

Assembly Bill No. 446

CHAPTER 589

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

[Approved by Governor October 5, 2013. Filed with
Secretary of State October 5, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 446, 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. Existing law exempts from these provisions HIV tests that are independently requested by the patient from specified providers.

This bill would require that the medical care provider or the person who administers the test also provide a patient with specified information after the test results are received. The bill would require informed consent, as specified, either orally or in writing, except when a person independently requests an HIV test from an HIV counseling and testing site, as specified. The bill would require the person administering a test for a provider covered by the exemption to document the person's independent request for the test. The bill would also exempt clinical laboratories from the informed consent requirements.

This bill would require every patient who has blood drawn at a primary care clinic, as defined, and who has consented to the test to be offered an HIV test, consistent with the United States Preventive Services Task Force recommendations for screening, and would specify the manner in which the results of that test are provided.

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 HIV test subject is anonymously tested and the result is posted on a secure Internet Web site and can only be viewed with the use of a secure code that can access only a single set of test results and that is provided to the patient at the time of testing.

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

SECTION 1. Section 120990 of the Health and Safety Code is amended to read:

120990. (a) Prior to ordering a test that identifies infection of a patient with HIV, a medical care provider shall inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.

(b) Subdivision (a) does not apply when a person independently requests an HIV test from a medical care provider.

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

(d) Subdivision (c) shall not apply when a person independently requests an HIV test from an HIV counseling and testing site that employs a trained HIV counselor, pursuant to Section 120917, provided that the person is provided with information required pursuant to subdivision (a) and his or her independent request for an HIV test is documented by the person administering the test.

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

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

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

(g) Nothing in this section permits a person to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of

the Civil Code, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, who test positive for HIV, or who are presumed to be HIV-positive.

(h) After the results of a test performed pursuant to this section have been received, the medical care provider or the person who administers the test shall ensure that the patient receives timely information and counseling, as appropriate, to explain the results and the implications for the patient's health. If the patient tests positive for HIV infection, the medical provider or the person who administers the test shall inform the patient that there are numerous treatment options available and identify followup testing and care that may be recommended, including contact information for medical and psychological services. If the patient tests negative for HIV infection and is known to be at high risk for HIV infection, the medical provider or the person who administers the test shall advise the patient of the need for periodic retesting, explain the limitations of current testing technology and the current window period for verification of results, and may offer prevention counseling or a referral to prevention counseling.

(i) This section shall not apply to a clinical laboratory.

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

120991. (a) Each patient who has blood drawn at a primary care clinic and who has consented to the HIV test pursuant to Section 120990 shall be offered an HIV test. The primary care clinician shall offer an HIV test consistent with the United States Preventive Services Task Force recommendation for screening HIV infection. This subdivision shall not apply if the primary care clinic has tested the patient for HIV or if the patient has been offered the HIV test and declined the test within the previous 12 months. Any subsequent testing of a patient who has been tested by the primary care clinic shall be consistent with the most recent guidelines issued by the United States Preventive Services Task Force.

(b) HIV testing of minors 12 years of age or older shall comply with Section 6926 of the Family Code.

(c) This section shall not prohibit a primary care clinic from charging a patient to cover the cost of HIV testing. The primary care clinic shall be deemed to have complied with this section if an HIV test is offered.

(d) A primary care clinic shall attempt to provide test results to the patient before he or she leaves the facility. If that is not possible, the facility may inform the patient who tests negative for HIV by letter or by telephone, and shall inform a patient with a positive test result in a manner consistent with state law. However, in any case, the primary care clinic shall comply with subdivision (g) of Section 120990.

(e) For purposes of this section, "primary care clinic" means a primary care clinic as defined in subdivision (a) of Section 1204 or subdivision (g), (h), or (j) of Section 1206.

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

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

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

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

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

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

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

(f) Notwithstanding subdivision (a), unless the patient requests the disclosure, the health care professional deems this disclosure as an appropriate means, and a health care professional has first discussed in person, by telephone, or by any other means of oral communication, the

test results with the patient, in compliance with any other applicable laws, none of the following clinical laboratory test results and any other related results shall be disclosed to a patient by Internet posting or other electronic means:

(1) HIV antibody test, unless an HIV test subject is anonymously tested and the test result is posted on a secure Internet Web site and can only be viewed with the use of a secure code that can access only a single set of test results and that is provided to the patient at the time of testing. The test result shall be posted only if there is no link to any information that identifies or refers to the subject of the test and the information required pursuant to subdivision (h) of Section 120990 is provided.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

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

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code. In no event shall patient identifiable HIV-related test results and health information disclosed in this section be used in violation of subdivision (f) of Section 120980.

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

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

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