

Assembly Bill No. 2439

Passed the Assembly August 29, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 120992 to the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2439, Nazarian. HIV testing.

Existing law requires that 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 that is consistent with the United States Preventive Services Task Force recommendations for screening for HIV infection. Existing law specifies the manner in which the results of that test are provided.

This bill would create a pilot project, administered by the State Department of Public Health, to assess and make recommendations regarding the effectiveness of the routine offering of an HIV test in the emergency department of a hospital. The bill would require the department to select 4 hospitals, or fewer under specified circumstances, that have emergency departments to voluntarily participate in the pilot project. The bill would require the participating hospitals to offer an HIV test to any patient in the hospital emergency department, as provided, to collect specified information, and to report the information to the department. The pilot project would commence on March 1, 2017, and end on February 28, 2019. The bill would require the department, by December 1, 2019, to complete a report to the Legislature on the findings of the hospitals in the pilot project and make recommendations about routine HIV testing in hospital emergency departments.

This bill would require that these provisions be implemented only to the extent that the department identifies available funding for the purposes of these provisions.

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

SECTION 1. Section 120992 is added to the Health and Safety Code, to read:

120992. (a) There is hereby created a pilot project, to be administered by the department, in order to assess and make recommendations regarding the effectiveness of the routine offering of an HIV test in the emergency department of a hospital.

(b) The department shall select four hospitals that have emergency departments to voluntarily participate in the pilot project. The department may select fewer hospitals if an insufficient number of hospitals express willingness to voluntarily participate.

(1) Two of the hospitals shall be selected from large urban areas.

(2) One hospital shall be selected from a small urban or suburban area.

(3) One hospital shall be selected from a rural area.

(c) Each hospital in the pilot project shall offer an HIV test to any patient in the hospital emergency department who has consented to the HIV test pursuant to Section 120990. The emergency department shall comply with subdivision (h) of Section 120990 and may choose to comply either by using emergency department or other hospital personnel or engaging the services of an HIV organization that has experience in prevention counseling for persons at risk for HIV.

(d) (1) A hospital in the pilot project shall not offer a test to any person who is being treated for a life-threatening emergency or who lacks the capacity to consent to an HIV test.

(2) If an emergency department physician at a hospital in the pilot project determines that a patient is in significant pain or distress, including psychological distress, the hospital shall not offer an HIV test to the patient. Once an emergency department physician determines that the patient has stabilized and is no longer in significant pain or distress, including psychological distress, the hospital shall offer an HIV test to the patient.

(e) A hospital in the pilot project shall offer HIV tests to individuals 15 to 65 years of age, inclusive, pursuant to the United States Preventive Services Task Force recommendations. In order to protect the confidentiality and privacy interests of minors, the hospital shall not offer HIV tests to individuals 15 to 17 years of age, inclusive, in the presence of their parent or legal guardian.

(f) A hospital in the pilot project shall be authorized to charge a patient for the cost of the HIV testing.

(g) A hospital in the pilot project shall be directed by the department, in a form, manner, and timeframe determined by the department, to collect and report data on the following topics:

- (1) The frequency of HIV test offers.
- (2) The frequency of consent or nonconsent to an HIV test and any reasons given by the patient for the consent or the nonconsent.
- (3) The time taken to offer an HIV test and secure consent from a patient and the time taken to provide information and counseling pursuant to subdivision (h) of Section 120990.
- (4) The aggregate HIV positivity rate.
- (5) The frequency with which patients agree to participate in a session to receive information and counseling pursuant to subdivision (h) of Section 120990 and the reasons that patients give for refusing to participate.
- (6) The frequency of patients leaving the emergency department without receiving their test results.

(h) A hospital in the pilot project shall provide information to the department regarding its practices and protocols for implementing the offer of an HIV test and the required followup to the test, as well as an assessment of the effectiveness of those practices and protocols.

(i) (1) The pilot project shall commence on March 1, 2017, and end on February 28, 2019.

(2) By December 1, 2019, the department shall complete a report to the Legislature on the findings of the hospitals in the pilot project and make recommendations about routine HIV testing in hospital emergency departments. In preparing the report to the Legislature, the department shall solicit input from a broad range of HIV testing and hospital stakeholders.

(j) (1) The requirement for submitting a report imposed under paragraph (2) of subdivision (i) is inoperative on December 1, 2023, pursuant to Section 10231.5 of the Government Code.

(2) A report submitted pursuant to paragraph (2) of subdivision (i) shall be submitted in compliance with Section 9795 of the Government Code.

(k) For purposes of this section, “hospital” means a general acute care hospital as defined in subdivision (a) of Section 1250.

(l) This section shall be implemented only to the extent that the department identifies available funding for the purposes of this

section. The department may seek or use private funding to cover the costs of administering the pilot project.

Approved _____, 2016

Governor