S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. MAYERSOHN, CLARK, ZEBROWSKI, MILLER, MAGNARELLI, PAULIN, FIELDS, SPANO, GALEF, SCARBOROUGH, GREENE, DINOWITZ, PERALTA, CARROZZA, LAVINE, PERRY, WALKER, CAMARA, HOOPER -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, ALFANO, AMEDORE, ARROYO, BACALLES, BALL, BARCLAY, BARRA, BENJAMIN, BOYLE, BRADLEY, BRODSKY, BROOK-KRASNY, BURLING, BUTLER, CALHOUN, CONTE, COOK, CROUCH, CUSICK, DelMONTE, DESTITO, ENGLEBRIGHT, ERRIGO, FINCH, FITZPATRICK, GABRYSZAK, GANTT, GIANARIS, GIGLIO, GORDON, GUNTHER, HAWLEY, HAYES, HEVESI, HIKIND, JACOBS, JEFFRIES, KOON, LANCMAN, LATIMER, P. LOPEZ, LUPARDO, MAGEE, MAISEL, MARKEY, McDONOUGH, McKEVITT, MOLINARO, MORELLE, OAKS, ORTIZ, PEOPLES, PHEFFER, QUINN, RAIA, REILICH, REILLY, J. RIVERA, N. RIVERA, ROBINSON, SALADINO, SCOZZAFAVA, SEMINERIO, SWEENEY, THIELE, TITUS, TOBACCO, TOWNSEND, WEISENBERG, WEPRIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to HIV related testing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 9 of section 2780 of the public health law, as added by chapter 584 of the laws of 1988, is amended to read as follows:

9. "Release of confidential HIV related information" means a written authorization for disclosure of confidential HIV related information which is signed by the protected individual, or if the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual. Such release shall be dated and shall specify to whom disclosure is authorized, the purpose for such disclosure and the time period during which the release is to be effective. A general authorization for the release of medical or other information [shall not be construed] *MAY BE USED* as a release of confidential HIV related information[, unless such authorization specifically indicates its dual purpose as a general authorization and an authorization

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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for the release of confidential HIV related information and complies with the requirements of this subdivision].

S 2. Section 2781 of the public health law, as added by chapter 584 of the laws of 1988, paragraph (d) of subdivision 6 as added by chapter 220 of the laws of 1996 and subdivision 7 as added by chapter 429 of the laws of 2005, is amended to read as follows:

S 2781. HIV related testing. 1. Except as provided in section three thousand one hundred twenty-one of the civil practice law and rules, or unless otherwise specifically authorized or required by a state or federal law, no person shall order the performance of an HIV related test without first receiving the [written,] informed consent of the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, of a person authorized pursuant to law to consent to health care for such individual. A physician or other person authorized pursuant to law to order the performance of an HIV related test shall [certify, in the order for the performance of an HIV related test, that informed consent required by this section has been received], prior to ordering [such] AN HIV RELATED test by a laboratory or other facility, DOCUMENT THE PROVISION OF INFORMED CONSENT AND WHETHER THE SUBJECT OF THE TEST OR PERSON AUTHORIZED PURSUANT TO LAW TO CONSENT TO HEALTH CARE FOR SUCH INDIVIDUAL DECLINED THE OFFER OF AN HIV RELATED TEST.

[2. Informed consent to an HIV related test shall consist of a statement signed by the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, by a person authorized pursuant to law to consent to health care for the subject which includes at least the following:

(a) an explanation of the test, including its purpose, the meaning of its results, and the benefits of early diagnosis and medical intervention; and

(b) an explanation of the procedures to be followed, including that the test is voluntary, that consent may be withdrawn at any time, and a statement advising the subject that anonymous testing is available; and

(c) an explanation of the confidentiality protections afforded confidential HIV related information under this article, including the circumstances under which and classes of persons to whom disclosure of such information may be required, authorized or permitted under this article or in accordance with other provisions of law or regulation.

3. Prior to the execution of a written informed consent, a person ordering the performance of an HIV related test shall provide to the subject of an HIV related test or, if the subject lacks capacity to consent, to a person authorized pursuant to law to consent to health care for the subject, an explanation of the nature of AIDS and HIV related illness, information about discrimination problems that disclosure of the test result could cause and legal protections against such discrimination, and information about behavior known to pose risks for transmission and contraction of HIV infection.

4.] 2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NOTHING SHALL PROHIBIT A HEALTH CARE PROVIDER FROM COMBINING A FORM USED TO OBTAIN INFORMED CONSENT FOR HIV RELATED TESTING WITH FORMS USED TO OBTAIN WRITTEN CONSENT FOR GENERAL MEDICAL CARE OR ANY OTHER MEDICAL TEST OR PROCEDURE PROVIDED THAT THE FORMS MAKE IT CLEAR THAT THE SUBJECT OF THE TEST MAY CONSENT TO GENERAL MEDICAL CARE, TESTS OR MEDICAL PROCEDURES WITHOUT BEING REQUIRED TO CONSENT TO HIV RELATED TESTING AND CLEARLY EXPLAIN HOW THE SUBJECT OF THE TEST MAY OPT OUT OF HIV RELATED TESTING.

3. A person authorized pursuant to law to order the performance of an HIV related test shall provide to the person seeking such test an opportunity to remain anonymous and to provide [written,] informed consent through use of a coded system with no linking of individual identity to the test request or results. A health care provider who is not authorized by the commissioner to provide HIV related tests on an anonymous basis shall refer a person who requests an anonymous test to a test site which does provide anonymous testing. The provisions of this subdivision shall not apply to a health care provider ordering the performance of an HIV related test on an individual proposed for insurance coverage.

[5.] 4. At the time of communicating [the] A POSITIVE test result to the subject of the test, a person ordering the performance of an HIV related test shall provide the subject of the test or, if the subject lacks capacity to consent, the person authorized pursuant to law to consent to health care for the subject with counseling or referrals for counseling: (a) for coping with the emotional consequences of learning the result; (b) regarding the discrimination problems that disclosure of the result could cause; (c) for behavior change to prevent transmission or contraction of HIV infection; (d) to inform such person of available medical treatments; and (e) regarding the [test subject's] need to notify his or her contacts.

[6.] 5. The provisions of this section shall not apply to the performance of an HIV related test:

(a) by a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical research or therapy, or for transplantation to individuals provided, however, that where the test results are communicated to the subject, post-test counseling, as described in subdivision [five] FOUR of this section, shall nonetheless be required; or

(b) for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or

(c) on a deceased person, when such test is conducted to determine the cause of death or for epidemiological purposes[.]; OR

(d) conducted pursuant to section twenty-five hundred-f of this chapter.

[7.] 6. In the event that an HIV related test is ordered by a physician or certified nurse practitioner pursuant to the provisions of the education law providing for non-patient specific regimens, then for the purposes of this section the individual administering the test shall be deemed to be the individual ordering the test.

S 3. Subdivision 4 of section 2783 of the public health law, as added by chapter 584 of the laws of 1988, is amended to read as follows:

4. Any cause of action to recover damages [based on a failure to provide information, explanations, or counseling prior to the execution of a written informed consent, or] based on a lack of informed consent in the ordering or performance of an HIV related test in violation of this article shall be governed by the provisions of section two thousand eight hundred five-d of this chapter.

S 4. Subdivision 1 of section 2786 of the public health law, as added by chapter 584 of the laws of 1988, is amended to read as follows:

1. The commissioner shall promulgate rules and regulations concerning implementation of this article for health facilities, health care providers and other persons to whom this article is applicable. The

commissioner shall also develop forms to be used [for informed consent for HIV related testing and] for the release of confidential HIV related information [and materials for pre-test counseling as required by subdivision three of section twenty-seven hundred eighty-one of this article, and] for post-test counseling as required by subdivision [five] FOUR of section twenty-seven hundred eighty-one of this article. Persons, health facilities and health care providers may use forms [for informed consent for HIV related testing, and] for the release of confidential HIV related information other than those forms developed pursuant to this section, provided that the person, health facility or health care provider doing so receives prior authorization from the commissioner. All forms developed or authorized pursuant to this section shall be written in a clear and coherent manner using words with common, everyday meanings. The commissioner, in consultation with the AIDS institute advisory council, shall promulgate regulations to identify those circumstances which create a significant risk of contracting or transmitting HIV infection; provided, however, that such regulations shall not be determinative of any significant risk determined pursuant to paragraph (a) of subdivision four of section twenty-seven hundred eighty-two or section twenty-seven hundred eighty-five of this article.

S 5. Nothing contained in this act shall be construed as authorizing any individual to require any person to have an HIV related test or treatment for HIV/AIDS.

S 6. This act shall take effect on the one hundred twentieth day after it shall have become a law.