

AMENDED IN SENATE JUNE 17, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY MAY 14, 2013

AMENDED IN ASSEMBLY APRIL 30, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 446

Introduced by Assembly Member Mitchell

February 19, 2013

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. *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 information about risk reduction strategies and with specified information after the test results are received. The bill would 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 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, who is between 12 and 65 years of age and who has consented to the test to be offered an HIV test 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 result is posted on a secure Internet Web site and can only be viewed with the use of a secure ~~personal identification number~~ *code that can access only a single set of test results and that is provided to the patient at the time of testing.*

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 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.
11 (b) Subdivision (a) does not apply when a person independently
12 requests an HIV test from a medical care provider, a primary care
13 clinic as defined in subdivision (a) of Section 1204 or any clinic
14 specified in subdivision (g), (h), or (j) of Section 1206, laboratory,
15 or HIV counseling and testing site that employs a trained HIV

1 counselor pursuant to Section 120917, *provided that the person's*
2 *independent request for an HIV test is documented by the person*
3 *administering the test.*

4 (c) Except as provided in subdivision (a), a person shall not
5 administer a test for HIV infection unless the person being tested
6 or his or her parent, guardian, conservator, or other person specified
7 in Section 121020 has provided informed consent for the
8 performance of the test. Informed consent may be provided orally
9 or in writing, but the person administering the test shall maintain
10 documentation of consent, whether obtained orally or in writing,
11 in the client's medical record. This consent requirement does not
12 apply to a test performed at an alternative site pursuant to Section
13 120890 or 120895. This section does not authorize a person to
14 administer a test for HIV unless that person is otherwise lawfully
15 permitted to administer an HIV test.

16 (d) Nothing in this section shall preclude a medical examiner
17 or other physician from ordering or performing a test to detect
18 HIV on a cadaver when an autopsy is performed or body parts are
19 donated pursuant to the Uniform Anatomical Gift Act (Chapter
20 3.5 (commencing with Section 7150) of Part 1 of Division 7).

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

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

32 (f) Nothing in this section permits a person to unlawfully
33 disclose an individual's HIV status, or to otherwise violate
34 provisions of Section 54 of the Civil Code, the Americans With
35 Disabilities Act of 1990 (Public Law 101-336), or the California
36 Fair Employment and Housing Act (Part 2.8 (commencing with
37 Section 12900) of Division 3 of Title 2 of the Government Code),
38 which prohibit discrimination against individuals who are living
39 with HIV, who test positive for HIV, or who are presumed to be
40 HIV-positive.

1 (g) After the results of a test performed pursuant to this section
 2 have been received, the medical care provider or the person who
 3 administers the test shall ensure that the patient receives timely
 4 information and counseling, as appropriate, to explain the results
 5 and the implications for the patient’s health. If the patient tests
 6 positive for HIV infection, the medical provider or the person who
 7 adminsters the test shall inform the patient that there are numerous
 8 treatment options available and identify followup testing and care
 9 that may be recommended, including contact information for
 10 medical and psychological services. If the patient tests negative
 11 for HIV infection and is known to be at high risk for HIV infection,
 12 the medical provider or the person who administers the test shall
 13 advise the patient of the need for periodic retesting, explain the
 14 limitations of current testing technology and the current window
 15 period for verification of results, and may offer prevention
 16 counseling or a referral to prevention counseling.

17 (h) *This section shall not apply to a clinical laboratory.*

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

20 120991. (a) Each patient who has blood drawn at a primary
 21 care clinic, who is between ~~18~~ 12 and 65 years of age, and who
 22 has consented to the HIV test pursuant to Section 120990 shall be
 23 offered an HIV test. The primary care clinic shall be in compliance
 24 with this subdivision if it chooses to test the patient using a rapid
 25 HIV test. This subdivision shall not apply if the primary care clinic
 26 has tested the patient for HIV or if the patient has been offered the
 27 HIV test and declined the test within the previous 12 months. Any
 28 subsequent testing of a patient who has been tested by the primary
 29 care clinic shall be consistent with the most recent guidelines issued
 30 by the federal Centers for Disease Control and Prevention and the
 31 United States Preventive Services Task Force.

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

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

38 (d) A primary care clinic shall attempt to provide test results to
 39 the patient before he or she leaves the facility. If that is not
 40 possible, the facility may inform the patient who tests negative for

1 HIV by letter or by telephone, and shall inform a patient with a
2 positive test result in a manner consistent with state law. However,
3 in any case, the primary care clinic shall comply with subdivision
4 (g) of Section 120990.

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

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

10 123148. (a) Notwithstanding any other law, a health care
11 professional at whose request a test is performed shall provide or
12 arrange for the provision of the results of a clinical laboratory test
13 to the patient who is the subject of the test if so requested by the
14 patient, in oral or written form. The results shall be disclosed in
15 plain language and in oral or written form, except the results may
16 be disclosed in electronic form if requested by the patient and if
17 deemed most appropriate by the health care professional who
18 requested the test. The telephone shall not be considered an
19 electronic form of disclosing laboratory results subject to the limits
20 on electronic disclosure of test results for the purpose of this
21 section.

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

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

39 (c) When a patient requests access to his or her laboratory test
40 results by Internet posting, the health care professional shall advise

1 the patient of any charges that may be assessed directly to the
2 patient or insurer for the service and that the patient may call the
3 health care professional for a more detailed explanation of the
4 laboratory test results when delivered.

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

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

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

24 (1) HIV antibody test, unless the test result is posted on a secure
25 Internet Web site and can only be viewed with the use of a secure
26 ~~personal identification number~~ *code that can access only a single*
27 *set of test results and that is provided to the patient at the time of*
28 *testing. The test result shall be posted only if there is no link to*
29 *any information that identifies or refers to the subject of the test.*

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

31 (3) Abusing the use of drugs.

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

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

1 test results and health information disclosed in this section be used
2 in violation of subdivision (f) of Section 120980.

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

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

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