

# STATE OF NEW YORK

7809

2023-2024 Regular Sessions

## IN SENATE

December 13, 2023

Introduced by Sen. HOYLMAN-SIGAL -- 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 requirements

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

1 Section 1. Section 2781 of the public health law, as amended by chap-  
2 ter 308 of the laws of 2010, subdivisions 1 and 2 as amended by chapter  
3 502 of the laws of 2016 and subdivision 4 as amended by section 2 of  
4 part A of chapter 60 of the laws of 2014, is amended to read as follows:

5 § 2781. HIV related testing. 1. Except as provided in section three  
6 thousand one hundred twenty-one of the civil practice law and rules, or  
7 unless otherwise specifically authorized or required by a state or  
8 federal law, no person shall order the performance of an HIV related  
9 test without first, at a minimum, [~~orally advising~~] providing notice by  
10 means readily accessible in multiple languages to the protected individ-  
11 ual, or, when the protected individual lacks capacity to consent, a  
12 person authorized to consent to health care for such individual, that an  
13 HIV-related test is being performed, or over the objection of such indi-  
14 vidual or authorized persons. Such [~~advisement and objection, when~~  
15 ~~applicable~~] notice may be provided orally, in writing by prominently  
16 displayed signage, by electronic means or other appropriate form of  
17 communication. Such notice shall include information that HIV testing is  
18 voluntary. A refusal of an HIV related test shall be noted in the indi-  
19 vidual's record.

20 2. [~~A person ordering the performance of an HIV related test shall~~  
21 ~~provide either directly or through a representative~~] Prior to ordering  
22 the test, information shall be provided, either orally or by prominently  
23 displayed signage, by printed materials, by electronic means or other  
24 appropriate form of communication to the subject of an HIV related test  
25 or, if the subject lacks capacity to consent, to a person authorized

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

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1 pursuant to law to consent to health care for the subject, [~~an explana-~~  
2 ~~tion~~] explaining that:

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

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

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

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

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

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

16 (g) the law requires that an individual be [~~advised~~] notified before  
17 an HIV-related test is performed, and that no test shall be performed  
18 over [~~his or her~~] their objection; and

19 (h) pre- and post-exposure prophylaxis medications (PrEP and PEP) are  
20 available to protect persons at risk of HIV infection.

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

22 4. [~~A person authorized pursuant to law to order the performance of an~~  
23 ~~HIV related test shall provide directly or through a representative to~~  
24 ~~the person seeking such test, an opportunity to remain anonymous through~~  
25 ~~use of a coded system with no linking of individual identity to the test~~  
26 ~~request or results.~~] A health care provider who is not authorized by the  
27 commissioner to provide HIV related tests on an anonymous basis shall  
28 refer a person who requests an anonymous test to a test site which does  
29 provide anonymous testing. The provisions of this subdivision shall not  
30 apply to a health care provider ordering the performance of an HIV  
31 related test on an individual proposed for insurance coverage.

32 5. At the time of communicating the test result to the subject of the  
33 test, a person ordering the performance of an HIV related test shall,  
34 directly or through a representative:

35 (a) in the case of a test indicating evidence of HIV infection,  
36 provide the subject of the test or, if the subject lacks capacity to  
37 consent, the person authorized pursuant to law to consent to health care  
38 for the subject with counseling or referrals for counseling: (i) for  
39 coping with the emotional consequences of learning the result; (ii)  
40 regarding the discrimination problems that disclosure of the result  
41 could cause; (iii) for behavior change to prevent transmission or  
42 contraction of HIV infection; (iv) to inform such person of available  
43 medical treatments; and (v) regarding the need to notify his or her  
44 contacts; and (vi) regarding pre- and post-exposure prophylaxis medica-  
45 tions available to sexual partners to prevent HIV infection.

46 (b) in the case of a test not indicating evidence of HIV infection,  
47 provide (in a manner which may consist of oral or written reference to  
48 information previously provided) the subject of the test, or if the  
49 subject lacks capacity to consent, the person authorized pursuant to law  
50 to consent to health care for the subject, with information concerning  
51 (i) the risks of participating in high risk sexual or needle-sharing  
52 behavior; and (ii) regarding pre- and post-exposure prophylaxis medica-  
53 tions available to prevent HIV infection.

54 5-a. With the consent of the subject of a test indicating evidence of  
55 HIV infection or, if the subject lacks capacity to consent, with the  
56 consent of the person authorized pursuant to law to consent to health

1 care for the subject, the person who ordered the performance of the HIV  
2 related test, or such person's representative, shall provide or arrange  
3 with a health care provider for an appointment for follow-up medical  
4 care for HIV for such subject.

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

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

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

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

20 (d) conducted pursuant to section twenty-five hundred-f of this chap-  
21 ter; or

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

26 (i) provided that:

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

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

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

41 (ii) in which case

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

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

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

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

56 § 2. This act shall take effect immediately.