

8129

I N S E N A T E

June 13, 2016

Introduced by Sen. HANNON -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to HIV-related testing; and to amend the education law, in relation to screening for certain diseases

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

1 Section 1. Subdivisions 1, 2 and 3 of section 2781 of the public  
2 health law, as amended by section 2 of part A of chapter 60 of the laws  
3 of 2014, are amended to read as follows:  
4 1. Except as provided in section three thousand one hundred twenty-one  
5 of the civil practice law and rules, or unless otherwise specifically  
6 authorized or required by a state or federal law, no person shall order  
7 the performance of an HIV related test without first [having received  
8 informed consent of the subject of the test who has capacity to consent  
9 or, when the subject lacks capacity to consent, of a person authorized  
10 pursuant to law to consent to health care for such individual. In order  
11 for there to be informed consent, the person ordering the test shall,  
12 prior to obtaining informed consent], at a minimum [advise], ORALLY  
13 ADVISING the protected individual, OR, WHEN THE PROTECTED INDIVIDUAL  
14 LACKS CAPACITY TO CONSENT, A PERSON AUTHORIZED TO CONSENT TO HEALTH CARE  
15 FOR SUCH INDIVIDUAL, that an HIV-related test is being performed, OR  
16 OVER THE OBJECTION OF SUCH INDIVIDUAL OR AUTHORIZED PERSONS. SUCH  
17 ADVISEMENT AND OBJECTION, WHEN APPLICABLE SHALL BE NOTED IN THE INDIVID-  
18 UAL'S RECORD.  
19 2. [Informed consent for HIV related testing pursuant to this section  
20 shall be valid for such testing until such consent is revoked. Each time  
21 that an HIV related test is ordered pursuant to informed consent in  
22 accordance with this section, the physician or other person authorized  
23 pursuant to law to order the performance of the HIV related test, or  
24 such person's representative, shall orally notify the subject of the  
25 test or, when the subject lacks capacity to consent, a person authorized  
26 pursuant to law to consent to health care for such individual, that an

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

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1 HIV related test will be conducted at such time, and shall note the  
2 notification in the patient's record.

3 3.] A person ordering the performance of an HIV related test shall  
4 provide either directly or through a representative to the subject of an  
5 HIV related test or, if the subject lacks capacity to consent, to a  
6 person authorized pursuant to law to consent to health care for the  
7 subject, an explanation that:

8 (a) HIV causes AIDS and can be transmitted through sexual activities  
9 and needle-sharing, by pregnant women to their fetuses, and through  
10 breastfeeding infants;

11 (b) there is treatment for HIV that can help an individual stay heal-  
12 thy;

13 (c) individuals with HIV or AIDS can adopt safe practices to protect  
14 uninfected and infected people in their lives from becoming infected or  
15 multiply infected with HIV;

16 (d) testing is voluntary and can be done anonymously at a public test-  
17 ing center;

18 (e) the law protects the confidentiality of HIV related test results;

19 (f) the law prohibits discrimination based on an individual's HIV  
20 status and services are available to help with such consequences; and

21 (g) the law [allows an individual's informed consent for HIV related  
22 testing to be valid for such testing until such consent is revoked by  
23 the subject of the HIV related test] **REQUIRES THAT AN INDIVIDUAL BE  
24 ADVISED BEFORE AN HIV-RELATED TEST IS PERFORMED, AND THAT NO TEST SHALL  
25 BE PERFORMED OVER HIS OR HER OBJECTION.**

26 Protocols shall be in place to ensure compliance with this section.

27 S 2. Subdivision 1 of section 2781-a of the public health law, as  
28 added by chapter 308 of the laws of 2010, is amended to read as follows:

29 1. Every individual [between the ages of] AGE thirteen and [sixty-four  
30 years] OLDER (or younger [or older] THAN THIRTEEN if there is evidence  
31 or indication of risk activity) who receives health services as an inpa-  
32 tient or in the emergency department of a general hospital defined in  
33 subdivision ten of section twenty-eight hundred one of this chapter or  
34 who receives primary care services in an outpatient department of such  
35 hospital or in a diagnostic and treatment center licensed under article  
36 twenty-eight of this chapter or from a physician, physician assistant,  
37 nurse practitioner, or midwife providing primary care shall IN ACCORD-  
38 ANCE WITH SUBDIVISION ONE OF SECTION TWO THOUSAND SEVEN HUNDRED EIGHTY-  
39 ONE OF THIS ARTICLE be offered an HIV related test unless the health  
40 care practitioner providing such services reasonably believes that (a)  
41 the individual is being treated for a life threatening emergency; or (b)  
42 the individual has previously been offered or has been the subject of an  
43 HIV related test (except that a test shall be offered if otherwise indi-  
44 cated); or (c) the individual lacks capacity to consent to an HIV  
45 related test.

46 S 3. Subdivision 6 of section 6527 of the education law is amended by  
47 adding a new paragraph (g) to read as follows:

48 (G) SCREENING OF PERSONS AT INCREASED RISK OF SYPHILIS, GONORRHEA AND  
49 CHLAMYDIA.

50 S 4. Subdivision 4 of section 6909 of the education law is amended by  
51 adding a new paragraph (g) to read as follows:

52 (G) SCREENING OF PERSONS AT INCREASED RISK FOR SYPHILIS, GONORRHEA AND  
53 CHLAMYDIA.

54 S 5. Section 6527 of the education law is amended by adding a new  
55 subdivision 7-a to read as follows:

1 7-A. A LICENSED PHYSICIAN MAY PRESCRIBE AND ORDER A PATIENT SPECIFIC  
2 ORDER OR NON-PATIENT SPECIFIC ORDER TO A LICENSED PHARMACIST, PURSUANT  
3 TO REGULATIONS PROMULGATED BY THE COMMISSIONER IN CONSULTATION WITH THE  
4 COMMISSIONER OF HEALTH, AND CONSISTENT WITH THE PUBLIC HEALTH LAW, FOR  
5 DISPENSING UP TO A SEVEN DAY STARTER PACK OF HIV POST-EXPOSURE PROPHY-  
6 LAXIS FOR THE PURPOSE OF PREVENTING HUMAN IMMUNODEFICIENCY VIRUS  
7 INFECTION FOLLOWING A POTENTIAL HUMAN IMMUNODEFICIENCY VIRUS EXPOSURE.

8 S 6. Section 6909 of the education law is amended by adding a new  
9 subdivision 8 to read as follows:

10 8. A CERTIFIED NURSE PRACTITIONER MAY PRESCRIBE AND ORDER A PATIENT  
11 SPECIFIC ORDER OR NON-PATIENT SPECIFIC ORDER TO A LICENSED PHARMACIST,  
12 PURSUANT TO REGULATIONS PROMULGATED BY THE COMMISSIONER IN CONSULTATION  
13 WITH THE COMMISSIONER OF HEALTH, AND CONSISTENT WITH THE PUBLIC HEALTH  
14 LAW, FOR DISPENSING UP TO A SEVEN DAY STARTER PACK OF HIV POST-EXPOSURE  
15 PROPHYLAXIS FOR THE PURPOSE OF PREVENTING HUMAN IMMUNODEFICIENCY VIRUS  
16 INFECTION FOLLOWING A POTENTIAL HUMAN IMMUNODEFICIENCY VIRUS EXPOSURE.

17 S 7. Section 6801 of the education law is amended by adding a new  
18 subdivision 5 to read as follows:

19 5. A LICENSED PHARMACIST MAY EXECUTE A NON-PATIENT SPECIFIC ORDER, FOR  
20 DISPENSING UP TO A SEVEN DAY STARTER PACK OF HIV POST-EXPOSURE PROPHY-  
21 LAXIS MEDICATIONS FOR THE PURPOSE OF PREVENTING HUMAN IMMUNODEFICIENCY  
22 VIRUS INFECTION, BY A PHYSICIAN LICENSED IN THIS STATE OR NURSE PRACTI-  
23 TIONER CERTIFIED IN THIS STATE, PURSUANT TO RULES AND REGULATIONS  
24 PROMULGATED BY THE COMMISSIONER IN CONSULTATION WITH THE COMMISSIONER OF  
25 HEALTH FOLLOWING A POTENTIAL HUMAN IMMUNODEFICIENCY VIRUS EXPOSURE.

26 S 8. This act shall take effect immediately; provided, however, the  
27 amendments to section 6801 of the education law made by section seven of  
28 this act shall not affect the expiration of such section and shall be  
29 deemed to expire therewith.