

27 virus infection.

28 (c)~~(b)~~ "HIV test result" means a laboratory report of a
 29 human immunodeficiency virus test result entered into a medical
 30 record on or after July 6, 1988, or any report or notation in a
 31 medical record of a laboratory report of a human
 32 immunodeficiency virus test. ~~As used in this section,~~ The term
 33 ~~"HIV test result"~~ does not include test results reported to a
 34 health care provider by a patient.

35 (d) "Nonhealth care setting" means a site that conducts
 36 HIV testing for the sole purpose of identifying HIV infection.
 37 Such setting does not provide medical treatment but may include
 38 community-based organizations, outreach settings, county health
 39 department HIV testing programs, and mobile vans.

40 (f)~~(e)~~ "Significant exposure" means:

- 41 1. Exposure to blood or body fluids through needlestick,
 42 instruments, or sharps;
- 43 2. Exposure of mucous membranes to visible blood or body
 44 fluids, to which universal precautions apply according to the
 45 National Centers for Disease Control and Prevention, including,
 46 without limitations, the following body fluids:
 - 47 a. Blood.
 - 48 b. Semen.
 - 49 c. Vaginal secretions.
 - 50 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
 - 51 e. Synovial fluid.
 - 52 f. Pleural fluid.

53 g. Peritoneal fluid.
 54 h. Pericardial fluid.
 55 i. Amniotic fluid.
 56 j. Laboratory specimens that contain HIV (e.g.,
 57 suspensions of concentrated virus); or
 58 3. Exposure of skin to visible blood or body fluids,
 59 especially when the exposed skin is chapped, abraded, or
 60 afflicted with dermatitis or the contact is prolonged or
 61 involving an extensive area.
 62 (e)~~(d)~~ "Preliminary HIV test" means an antibody or
 63 antibody-antigen screening test, such as the ~~enzyme-linked~~
 64 immunosorbent assays (IA), or a rapid test approved by the
 65 federal Food and Drug Administration ~~(ELISAs) or the Single Use~~
 66 ~~Diagnostic System (SUDS).~~
 67 (g)~~(e)~~ "Test subject" or "subject of the test" means the
 68 person upon whom an HIV test is performed, or the person who has
 69 legal authority to make health care decisions for the test
 70 subject.
 71 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
 72 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—
 73 (a) Before performing an HIV test:
 74 1. In a health care setting, the person to be tested shall
 75 be provided information about the test and shall be notified
 76 that the test is planned, that he or she has the right to
 77 decline the test, and that he or she has the right to
 78 confidential treatment of information identifying the subject of

79 the test and of the results of the test as provided by law. If
80 the person to be tested declines the test, such decision shall
81 be documented in the person's medical record. No person in this
82 state shall order a test designed to identify the human
83 immunodeficiency virus, or its antigen or antibody, without
84 first obtaining the informed consent of the person upon whom the
85 test is being performed, except as specified in paragraph (h).
86 Informed consent shall be preceded by an explanation of the
87 right to confidential treatment of information identifying the
88 subject of the test and the results of the test to the extent
89 provided by law. Information shall also be provided on the fact
90 that a positive HIV test result will be reported to the county
91 health department with sufficient information to identify the
92 test subject and on the availability and location of sites at
93 which anonymous testing is performed. As required in paragraph
94 (3) (c), each county health department shall maintain a list of
95 sites at which anonymous testing is performed, including the
96 locations, phone numbers, and hours of operation of the sites.
97 Consent need not be in writing provided there is documentation
98 in the medical record that the test has been explained and the
99 consent has been obtained.

100 2. In a nonhealth care setting, a provider shall obtain
101 the informed consent of the person upon whom the test is being
102 performed. Informed consent shall be preceded by an explanation
103 of the right to confidential treatment of information
104 identifying the subject of the test and the results of the test

105 as provided by law.

106

107 The test subject shall also be informed that a positive HIV test
 108 result will be reported to the county health department with
 109 sufficient information to identify the test subject and on the
 110 availability and location of sites at which anonymous testing is
 111 performed. As required in paragraph (3)(c), each county health
 112 department shall maintain a list of sites at which anonymous
 113 testing is performed, including the locations, telephone
 114 numbers, and hours of operation of the sites.

115 (b) Except as provided in paragraph (h), informed consent
 116 must be obtained from a legal guardian or other person
 117 authorized by law if ~~when~~ the person:

118 1. Is not competent, is incapacitated, or is otherwise
 119 unable to make an informed judgment; or

120 2. Has not reached the age of majority, except as provided
 121 in s. 384.30.

122 (g) Human immunodeficiency virus test results contained in
 123 the medical records of a hospital licensed under chapter 395 may
 124 be released in accordance with s. 395.3025 without being subject
 125 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,
 126 or paragraph (f) if; ~~provided~~ the hospital has notified the
 127 patient of the limited confidentiality protections afforded HIV
 128 test results contained in hospital medical records ~~obtained~~
 129 ~~written informed consent for the HIV test in accordance with~~
 130 ~~provisions of this section.~~

131 (h) Notwithstanding ~~the provisions of~~ paragraph (a),
132 informed consent is not required:

133 1. When testing for sexually transmissible diseases is
134 required by state or federal law, or by rule including the
135 following situations:

136 a. HIV testing pursuant to s. 796.08 of persons convicted
137 of prostitution or of procuring another to commit prostitution.

138 b. HIV testing of inmates pursuant to s. 945.355 before
139 ~~prior to their~~ release from prison by reason of parole,
140 accumulation of gain-time credits, or expiration of sentence.

141 c. Testing for HIV by a medical examiner in accordance
142 with s. 406.11.

143 d. HIV testing of pregnant women pursuant to s. 384.31.

144 2. Those exceptions provided for blood, plasma, organs,
145 skin, semen, or other human tissue pursuant to s. 381.0041.

146 3. For the performance of an HIV-related test by licensed
147 medical personnel in bona fide medical emergencies if ~~when~~ the
148 test results are necessary for medical diagnostic purposes to
149 provide appropriate emergency care or treatment to the person
150 being tested and the patient is unable to consent, as supported
151 by documentation in the medical record. Notification of test
152 results in accordance with paragraph (c) is required.

153 4. For the performance of an HIV-related test by licensed
154 medical personnel for medical diagnosis of acute illness where,
155 in the opinion of the attending physician, providing
156 notification ~~obtaining informed consent~~ would be detrimental to

157 the patient, as supported by documentation in the medical
158 record, and the test results are necessary for medical
159 diagnostic purposes to provide appropriate care or treatment to
160 the person being tested. Notification of test results in
161 accordance with paragraph (c) is required if it would not be
162 detrimental to the patient. This subparagraph does not authorize
163 the routine testing of patients for HIV infection without
164 notification ~~informed consent~~.

165 5. If ~~When~~ HIV testing is performed as part of an autopsy
166 for which consent was obtained pursuant to s. 872.04.

167 6. For the performance of an HIV test upon a defendant
168 pursuant to the victim's request in a prosecution for any type
169 of sexual battery where a blood sample is taken from the
170 defendant voluntarily, pursuant to court order for any purpose,
171 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
172 960.003; however, the results of an ~~any~~ HIV test performed shall
173 be disclosed solely to the victim and the defendant, except as
174 provided in ss. 775.0877, 951.27, and 960.003.

175 7. If ~~When~~ an HIV test is mandated by court order.

176 8. For epidemiological research pursuant to s. 381.0031,
177 for research consistent with institutional review boards created
178 by 45 C.F.R. part 46, or for the performance of an HIV-related
179 test for the purpose of research, if the testing is performed in
180 a manner by which the identity of the test subject is not known
181 and may not be retrieved by the researcher.

182 9. If ~~When~~ human tissue is collected lawfully without the

183 consent of the donor for corneal removal as authorized by s.
184 765.5185 or enucleation of the eyes as authorized by s. 765.519.

185 10. For the performance of an HIV test upon an individual
186 who comes into contact with medical personnel in such a way that
187 a significant exposure has occurred during the course of
188 employment or within the scope of practice and where a blood
189 sample is available which ~~that~~ was taken from that individual
190 voluntarily by medical personnel for other purposes. The term
191 "medical personnel" includes a licensed or certified health care
192 professional; an employee of a health care professional or
193 health care facility; employees of a laboratory licensed under
194 chapter 483; personnel of a blood bank or plasma center; a
195 medical student or other student who is receiving training as a
196 health care professional at a health care facility; and a
197 paramedic or emergency medical technician certified by the
198 department to perform life-support procedures under s. 401.23.

199 a. Before performing ~~Prior to performance of~~ an HIV test
200 on a voluntarily obtained blood sample, the individual from whom
201 the blood was obtained shall be requested to consent to the
202 performance of the test and to the release of the results. If
203 consent cannot be obtained within the time necessary to perform
204 the HIV test and begin prophylactic treatment of the exposed
205 medical personnel, all information concerning the performance of
206 an HIV test and any HIV test result shall be documented only in
207 the medical personnel's record unless the individual gives
208 written consent to entering this information on the individual's

209 medical record.

210 b. Reasonable attempts to locate the individual and to
211 obtain consent shall be made, and all attempts must be
212 documented. If the individual cannot be found or is incapable of
213 providing consent, an HIV test may be conducted on the available
214 blood sample. If the individual does not voluntarily consent to
215 the performance of an HIV test, the individual shall be informed
216 that an HIV test will be performed, and counseling shall be
217 furnished as provided in this section. However, HIV testing
218 shall be conducted only after appropriate medical personnel
219 under the supervision of a licensed physician documents, in the
220 medical record of the medical personnel, that there has been a
221 significant exposure and that, in accordance with the written
222 protocols based on the National Centers for Disease Control and
223 Prevention guidelines on HIV postexposure prophylaxis and in the
224 physician's medical judgment, the information is medically
225 necessary to determine the course of treatment for the medical
226 personnel.

227 c. Costs of an ~~any~~ HIV test of a blood sample performed
228 with or without the consent of the individual, as provided in
229 this subparagraph, shall be borne by the medical personnel or
230 the employer of the medical personnel. However, costs of testing
231 or treatment not directly related to the initial HIV tests or
232 costs of subsequent testing or treatment may not be borne by the
233 medical personnel or the employer of the medical personnel.

234 d. In order to use ~~utilize~~ the provisions of this

235 subparagraph, the medical personnel must ~~either~~ be tested for
236 HIV pursuant to this section or provide the results of an HIV
237 test taken within 6 months before ~~prior to~~ the significant
238 exposure if such test results are negative.

239 e. A person who receives the results of an HIV test
240 pursuant to this subparagraph shall maintain the confidentiality
241 of the information received and of the persons tested. Such
242 confidential information is exempt from s. 119.07(1).

243 f. If the source of the exposure will not voluntarily
244 submit to HIV testing and a blood sample is not available, the
245 medical personnel or the employer of such person acting on
246 behalf of the employee may seek a court order directing the
247 source of the exposure to submit to HIV testing. A sworn
248 statement by a physician licensed under chapter 458 or chapter
249 459 that a significant exposure has occurred and that, in the
250 physician's medical judgment, testing is medically necessary to
251 determine the course of treatment constitutes probable cause for
252 the issuance of an order by the court. The results of the test
253 shall be released to the source of the exposure and to the
254 person who experienced the exposure.

255 11. For the performance of an HIV test upon an individual
256 who comes into contact with medical personnel in such a way that
257 a significant exposure has occurred during the course of
258 employment or within the scope of practice of the medical
259 personnel while the medical personnel provides emergency medical
260 treatment to the individual; or notwithstanding s. 384.287, an

261 individual who comes into contact with nonmedical personnel in
262 such a way that a significant exposure has occurred while the
263 nonmedical personnel provides emergency medical assistance
264 during a medical emergency. For the purposes of this
265 subparagraph, a medical emergency means an emergency medical
266 condition outside of a hospital or health care facility that
267 provides physician care. The test may be performed only during
268 the course of treatment for the medical emergency.

269 a. An individual who is capable of providing consent shall
270 be requested to consent to an HIV test before ~~prior to the~~
271 testing. If consent cannot be obtained within the time necessary
272 to perform the HIV test and begin prophylactic treatment of the
273 exposed medical personnel and nonmedical personnel, all
274 information concerning the performance of an HIV test and its
275 result, shall be documented only in the medical personnel's or
276 nonmedical personnel's record unless the individual gives
277 written consent to entering this information in ~~on~~ the
278 individual's medical record.

279 b. HIV testing shall be conducted only after appropriate
280 medical personnel under the supervision of a licensed physician
281 documents, in the medical record of the medical personnel or
282 nonmedical personnel, that there has been a significant exposure
283 and that, in accordance with the written protocols based on the
284 National Centers for Disease Control and Prevention guidelines
285 on HIV postexposure prophylaxis and in the physician's medical
286 judgment, the information is medically necessary to determine

287 | the course of treatment for the medical personnel or nonmedical
288 | personnel.

289 | c. Costs of any HIV test performed with or without the
290 | consent of the individual, as provided in this subparagraph,
291 | shall be borne by the medical personnel or the employer of the
292 | medical personnel or nonmedical personnel. However, costs of
293 | testing or treatment not directly related to the initial HIV
294 | tests or costs of subsequent testing or treatment may not be
295 | borne by the medical personnel or the employer of the medical
296 | personnel or nonmedical personnel.

297 | d. In order to use ~~utilize~~ the provisions of this
298 | subparagraph, the medical personnel or nonmedical personnel
299 | shall be tested for HIV pursuant to this section or shall
300 | provide the results of an HIV test taken within 6 months before
301 | ~~prior to~~ the significant exposure if such test results are
302 | negative.

303 | e. A person who receives the results of an HIV test
304 | pursuant to this subparagraph shall maintain the confidentiality
305 | of the information received and of the persons tested. Such
306 | confidential information is exempt from s. 119.07(1).

307 | f. If the source of the exposure will not voluntarily
308 | submit to HIV testing and a blood sample was not obtained during
309 | treatment for the medical emergency, the medical personnel, the
310 | employer of the medical personnel acting on behalf of the
311 | employee, or the nonmedical personnel may seek a court order
312 | directing the source of the exposure to submit to HIV testing. A

313 sworn statement by a physician licensed under chapter 458 or
314 chapter 459 that a significant exposure has occurred and that,
315 in the physician's medical judgment, testing is medically
316 necessary to determine the course of treatment constitutes
317 probable cause for the issuance of an order by the court. The
318 results of the test shall be released to the source of the
319 exposure and to the person who experienced the exposure.

320 12. For the performance of an HIV test by the medical
321 examiner or attending physician upon an individual who expired
322 or could not be resuscitated while receiving emergency medical
323 assistance or care and who was the source of a significant
324 exposure to medical or nonmedical personnel providing such
325 assistance or care.

326 a. HIV testing may be conducted only after appropriate
327 medical personnel under the supervision of a licensed physician
328 documents in the medical record of the medical personnel or
329 nonmedical personnel that there has been a significant exposure
330 and that, in accordance with the written protocols based on the
331 National Centers for Disease Control and Prevention guidelines
332 on HIV postexposure prophylaxis and in the physician's medical
333 judgment, the information is medically necessary to determine
334 the course of treatment for the medical personnel or nonmedical
335 personnel.

336 b. Costs of an ~~any~~ HIV test performed under this
337 subparagraph may not be charged to the deceased or to the family
338 of the deceased person.

339 c. For ~~the provisions of~~ this subparagraph to be
 340 applicable, the medical personnel or nonmedical personnel must
 341 be tested for HIV under this section or must provide the results
 342 of an HIV test taken within 6 months before the significant
 343 exposure if such test results are negative.

344 d. A person who receives the results of an HIV test
 345 pursuant to this subparagraph shall comply with paragraph (e).

346 13. For the performance of an HIV-related test medically
 347 indicated by licensed medical personnel for medical diagnosis of
 348 a hospitalized infant as necessary to provide appropriate care
 349 and treatment of the infant if ~~when~~, after a reasonable attempt,
 350 a parent cannot be contacted to provide consent. The medical
 351 records of the infant must ~~shall~~ reflect the reason consent of
 352 the parent was not initially obtained. Test results shall be
 353 provided to the parent when the parent is located.

354 14. For the performance of HIV testing conducted to
 355 monitor the clinical progress of a patient previously diagnosed
 356 to be HIV positive.

357 15. For the performance of repeated HIV testing conducted
 358 to monitor possible conversion from a significant exposure.

359 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
 360 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
 361 REGISTRATION.—No county health department and no other person in
 362 this state shall conduct or hold themselves out to the public as
 363 conducting a testing program for acquired immune deficiency
 364 syndrome or human immunodeficiency virus status without first

365 registering with the Department of Health, reregistering each
 366 year, complying with all other applicable provisions of state
 367 law, and meeting the following requirements:

368 (d) A program in a health care setting shall meet the
 369 notification criteria contained in subparagraph (2)(a)1. A
 370 program in a nonhealth care setting shall meet all informed
 371 consent criteria contained in subparagraph (2)(a)2. ~~The program~~
 372 ~~must meet all the informed consent criteria contained in~~
 373 ~~subsection (2).~~

374 Section 2. Subsection (2) of section 456.032, Florida
 375 Statutes, is amended to read:

376 456.032 Hepatitis B or HIV carriers.-

377 (2) Any person licensed by the department and any other
 378 person employed by a health care facility who contracts a blood-
 379 borne infection shall have a rebuttable presumption that the
 380 illness was contracted in the course and scope of his or her
 381 employment, provided that the person, as soon as practicable,
 382 reports to the person's supervisor or the facility's risk
 383 manager any significant exposure, as that term is defined in s.
 384 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
 385 employer may test the blood or body fluid to determine if it is
 386 infected with the same disease contracted by the employee. The
 387 employer may rebut the presumption by the preponderance of the
 388 evidence. Except as expressly provided in this subsection, there
 389 shall be no presumption that a blood-borne infection is a job-
 390 related injury or illness.

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391 Section 3. This act shall take effect July 1, 2014.