STATE OF NEW YORK

7896

2019-2020 Regular Sessions

IN ASSEMBLY

May 28, 2019

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2781 of the public health law, as amended by chapter 308 of the laws of 2010, subdivisions 1 and 2 as amended by chapter 502 of the laws of 2016 and subdivision 4 as amended by section 2 of part A of chapter 60 of the laws of 2014, is amended to read as follows:

§ 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, at a minimum, [~~orally advising~~] **providing notice by means readily accessible in multiple languages to** the protected individual, or, when the protected individual lacks capacity to consent, a person authorized to consent to health care for such individual, that an HIV-related test is being performed, or over the objection of such individual or authorized persons. Such [~~advisement and objection, when applicable~~] **notice may be provided orally, in writing by prominently displayed signage, by electronic means or other appropriate form of communication. Such notice shall include information that HIV testing is voluntary. A refusal of an HIV related test** shall be noted in the individual's record.

2. [~~A person ordering the performance of an HIV related test shall provide either directly or through a representative 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 that:~~

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

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

~~(b) there is treatment for HIV that can help an individual stay healthy;~~

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

~~(d) testing is voluntary and can be done anonymously at a public testing center;~~

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

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

~~(g) the law requires that an individual be advised before an HIV-related test is performed, and that no test shall be performed over his or her objection.~~

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

~~4. A person authorized pursuant to law to order the performance of an HIV related test shall provide directly or through a representative to the person seeking such test, an opportunity to remain anonymous 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.~~] At the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV related test shall, directly or through a representative:

(a) **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, oral or written information explaining that:**

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

(ii) there is treatment for HIV that can help an individual stay healthy and if taken regularly will prevent sexual transmission of HIV;

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

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

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

(vi) the law requires that no HIV related test shall be performed over an individual's stated objection;

(vii) pre- and post-exposure prophylaxis medications (PrEP and PEP) are available to protect persons at risk of HIV infection; and

(b) in the case of a test indicating evidence of HIV infection, 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: (i) **to inform such person of available medical treatments; (ii)** for coping with the emotional consequences of learning the result; [~~(ii)~~] **(iii)** regarding the discrimination problems that disclosure of the result could cause; [~~(iii)~~] **(iv)** for behavior change to prevent transmission or

contraction of HIV infection; [~~(iv) to inform such person of available medical treatments; and~~] (v) regarding the need to notify his or her contacts; and **(vi) regarding pre- and post-exposure prophylaxis medications available to sexual partners to prevent HIV infection.**

[~~(b) in the case of a test not indicating evidence of HIV infection, provide (in a manner which may consist of oral or written reference to information previously provided) 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 information concerning the risks of participating in high risk sexual or needle-sharing behavior.~~

~~5-a.~~] **2-a.** With the consent of the subject of a test indicating evidence of HIV infection or, if the subject lacks capacity to consent, with the consent of the person authorized pursuant to law to consent to health care for the subject, the person who ordered the performance of the HIV related test, or such person's representative, shall provide or arrange with a health care provider for an appointment for follow-up medical care for HIV for such subject.

[~~6.~~] **3.** 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~~] **two** 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; or

(e) in situations involving occupational exposures which create a significant risk of contracting or transmitting HIV infection, as defined in regulations of the department and pursuant to protocols adopted by the department,

(i) provided that:

(A) the person who is the source of the occupational exposure is deceased, comatose or is determined by his or her attending health care professional to lack mental capacity to consent to an HIV related test and is not reasonably expected to recover in time for the exposed person to receive appropriate medical treatment, as determined by the exposed person's attending health care professional who would order or provide such treatment;

(B) there is no person available or reasonably likely to become available who has the legal authority to consent to the HIV related test on behalf of the source person in time for the exposed person to receive appropriate medical treatment; and

(C) the exposed person will benefit medically by knowing the source person's HIV test results, as determined by the exposed person's health care professional and documented in the exposed person's medical record;

(ii) in which case

(A) a provider shall order an anonymous HIV test of the source person; and

(B) the results of such anonymous test, but not the identity of the source person, shall be disclosed only to the attending health care professional of the exposed person solely for the purpose of assisting the exposed person in making appropriate decisions regarding post-exposure medical treatment; and

(C) the results of the test shall not be disclosed to the source person or placed in the source person's medical record.

[~~7.~~] **4.** 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.

§ 2. This act shall take effect immediately.