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PUBLIC HEALTH (410 ILCS 305/) AIDS Confidentiality Act.

(410 ILCS 305/1) (from Ch. 111 1/2, par. 7301)

Sec. 1. This Act shall be known and may be cited as the "AIDS Confidentiality Act".

(Source: P.A. 85-677; 85-679.)

(410 ILCS 305/2) (from Ch. 111 1/2, par. 7302)

Sec. 2. The General Assembly finds that:

(1) The use of tests designed to reveal a condition indicative of Human Immunodeficiency Virus (HIV) infection can be a valuable tool in protecting the public health.

(2) Despite existing laws, regulations and professional standards which require or promote the informed, voluntary and confidential use of tests designed to reveal HIV infection, many members of the public are deterred from seeking such testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent.

(3) The public health will be served by facilitating informed, voluntary and confidential use of tests designed to reveal HIV infection.

(4) The public health will also be served by expanding the availability of informed, voluntary, and confidential HIV testing and making HIV testing a routine part of general medical care, as recommended by the United States Centers for Disease Control and Prevention.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

Sec. 3. When used in this Act:

(a) "Department" means the Illinois Department of Public Health.

(b) "AIDS" means acquired immunodeficiency syndrome.

(c) "HIV" means the Human Immunodeficiency Virus or any other identified causative agent of AIDS.

(d) "Informed consent" means a written or verbal agreement by the subject of a test or the subject's legally authorized representative without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or coercion, which entails at least the following pre-test information:

(1) a fair explanation of the test, including its purpose, potential uses, limitations and the meaning of its results; and

(2) a fair explanation of the procedures to be followed, including the voluntary nature of the test, the right to withdraw consent to the testing

process at any time, the right to anonymity to the extent provided by law with respect to participation in the test and disclosure of test results, and the right to confidential treatment of information identifying the subject of the test and the results of the test, to the extent provided by law.

Pre-test information may be provided in writing, verbally, or by video, electronic, or other means. The subject must be offered an opportunity to ask questions about the HIV test and decline testing. Nothing in this Act shall prohibit a health care provider from combining a form used to obtain informed consent for HIV testing with forms used to obtain written consent for general medical care or any other medical test or procedure provided that the forms make it clear that the subject may consent to general medical care, tests, or medical procedures without being required to consent to HIV testing and clearly explain how the subject may opt-out of HIV testing.

(e) "Health facility" means a hospital, nursing home, blood bank, blood center, sperm bank, or other health care institution, including any "health facility" as that term is defined in the Illinois Finance Authority Act.

(f) "Health care provider" means any health care professional, nurse, paramedic, psychologist or other person providing medical, nursing, psychological, or other health care services of any kind.

(f-5) "Health care professional" means (i) a licensed physician, (ii) a physician assistant to whom the physician assistant's supervising physician has delegated the provision of AIDS and HIV-related health services, (iii) an advanced practice registered nurse who has a written collaborative agreement with a collaborating physician which authorizes the provision of AIDS and HIV-related health services, (iv) a licensed dentist, (v) a licensed podiatrist, or (vi) an individual certified to provide HIV testing and counseling by a state or local public health department.

(g) "Test" or "HIV test" means a test to determine the presence of the antibody or antigen to HIV, or of HIV infection.

(h) "Person" includes any natural person, partnership, association, joint venture, trust, governmental entity, public or private corporation, health facility or other legal entity.

(Source: P.A. 95-7, eff. 6-1-08; 95-331, eff. 8-21-07.)

(410 ILCS 305/4) (from Ch. 111 1/2, par. 7304)

Sec. 4. No person may order an HIV test without first receiving the documented informed consent of the subject of the test or the subject's legally authorized representative. A health care facility or provider may offer opt-out HIV testing where the subject or the subject's legally authorized representative is informed that the subject will be tested for HIV unless he or she refuses. The health care facility or provider must document the provision of informed consent, including pre-test information, and whether the subject or the subject's legally authorized representative declined the offer of HIV testing.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/5) (from Ch. 111 1/2, par. 7305)

Sec. 5. No health care professional may order an HIV test without making available to the person tested pre-test information about the meaning of the test results, the availability of additional or confirmatory testing, if appropriate, and the availability of referrals for further information or counseling.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/5.5)

Sec. 5.5. Rapid testing. The Department shall adopt rules to allow for the implementation of HIV/AIDS rapid testing. The rules must include, but need not be limited to, standards for ordering and administration of testing and counseling and dissemination of test results.
(Source: P.A. 93-482, eff. 8-8-03.)

(410 ILCS 305/6) (from Ch. 111 1/2, par. 7306)

Sec. 6. Any individual seeking an HIV test shall have the right to anonymous testing, unless identification of the test subject is otherwise required. Anonymous testing shall be performed after pre-test information is provided and informed consent is obtained, using a coded system that does not link individual identity with the request or result. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where it is available. The Department may, if it deems necessary, promulgate regulations exempting blood banks, as defined in the Illinois Blood Bank Act, from the requirements of this Section.
(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/7) (from Ch. 111 1/2, par. 7307)

Sec. 7. (a) Notwithstanding the provisions of Sections 4, 5 and 6 of this Act, informed consent is not required for a health care provider or health facility to perform a test when the health care provider or health facility procures, processes, distributes or uses a human body part donated for a purpose specified under the Illinois Anatomical Gift Act, or semen provided prior to the effective date of this Act for the purpose of artificial insemination, and such a test is necessary to assure medical acceptability of such gift or semen for the purposes intended.

(b) Informed consent is not required for a health care provider or health facility to perform a test when a health care provider or employee of a health facility, or a firefighter or an EMT-A, EMT-I or EMT-P, is involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment. Should such test prove to be positive, the patient and the health care provider, health facility employee, firefighter, EMT-A, EMT-I, or EMT-P shall be provided appropriate counseling consistent with this Act.

(c) Informed consent is not required for a health care provider or health facility to perform a test when a law enforcement officer is involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment. Should such test prove to be positive, the patient shall be provided appropriate counseling consistent with this Act. For purposes of this subsection (c), "law enforcement officer" means any person employed by the State, a county or a municipality as a policeman, peace officer, auxiliary policeman, correctional officer or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/8) (from Ch. 111 1/2, par. 7308)

Sec. 8. Notwithstanding the provisions of Sections 4 and 5 of this Act, informed consent and pre-test information are not required for the performance of an HIV test: (a) for the purpose of research, if the testing is performed in such a way that the identity of the test subject is not known and may not be retrieved by the researcher, and in such a way that the test subject is not informed of the results of the testing, or (b) when in the judgment of the physician, such testing is medically indicated to provide appropriate diagnosis and treatment to the subject of the test, provided that the subject of the test has otherwise provided his or her consent to such physician for medical treatment.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

Sec. 9. No person may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

(a) The subject of the test or the subject's legally authorized representative. A physician may notify the spouse of the test subject, if the test result is positive and has been confirmed pursuant to rules adopted by the Department, provided that the physician has first sought unsuccessfully to persuade the patient to notify the spouse or that, a reasonable time after the patient has agreed to make the notification, the physician has reason to believe that the patient has not provided the notification. This paragraph shall not create a duty or obligation under which a physician must notify the spouse of the test results, nor shall such duty or obligation be implied. No civil liability or criminal sanction under this Act shall be imposed for any disclosure or non-disclosure of a test result to a spouse by a physician acting in good faith under this paragraph. For the purpose of any proceedings, civil or criminal, the good faith of any physician acting under this paragraph shall be presumed.

(b) Any person designated in a legally effective release of the test results executed by the subject of the test or the subject's legally authorized representative.

(c) An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information.

(d) The Department and local health authorities serving a population of over 1,000,000 residents or other local health authorities as designated by the Department, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by State law. The Department, local health authorities, and authorized representatives shall not disclose information and records held by them relating to known or suspected cases of AIDS or HIV infection, publicly or in any action of any kind in any court or before any tribunal, board, or agency. AIDS and HIV infection data shall be protected from disclosure in accordance with the provisions of Sections 8-2101 through 8-2105 of the Code of Civil Procedure.

(e) A health facility or health care provider which procures, processes, distributes or uses: (i) a human body part from a deceased person with

respect to medical information regarding that person; or (ii) semen provided prior to the effective date of this Act for the purpose of artificial insemination.

(f) Health facility staff committees for the purposes of conducting program monitoring, program evaluation or service reviews.

(g) (Blank).

(h) Any health care provider or employee of a health facility, and any firefighter or EMT-A, EMT-P, or EMT-I, involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment.

(i) Any law enforcement officer, as defined in subsection (c) of Section 7, involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment.

(j) A temporary caretaker of a child taken into temporary protective custody by the Department of Children and Family Services pursuant to Section 5 of the Abused and Neglected Child Reporting Act, as now or hereafter amended.

(k) In the case of a minor under 18 years of age whose test result is positive and has been confirmed pursuant to rules adopted by the Department, the health care provider who ordered the test shall make a reasonable effort to notify the minor's parent or legal guardian if, in the professional judgment of the health care provider, notification would be in the best interest of the child and the health care provider has first sought unsuccessfully to persuade the minor to notify the parent or legal guardian or a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care provider has reason to believe that the minor has not made the notification. This subsection shall not create a duty or obligation under which a health care provider must notify the minor's parent or legal guardian of the test results, nor shall a duty or obligation be implied. No civil liability or criminal sanction under this Act shall be imposed for any notification or non-notification of a minor's test result by a health care provider acting in good faith under this subsection. For the purpose of any proceeding, civil or criminal, the good faith of any health care provider acting under this subsection shall be presumed.

(Source: P.A. 96-328, eff. 8-11-09.)

(410 ILCS 305/9.5)

Sec. 9.5. Delivery of test results.

(a) The Department shall develop rules regarding the delivery of HIV test results to patients.

(b) The subject of the test or the subject's legally authorized representative shall be notified by personal contact whenever possible of the confirmed positive result of an HIV test. When the subject or the subject's legally authorized representative is notified of a confirmed positive test result, the health care provider or professional shall provide the subject or the subject's legally authorized representative with a referral to counseling in connection with the confirmed positive test result and a referral to an appropriate medical facility for the treatment and management of HIV.

(c) A health care provider shall not be in violation of this Section when an attempt to contact the test subject or the subject's legally authorized representative at the address or telephone number provided by the test subject or the test subject's legally authorized representative does not result in contact and notification or where an attempt to deliver results by

personal contact has not been successful.
(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/10) (from Ch. 111 1/2, par. 7310)

Sec. 10. No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by Section 9.

(Source: P.A. 85-677; 85-679.)

(410 ILCS 305/11) (from Ch. 111 1/2, par. 7311)

Sec. 11. Notwithstanding the provisions of Section 4 of this Act, informed consent is not required for the performance of an HIV test upon a person who is specifically required by law to be so tested.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/12) (from Ch. 111 1/2, par. 7312)

Sec. 12. Intentional or reckless violation of this Act or any regulation issued hereunder shall constitute a Class A misdemeanor.

(Source: P.A. 87-763.)

(410 ILCS 305/13) (from Ch. 111 1/2, par. 7313)

Sec. 13. Any person aggrieved by a violation of this Act or of a regulation promulgated hereunder shall have a right of action in the circuit court and may recover for each violation:

(1) Against any person who negligently violates a provision of this Act or the regulations promulgated hereunder, liquidated damages of \$2,000 or actual damages, whichever is greater.

(2) Against any person who intentionally or recklessly violates a provision of this Act or the regulations promulgated hereunder, liquidated damages of \$10,000 or actual damages, whichever is greater.

(3) Reasonable attorney fees.

(4) Such other relief, including an injunction, as the court may deem appropriate.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/14) (from Ch. 111 1/2, par. 7314)

Sec. 14. Nothing in this Act limits the right of the subject of a test to recover damages or other relief under any other applicable law.

(Source: P.A. 85-677; 85-679.)

(410 ILCS 305/15) (from Ch. 111 1/2, par. 7315)

Sec. 15. Nothing in this Act shall be construed to impose civil liability or criminal sanction for disclosure of a test result in accordance with any reporting requirement of the Department for a diagnosed case of HIV

infection, AIDS or a related condition.

Nothing in this Act shall be construed to impose civil liability or criminal sanction for performing a test without informed consent pursuant to the provisions of subsection (b) or (c) of Section 7 of this Act.

(Source: P.A. 95-7, eff. 6-1-08.)

(410 ILCS 305/15.1) (from Ch. 111 1/2, par. 7315.1)

Sec. 15.1. Sections 1 through 15 of this Act shall not apply to a health maintenance organization nor to any insurance company, fraternal benefit society, or other insurer regulated under the "Illinois Insurance Code", approved June 29, 1937, as amended.

(Source: P.A. 85-677; 85-679.)

(410 ILCS 305/16) (from Ch. 111 1/2, par. 7316)

Sec. 16. The Department shall promulgate rules and regulations concerning implementation and enforcement of this Act. The rules and regulations promulgated by the Department pursuant to this Act may include procedures for taking appropriate action with regard to health care facilities or health care providers which violate this Act or the regulations promulgated hereunder. The provisions of The Illinois Administrative Procedure Act shall apply to all administrative rules and procedures of the Department pursuant to this Act, except that in case of conflict between The Illinois Administrative Procedure Act and this Act, the provisions of this Act shall control. The Department shall conduct training, technical assistance, and outreach activities, as needed, to implement routine HIV testing in healthcare medical settings.

(Source: P.A. 95-7, eff. 6-1-08.)