 ~~secure personal identification number when the results are delivered~~
24 ~~to a patient by Internet posting or other electronic manner.~~

25 ~~(2) Nothing in paragraph (1) shall prohibit direct communication~~
26 ~~by Internet posting or the use of other electronic means to convey~~
27 ~~clinical laboratory test results by a treating health care professional~~
28 ~~who ordered the test for his or her patient or by a health care~~
29 ~~professional acting on behalf of, or with the authorization of, the~~
30 ~~treating health care professional who ordered the test.~~

31 ~~(c) When a patient requests to receive his or her laboratory test~~
32 ~~results by Internet posting, the health care professional shall advise~~
33 ~~the patient of any charges that may be assessed directly to the~~
34 ~~patient or insurer for the service and that the patient may call the~~
35 ~~health care professional for a more detailed explanation of the~~
36 ~~laboratory test results when delivered.~~

37 ~~(d) The electronic provision of test results under this section~~
38 ~~shall be in accordance with any applicable federal law governing~~
39 ~~privacy and security of electronic personal health records.~~
40 ~~However, any state statute, if enacted, that governs privacy and~~

1 security of electronic personal health records, shall apply to test
2 results under this section and shall prevail over federal law if
3 federal law permits.

4 (e) The test results to be reported to the patient pursuant to this
5 section shall be recorded in the patient's medical record, and shall
6 be reported to the patient within a reasonable time period after the
7 test results are received at the offices of the health care professional
8 who requested the test.

9 (f) Notwithstanding subdivisions (a) and (b), none of the
10 following clinical laboratory test results and any other related
11 results shall be conveyed to a patient by Internet posting or other
12 electronic means:

13 (1) HIV antibody test, except as provided in subdivision (k).

14 (2) Presence of antigens indicating a hepatitis infection.

15 (3) Abusing the use of drugs.

16 (4) Test results related to routinely processed tissues, including
17 skin biopsies, Pap smear tests, products of conception, and bone
18 marrow aspirations for morphological evaluation, if they reveal a
19 malignancy.

20 (g) Patient identifiable test results and health information that
21 have been provided under this section shall not be used for any
22 commercial purpose without the consent of the patient, obtained
23 in a manner consistent with the requirements of Section 56.11 of
24 the Civil Code.

25 (h) Any third party to whom laboratory test results are disclosed
26 pursuant to this section shall be deemed a provider of
27 administrative services, as that term is used in paragraph (3) of
28 subdivision (c) of Section 56.10 of the Civil Code, and shall be
29 subject to all limitations and penalties applicable to that section.

30 (i) A patient may not be required to pay any cost, or be charged
31 any fee, for electing to receive his or her laboratory results in any
32 manner other than by Internet posting or other electronic form.

33 (j) A patient or his or her physician may revoke any consent
34 provided under this section at any time and without penalty, except
35 to the extent that action has been taken in reliance on that consent.

36 (k) The clinical laboratory test result of a negative HIV antibody
37 test may be posted on a secure Internet Web site provided that all
38 of the following conditions are met:

- 1 ~~(1) The test subject can view only his or her test result on the~~
2 ~~Internet Web site by using a unique access code provided to the~~
3 ~~test subject at the time of testing.~~
4 ~~(2) The test result is not posted on the Internet Web site any~~
5 ~~earlier than 10 calendar days after the test is administered and the~~
6 ~~test subject is advised that the result will not be posted until 10~~
7 ~~days after the test is administered.~~
8 ~~(3) A test subject who has a positive test result is informed of~~
9 ~~the positive test result no more than nine calendar days after the~~
10 ~~test is administered.~~