

Assembly Bill No. 682

CHAPTER 550

An act to amend Sections 125090 and 125107 of, and to repeal and add Section 120990 of, the Health and Safety Code, relating to HIV/AIDS.

[Approved by Governor October 12, 2007. Filed with
Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 682, Berg. HIV/AIDS testing.

Existing law prohibits, except in certain cases, a person from testing a person's blood for evidence of antibodies to the probable causative agent of acquired immunodeficiency syndrome (AIDS) without the written consent of the subject of the test or the written consent of the subject, as provided, confirming that he or she obtained the consent from the subject.

This bill would delete those provisions, and would, instead, require a medical care provider, prior to ordering a test that identifies infection with human immunodeficiency virus (HIV), to inform the patient that the test is planned, provide information about the test, inform the patient regarding specified treatment options and further testing needed, and advise the patient that he or she has the right to decline the test. The bill would require the medical provider, if a patient declines the test, to note that fact in the patient's medical file.

Existing law requires the physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery, prior to obtaining a prescribed blood specimen, to ensure that the woman is informed of the intent to perform a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, and certain other information about the risks associated with the transmission of HIV, and specifies that a woman has a right to accept or refuse this testing. Existing law requires that acceptance of testing for HIV be documented in writing on a prescribed form, with a copy to be maintained in the patient's medical file. Existing law authorizes a multispecialty medical group that provides health care services to enrollees of a health care service plan to use a form incorporating specified HIV information.

This bill would delete those provisions regarding the acceptance of HIV testing by a patient, and would, instead, specify that a woman has a right to decline this testing.

Existing law requires the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or post partum, after the results of HIV testing done pursuant to these provisions have been received, to explain the results and the implications for the mother's and infant's health, including any followup

care that is needed. Existing law states that health care providers are strongly encouraged to seek consultation with other providers specializing in the care of HIV-positive women.

This bill would require that the woman also receive any followup testing that is needed. The bill would also state that health care providers are strongly encouraged to seek consultation with HIV specialists who provide care for pregnant and post partum HIV-positive women.

Existing law provides, notwithstanding any other provision of law, that completion of a statement of acceptance of an HIV test pursuant to specified existing law constitutes sufficient consent for HIV testing for a pregnant woman or woman at the time of labor and delivery, and prohibits a laboratory or health care provider from requesting further consent for HIV testing.

This bill would delete the provisions designating completion of the statement of acceptance of an HIV test as sufficient consent for the HIV testing under the circumstances described above.

This bill would prohibit a person from administering a test for HIV infection pursuant to those provisions, unless the person being tested or his or her parent, guardian, conservator, or other specified person, signs a written statement documenting the person's informed consent to the test. The bill would provide an exception to that requirement for tests to detect HIV on a cadaver when an autopsy is performed, or when blood is tested as part of a scientific investigation conducted by a medical researcher operating under the approval of an institutional review board or by the department, in accordance with a prescribed protocol.

The people of the State of California do enact as follows:

SECTION 1. Section 120990 of the Health and Safety Code is repealed.

SEC. 2. Section 120990 is added to the Health and Safety Code, to read:

120990. (a) Prior to ordering a test that identifies infection with HIV, a medical care provider shall inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.

(b) Subdivision (a) shall not apply when a person independently requests an HIV test from the provider.

(c) Except as provided in subdivision (a), no person shall administer a test for HIV infection unless the person being tested or his or her parent, guardian, conservator, or other person specified in Section 121020, signs a written statement documenting the person's informed consent to the test. This requirement does not apply to such a test performed at an alternative site pursuant to Sections 120890 or 120895. Nothing in this section shall

be construed to allow a person to administer a test for HIV unless that person is otherwise permitted under current law to administer an HIV test.

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

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

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

(f) Nothing in this section shall be construed to permit any person to unlawfully disclose an individual’s HIV status, or to otherwise violate provisions of Section 54 of the Civil Code, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, or who test positive for HIV, or are presumed to be HIV-positive.

SEC. 3. Section 125090 of the Health and Safety Code is amended to read:

125090. (a) Subdivision (a) of Section 125085 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge of the woman’s blood type and accepts responsibility for the accuracy of the information.

(b) Subdivision (b) of Section 125085 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge that the woman has previously been determined to be chronically infected with hepatitis B or human immunodeficiency virus (HIV) and accepts responsibility for the accuracy of the information.

(c) Prior to obtaining a blood specimen collected pursuant to subdivision (b) of Section 125085 or this section, the physician and surgeon or other person engaged in the prenatal care of a pregnant woman, or attending the woman at the time of labor or delivery, shall ensure that the woman is informed of the intent to perform a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to decline this testing.

(d) If, during the final review of standard of prenatal care medical tests, the medical records of the pregnant woman do not document a test for rhesus (Rh) antibody blood type, a test for hepatitis B, or a test for HIV, the physician and surgeon or other person engaged in the prenatal care of the woman, or attending the woman at the time of labor or delivery, shall obtain a blood specimen from the woman for the tests that have not been documented. Prior to obtaining this blood specimen, the provider shall ensure that the woman is informed of the intent to perform the tests that have not been documented prior to this visit, including a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to decline the HIV test. The blood shall be tested by a method that will ensure the earliest possible results, and the results shall be reported to both of the following:

(1) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery.

(2) The woman tested.

(e) After the results of the tests done pursuant to this section and Section 125085 have been received, the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or post partum care at the time the results are received shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the mother's and infant's health, including any followup testing and care that are indicated. If the woman tests positive for HIV antibodies, she shall also receive, whenever possible, a referral to a provider, provider group, or institution specializing in prenatal and post partum care for HIV-positive women and their infants. Health care providers are also strongly encouraged to seek consultation with HIV specialists who provide care for pregnant and post partum HIV-positive women and their infants.

(f) The provisions of Section 125107 for counseling are equally applicable to every pregnant patient covered by subdivisions (c) and (d).

(g) Nothing in this section shall be construed to permit a licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of the Civil Code, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, or who test positive for HIV, or are presumed to be HIV-positive.

SEC. 4. Section 125107 of the Health and Safety Code is amended to read:

125107. (a) For purposes of this section, "prenatal care provider" means a licensed health care professional providing prenatal care within his or her

lawful scope of practice. This definition shall not include a licensed health care professional who provides care other than prenatal care to a pregnant patient.

(b) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer human immunodeficiency virus (HIV) information and counseling to every pregnant patient. This information and counseling shall include, but shall not be limited to, all of the following:

(1) A description of the modes of HIV transmission.

(2) A discussion of risk reduction behavior modifications including methods to reduce the risk of perinatal transmission.

(3) If appropriate, referral information to other HIV prevention and psychosocial services including anonymous and confidential test sites approved by the Office of AIDS.

(c) Nothing in this section shall be construed to require mandatory testing. Any documentation or disclosure of HIV-related information shall be made in accordance with Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 regarding confidentiality and informed consent.

(d) Nothing in this section shall be construed to permit a prenatal care provider to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of the Civil Code, or the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, or who test positive for HIV, or are presumed to be HIV-positive.