

AMENDED IN SENATE JULY 8, 2013  
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**

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**Introduced by Assembly Member Mitchell**

February 19, 2013

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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.~~ *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, 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 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 that a person who tests negative for HIV should continue*  
 9 *to be routinely tested*, and advise the patient that he or she has the  
 10 right to decline the test. If a patient declines the test, the medical  
 11 care provider shall note that fact in the patient's medical file.

1 (b) Subdivision (a) does not apply when a person independently  
2 requests an HIV test from a medical care provider, a primary care  
3 clinic as defined in subdivision (a) of Section 1204 or any clinic  
4 specified in subdivision (g), (h), or (j) of Section 1206, laboratory,  
5 or HIV counseling and testing site that employs a trained HIV  
6 counselor pursuant to Section 120917, provided that the person's  
7 independent request for an HIV test is documented by the person  
8 administering the test. *provider.*

9 (c) Except as provided in subdivision (a), a person shall not  
10 administer a test for HIV infection unless the person being tested  
11 or his or her parent, guardian, conservator, or other person specified  
12 in Section 121020 has provided informed consent for the  
13 performance of the test. Informed consent may be provided orally  
14 or in writing, but the person administering the test shall maintain  
15 documentation of consent, whether obtained orally or in writing,  
16 in the client's medical record. This consent requirement does not  
17 apply to a test performed at an alternative site pursuant to Section  
18 120890 or 120895. This section does not authorize a person to  
19 administer a test for HIV unless that person is otherwise lawfully  
20 permitted to administer an HIV test.

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

27 ~~(d)~~

28 (e) Nothing in this section shall preclude a medical examiner  
29 or other physician from ordering or performing a test to detect  
30 HIV on a cadaver when an autopsy is performed or body parts are  
31 donated pursuant to the Uniform Anatomical Gift Act (Chapter  
32 3.5 (commencing with Section 7150) of Part 1 of Division 7).

33 ~~(e)~~

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

39 (2) For purposes of this subdivision, "unlinked testing" means  
40 blood samples that are obtained anonymously, or that have the

1 name or identifying information of the individual who provided  
2 the sample removed in a manner that prevents the test results from  
3 ever being linked to the particular individual who participated in  
4 the research or study.

5 ~~(f)~~

6 (g) Nothing in this section permits a person to unlawfully  
7 disclose an individual's HIV status, or to otherwise violate  
8 provisions of Section 54 of the Civil Code, the Americans With  
9 Disabilities Act of 1990 (Public Law 101-336), or the California  
10 Fair Employment and Housing Act (Part 2.8 (commencing with  
11 Section 12900) of Division 3 of Title 2 of the Government Code),  
12 which prohibit discrimination against individuals who are living  
13 with HIV, who test positive for HIV, or who are presumed to be  
14 HIV-positive.

15 ~~(g)~~

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

32 ~~(h)~~

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

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

36 120991. (a) Each patient who has blood drawn at a primary  
37 care clinic, who is between 12 and 65 years of age, and who has  
38 consented to the HIV test pursuant to Section 120990 shall be  
39 offered an HIV test. The primary care clinic shall be in compliance  
40 with this subdivision if it chooses to test the patient using a rapid

1 HIV test. This subdivision shall not apply if the primary care clinic  
2 has tested the patient for HIV or if the patient has been offered the  
3 HIV test and declined the test within the previous 12 months. Any  
4 subsequent testing of a patient who has been tested by the primary  
5 care clinic shall be consistent with the most recent guidelines issued  
6 by the federal Centers for Disease Control and Prevention and the  
7 United States Preventive Services Task Force.

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

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

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

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

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

26 123148. (a) Notwithstanding any other law, a health care  
27 professional at whose request a test is performed shall provide or  
28 arrange for the provision of the results of a clinical laboratory test  
29 to the patient who is the subject of the test if so requested by the  
30 patient, in oral or written form. The results shall be disclosed in  
31 plain language and in oral or written form, except the results may  
32 be disclosed in electronic form if requested by the patient and if  
33 deemed most appropriate by the health care professional who  
34 requested the test. The telephone shall not be considered an  
35 electronic form of disclosing laboratory results subject to the limits  
36 on electronic disclosure of test results for the purpose of this  
37 section.

38 (b) (1) Consent of the patient to receive his or her laboratory  
39 results by Internet posting or other electronic means shall be  
40 obtained in a manner consistent with the requirements of Section

1 56.10 or 56.11 of the Civil Code. In the event that a health care  
2 professional arranges for the provision of test results by Internet  
3 posting or other electronic manner, the results shall be disclosed  
4 to a patient in a reasonable time period, but only after the results  
5 have been reviewed by the health care professional. Access to  
6 clinical laboratory test results shall be restricted by the use of a  
7 secure personal identification number when the results are disclosed  
8 to a patient by Internet posting or other electronic manner.

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

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

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

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

32 (f) Notwithstanding subdivision (a), unless the patient requests  
33 the disclosure, the health care professional deems this disclosure  
34 as an appropriate means, and a health care professional has first  
35 discussed in person, by telephone, or by any other means of oral  
36 communication, the test results with the patient, in compliance  
37 with any other applicable laws, none of the following clinical  
38 laboratory test results and any other related results shall be  
39 disclosed to a patient by Internet posting or other electronic means:

- 1 (1) HIV antibody test, unless the test result is posted on a secure  
2 Internet Web site and can only be viewed with the use of a secure  
3 code that can access only a single set of test results and that is  
4 provided to the patient at the time of testing. The test result shall  
5 be posted only if there is no link to any information that identifies  
6 or refers to the subject of the test.
- 7 (2) Presence of antigens indicating a hepatitis infection.
- 8 (3) Abusing the use of drugs.
- 9 (4) Test results related to routinely processed tissues, including  
10 skin biopsies, Pap smear tests, products of conception, and bone  
11 marrow aspirations for morphological evaluation, if they reveal a  
12 malignancy.
- 13 (g) Patient identifiable test results and health information that  
14 have been provided under this section shall not be used for any  
15 commercial purpose without the consent of the patient, obtained  
16 in a manner consistent with the requirements of Section 56.11 of  
17 the Civil Code. In no event shall patient identifiable HIV-related  
18 test results and health information disclosed in this section be used  
19 in violation of subdivision (f) of Section 120980.
- 20 (h) A third party to whom laboratory test results are disclosed  
21 pursuant to this section shall be deemed a provider of  
22 administrative services, as that term is used in paragraph (3) of  
23 subdivision (c) of Section 56.10 of the Civil Code, and shall be  
24 subject to all limitations and penalties applicable to that section.
- 25 (i) A patient may not be required to pay a cost, or be charged a  
26 fee, for electing to receive his or her laboratory results in a manner  
27 other than by Internet posting or other electronic form.
- 28 (j) A patient or his or her physician may revoke consent provided  
29 under this section at any time and without penalty, except to the  
30 extent that action has been taken in reliance on that consent.

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