

AMENDED IN ASSEMBLY APRIL 30, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 446**

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**Introduced by Assembly Member Mitchell**

February 19, 2013

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An act to amend Sections 120990 and 123148 of, and to add Section 120991 to, the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 446, as amended, Mitchell. HIV testing.

Existing law requires a medical care provider, prior to ordering an HIV test, to, among other things, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV, and inform the patient that a person who tests negative for HIV should continue to be routinely tested. Existing law, with specified exceptions, requires a written statement documenting the test subject's informed consent prior to the performance of an HIV test.

This bill would ~~delete the requirement~~ *require* that the medical care provider *also* provide a patient with information about ~~the HIV test, the treatment options, and the advisability of continued testing~~ *risk reduction strategies and with specified information after the test results are received*. The bill would ~~also delete the requirement for a written statement of~~ *require* informed consent, *as specified, either orally or in writing, and would require the person administering the test to record the informed consent in the person's medical record*. The bill would require an HIV test to be performed for each draw of blood that is ordered for a patient in ~~the emergency department of a general acute care hospital, a public health clinic, clinic or an urgent care center,~~

provided that the patient has consented and would require the results of the HIV test to be given to the patient before he or she leave the facility unless he or she leaves before being released.

Existing law regulates the disclosure of test results for HIV and other diseases. Existing law prohibits the disclosure of HIV test results by Internet posting or other electronic means unless the patient requests the disclosure, the healthcare professional deems it appropriate, and the health care professional has first discussed the results in person or over the phone.

This bill would authorize disclosure of HIV test results by Internet posting or other electronic means if the result is posted on a secure Internet Web site and can only be viewed with the use of a secure personal identification number provided to the patient at the time of testing.

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

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

- 1 SECTION 1. Section 120990 of the Health and Safety Code
- 2 is amended to read:
- 3 120990. (a) Prior to ordering a test that identifies infection of
- 4 a patient with HIV, a medical care provider shall inform the patient
- 5 that the test is planned, *provide information about the test, inform*
- 6 *the patient that there are numerous treatment options and risk*
- 7 *reduction strategies available for a patient who tests positive for*
- 8 *HIV*, and advise the patient that he or she has the right to decline
- 9 the test. If a patient declines the test, the medical care provider
- 10 shall note that fact in the patient’s medical file, ~~if a medical file~~
- 11 ~~exists. For purposes of this subdivision, a medical care provider~~
- 12 ~~includes a person authorized to administer an HIV test pursuant~~
- 13 ~~to Section 120917. This subdivision applies to testing in a clinical~~
- 14 ~~and nonclinical setting, if a test performed in a nonclinical setting~~
- 15 ~~is classified as waived under the federal Clinical Laboratory~~
- 16 ~~Improvement Act (CLIA) (42 U.S.C. Sec. 263a). file.~~
- 17 (b) Subdivision (a) does not apply when a person independently
- 18 requests an HIV test from ~~the provider~~ *a medical care provider,*
- 19 *public health clinic, laboratory, or HIV counseling and testing site*
- 20 *that employs a trained HIV counselor pursuant to Section 120917.*

1     (c) *Except as provided in subdivision (a), a person shall not*  
2 *administer a test for HIV infection unless the person being tested*  
3 *or his or her parent, guardian, conservator, or other person*  
4 *specified in Section 121020 has provided informed consent for the*  
5 *performance of the test. Informed consent may be provided orally*  
6 *or in writing, but the person administering the test shall maintain*  
7 *documentation of consent, whether obtained orally or in writing,*  
8 *in the client's medical record. This consent requirement does not*  
9 *apply to a test performed at an alternative site pursuant to Section*  
10 *120890 or 120895. This section does not authorize a person to*  
11 *administer a test for HIV unless that person is otherwise lawfully*  
12 *permitted to administer an HIV test.*

13     ~~(e)~~

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

19     ~~(d)~~

20     (e) Nothing in this section permits ~~any~~ a person to unlawfully  
21 disclose an individual's HIV status, or to otherwise violate  
22 provisions of Section 54 of the Civil Code, the Americans With  
23 Disabilities Act of 1990 (Public Law 101-336), or the California  
24 Fair Employment and Housing Act (Part 2.8 (commencing with  
25 Section 12900) of Division 3 of Title 2 of the Government Code),  
26 which prohibit discrimination against individuals who are living  
27 with HIV, or who test positive for HIV, or are presumed to be  
28 HIV-positive.

29     (f) *After the results of a test performed pursuant to this section*  
30 *have been received, the medical care provider shall ensure that*  
31 *the patient receives timely information and counseling, as*  
32 *appropriate, to explain the results and the implications for the*  
33 *patient's health. If the patient tests positive for HIV infection, the*  
34 *provider shall inform the patient that there are numerous treatment*  
35 *options available and identify followup testing and care that may*  
36 *be recommended. If the patient tests negative for HIV infection*  
37 *and is known to be at high risk for HIV infection, the provider*  
38 *shall advise the patient of the need for periodic retesting and may*  
39 *offer prevention counseling or a referral to prevention counseling.*

1 SEC. 2. Section 120991 is added to the Health and Safety Code,  
2 to read:

3 120991. Each draw of blood ordered for a patient in ~~the~~  
4 ~~emergency department of a general acute care hospital, a public~~  
5 ~~health clinic, clinic~~ or an urgent care center shall be tested for HIV,  
6 provided that the patient has consented to the HIV test pursuant  
7 to Section 120990. ~~The emergency department, public health clinic,~~  
8 ~~clinic~~ or urgent care center shall provide the test results to the  
9 patient before he or she leaves the facility, unless the patient leaves  
10 the facility prior to being released.

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

13 123148. (a) Notwithstanding any other law, a health care  
14 professional at whose request a test is performed shall provide or  
15 arrange for the provision of the results of a clinical laboratory test  
16 to the patient who is the subject of the test if so requested by the  
17 patient, in oral or written form. The results shall be disclosed in  
18 plain language and in oral or written form, except the results may  
19 be disclosed in electronic form if requested by the patient and if  
20 deemed most appropriate by the health care professional who  
21 requested the test. The telephone shall not be considered an  
22 electronic form of disclosing laboratory results subject to the limits  
23 on electronic disclosure of test results for the purpose of this  
24 section.

25 (b) (1) Consent of the patient to receive his or her laboratory  
26 results by Internet posting or other electronic means shall be  
27 obtained in a manner consistent with the requirements of Section  
28 56.10 or 56.11 of the Civil Code. In the event that a health care  
29 professional arranges for the provision of test results by Internet  
30 posting or other electronic manner, the results shall be disclosed  
31 to a patient in a reasonable time period, but only after the results  
32 have been reviewed by the health care professional. Access to  
33 clinical laboratory test results shall be restricted by the use of a  
34 secure personal identification number when the results are disclosed  
35 to a patient by Internet posting or other electronic manner.

36 (2) Nothing in paragraph (1) shall prohibit direct communication  
37 by Internet posting or the use of other electronic means to disclose  
38 clinical laboratory test results by a treating health care professional  
39 who ordered the test for his or her patient or by a health care

1 professional acting on behalf of, or with the authorization of, the  
2 treating health care professional who ordered the test.

3 (c) When a patient requests access to his or her laboratory test  
4 results by Internet posting, the health care professional shall advise  
5 the patient of any charges that may be assessed directly to the  
6 patient or insurer for the service and that the patient may call the  
7 health care professional for a more detailed explanation of the  
8 laboratory test results when delivered.

9 (d) The electronic disclosure of test results under this section  
10 shall be in accordance with any applicable federal law governing  
11 privacy and security of electronic personal health records.  
12 However, any state statute, if enacted, that governs privacy and  
13 security of electronic personal health records, shall apply to test  
14 results under this section and shall prevail over federal law if  
15 federal law permits.

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

21 (f) Notwithstanding subdivision (a), unless the patient requests  
22 the disclosure, the health care professional deems this disclosure  
23 as an appropriate means, and a health care professional has first  
24 discussed in person, by telephone, or by any other means of oral  
25 communication, the test results with the patient, in compliance  
26 with any other applicable laws, none of the following clinical  
27 laboratory test results and any other related results shall be  
28 disclosed to a patient by Internet posting or other electronic means:

29 (1) HIV antibody test, unless the test result is posted on a secure  
30 Internet Web site and can only be viewed with the use of a secure  
31 personal identification number provided to the patient at the time  
32 of testing.

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

34 (3) Abusing the use of drugs.

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

39 (g) Patient identifiable test results and health information that  
40 have been provided under this section shall not be used for any

1 commercial purpose without the consent of the patient, obtained  
2 in a manner consistent with the requirements of Section 56.11 of  
3 the Civil Code. In no event shall patient identifiable HIV-related  
4 test results and health information disclosed in this section be used  
5 in violation of subdivision (f) of Section 120980.

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

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

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