

AMENDED IN SENATE AUGUST 15, 2016
AMENDED IN SENATE AUGUST 2, 2016
AMENDED IN ASSEMBLY APRIL 21, 2016
AMENDED IN ASSEMBLY MARCH 16, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2640

Introduced by Assembly Member Gipson

February 19, 2016

An act to amend Section 120990 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2640, as amended, Gipson. Public health: HIV.

Existing law requires a medical care provider or person administering a test for HIV to, after receiving results indicating no infection for a patient who is known to be at high risk for HIV infection, advise the patient of the need for periodic retesting and explain the limitations of current testing technology and the current window period for verification of results.

This bill would instead require a medical care provider or person administering a test for HIV to provide patients who test negative for HIV infection and are determined to be at a high risk for HIV infection by the medical provider or person administering the test with the above-described information and information about ~~the effectiveness and safety of all~~ methods that prevent or reduce the risk of contracting HIV, including preexposure prophylaxis and postexposure prophylaxis, as specified.

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. 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 available for
7 a patient who tests positive for HIV and that a person who tests
8 negative for HIV should continue to be routinely tested, and advise
9 the patient that he or she has the right to decline the test. If a patient
10 declines the test, the medical care provider shall note that fact in
11 the patient’s medical file.
12 (b) Subdivision (a) does not apply when a person independently
13 requests an HIV test from a medical care provider.
14 (c) Except as provided in subdivision (a), a person shall not
15 administer a test for HIV infection unless the person being tested
16 or his or her parent, guardian, conservator, or other person specified
17 in Section 121020 has provided informed consent for the
18 performance of the test. Informed consent may be provided orally
19 or in writing, but the person administering the test shall maintain
20 documentation of consent, whether obtained orally or in writing,
21 in the client’s medical record. This consent requirement does not
22 apply to a test performed at an alternative site pursuant to Section
23 120890 or 120895. This section does not authorize a person to
24 administer a test for HIV unless that person is otherwise lawfully
25 permitted to administer an HIV test.
26 (d) Subdivision (c) shall not apply when a person independently
27 requests an HIV test from an HIV counseling and testing site that
28 employs a trained HIV counselor, pursuant to Section 120917,
29 provided that the person is provided with information required
30 pursuant to subdivision (a) and his or her independent request for
31 an HIV test is documented by the person administering the test.
32 (e) Nothing in this section shall preclude a medical examiner
33 or other physician from ordering or performing a test to detect
34 HIV on a cadaver when an autopsy is performed or body parts are

1 donated pursuant to the Uniform Anatomical Gift Act (Chapter
2 3.5 (commencing with Section 7150) of Part 1 of Division 7).

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

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

14 (g) Nothing in this section permits a person to unlawfully
15 disclose an individual’s HIV status, or to otherwise violate
16 provisions of Section 54 of the Civil Code, the Americans With
17 Disabilities Act of 1990 (Public Law 101-336), or the California
18 Fair Employment and Housing Act (Part 2.8 (commencing with
19 Section 12900) of Division 3 of Title 2 of the Government Code),
20 which prohibit discrimination against individuals who are living
21 with HIV, who test positive for HIV, or who are presumed to be
22 HIV-positive.

23 (h) After the results of a test performed pursuant to this section
24 have been received, the medical care provider or the person who
25 administers the test shall ensure that the patient receives timely
26 information and counseling, as appropriate, to explain the results
27 and the implications for the patient’s health. If the patient tests
28 positive for HIV infection, the medical provider or the person who
29 administers the test shall inform the patient that there are numerous
30 treatment options available and identify followup testing and care
31 that may be recommended, including contact information for
32 medical and psychological services. If the patient tests negative
33 for HIV infection and is determined to be at high risk for HIV
34 infection by the medical provider or person administering the test,
35 the medical provider or the person who administers the test shall
36 advise the patient of the need for periodic retesting, explain the
37 limitations of current testing technology and the current window
38 period for verification of results, and provide information about
39 ~~the effectiveness and safety of all~~ methods that prevent or reduce
40 the risk of contracting HIV, including, but not limited to,

- 1 preexposure prophylaxis and postexposure prophylaxis, consistent
- 2 with guidance of the federal Centers for Disease Control and
- 3 Prevention, and may offer prevention counseling or a referral to
- 4 prevention counseling.
- 5 (i) This section shall not apply to a clinical laboratory.