

CONFIDENTIALITY OF HIV- RELATED INFORMATION ACT - LEGISLATIVE
INTENT, CONSENT TO HIV - RELATED TESTS AND COUNSELING
Act of Jul. 7, 2011, P.L. 274, No. 59 Cl. 35
Session of 2011
No. 2011-59

SB 260

AN ACT

Amending the act of November 29, 1990 (P.L.585, No.148), entitled "An act providing for confidentiality of certain records; providing for the authorized sharing of certain information; providing for written consent prior to an HIV-related test, with certain exceptions; providing for civil immunity for certain licensed physicians; providing for protective procedures and equipment; and creating a civil cause of action," further providing for legislative intent, for consent to HIV-related test and for counseling.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2(c) of the act of November 29, 1990 (P.L.585, No.148), known as the Confidentiality of HIV-Related Information Act, is amended to read:
Section 2. Legislative intent.

* * *

(c) Intent.--It is the intent of the General Assembly to promote confidential testing on an informed and voluntary basis in order to encourage those most in need to obtain testing and appropriate counseling[.] **and to better serve the public health by making HIV testing a routine part of general medical care, as recommended by the Centers for Disease Control and Prevention.**

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Section 1.1. Section 5(a), (b) and (e) of the act are amended and the section is amended by adding a subsection to read:
Section 5. Consent to HIV-related test.

(a) Consent.--

(1) Except as provided in section 6 with respect to the involuntary testing of a source patient, no HIV-related test shall be performed without first obtaining the informed [written] **documented** consent of the subject. Any consent shall be preceded by an explanation of the test, including its purpose, potential uses, limitations and the meaning of its results.

(2) **A health care provider may offer opt-out HIV testing, where the subject is informed that the subject will be tested for HIV unless the subject refuses.**

(3) **The health care provider shall document the provision of informed consent, including pretest information, and whether the subject declined the offer of HIV testing.**

[(b) Pretest counseling.--No HIV-related test may be performed without first making available to the subject information regarding measures for the prevention of, exposure to and transmission of HIV.]

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[(e) Post-test counseling.--

(1) No positive or negative test result shall be revealed to the subject without affording the subject the immediate opportunity for individual, face-to-face counseling about:

(i) The significance of the test results.

(ii) Measures for the prevention of the transmission of HIV.

(iii) The benefits of locating and counseling any individual by whom the subject may have been exposed to HIV and the availability of any services with respect to locating and counseling such individual.

(2) No positive test result shall be revealed to the subject without, in addition to meeting the requirements of paragraph (1), also affording the subject the immediate opportunity for individual, face-to-face counseling about:

(i) The availability of any appropriate health care services, including mental health care, and appropriate social and support services.

(ii) The benefits of locating and counseling any individual who the infected subject may have exposed to HIV and the availability of any services with respect to locating and counseling such individual.]

(e.1) Posttest counseling.--No positive test result shall be revealed to the subject without affording the subject the immediate opportunity for individual, face-to-face counseling about:

(1) The significance of the test results.

(2) Measures for the prevention of the transmission of HIV.

(3) The benefits of locating and counseling any individual by whom the subject may have been exposed to HIV and the availability of any services with respect to locating and counseling such individual.

(4) The availability of any appropriate health care services, including mental health care, and appropriate social and support services.

(5) The benefits of locating and counseling any individual who the infected subject may have exposed to HIV and the availability of any services with respect to locating and counseling such individual.

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Section 1.2. Section 6(b)(1) of the act is amended to read:
Section 6. Certification of significant exposure and testing procedures.

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(b) Opportunity for source patient to consent.--

(1) In the event that an exposed individual health care provider or first responder is certified to have experienced a significant exposure and has submitted to an HIV-related test, no testing shall be performed on a source patient's available blood unless the certifying physician provides a copy of the written certification of significant exposure to the source patient's physician or institutional health care provider in possession of the available blood and the source patient's physician or institutional health care provider has made a good faith effort to:

(i) Notify the source patient or substitute decisionmaker of the significant exposure.

(ii) Seek the source patient's voluntary informed consent to the HIV-related testing as specified in section 5(a).

[(iii) Provide counseling as required under section 5(b).]

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Section 2. This act shall take effect in 60 days.

APPROVED--The 7th day of July, A.D. 2011.

TOM CORBETT