

CHAPTER 63

PUBLIC HEALTH REGULATION — MISCELLANEOUS CHANGES

H.F. 467

AN ACT relating to programs and activities under the purview of the department of public health.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I TOBACCO ENFORCEMENT

Section 1. Section 142A.1, subsection 2, Code 2011, is amended to read as follows:

2. It is the intent of the general assembly that the comprehensive tobacco use prevention and control initiative established in this chapter will specifically address reduction of tobacco use by youth and pregnant women, ~~promotion of compliance by minors and retailers with tobacco sales laws and ordinances~~, and enhancement of the capacity of youth to make healthy choices. The initiative shall allow extensive involvement of youth in attaining these results.

Sec. 2. Section 142A.2, subsection 10, Code 2011, is amended by striking the subsection.

Sec. 3. Section 142A.3, subsection 3, paragraph a, Code 2011, is amended to read as follows:

a. Members, at least one of whom is a member of a racial minority, to be appointed by the governor, subject to confirmation by the senate pursuant to sections 2.32 and 69.19, and consisting of the following:

(1) Three members who are active with nonprofit health organizations that emphasize tobacco use prevention or who are active as health services providers, at the local level.

~~(2) One member who is a retailer.~~

(3) (2) Three members who are active with health promotion activities at the local level in youth education, ~~law enforcement~~, nonprofit services, or other activities relating to tobacco use prevention and control.

Sec. 4. Section 142A.3, subsection 5, paragraph e, Code 2011, is amended by striking the paragraph.

Sec. 5. Section 142A.4, subsections 14 and 17, Code 2011, are amended by striking the subsections.

Sec. 6. Section 142A.5, subsection 1, paragraph e, Code 2011, is amended by striking the paragraph.

Sec. 7. Section 142A.5, subsection 2, paragraph f, Code 2011, is amended by striking the paragraph.

Sec. 8. Section 142A.6, subsection 2, paragraph e, Code 2011, is amended by striking the paragraph.

Sec. 9. Section 142A.6, subsection 3, paragraph c, Code 2011, is amended by striking the paragraph.

Sec. 10. Section 142A.7, subsection 1, paragraph f, Code 2011, is amended by striking the paragraph.

Sec. 11. Section 142A.8, subsection 4, paragraph d, Code 2011, is amended by striking the paragraph.

Sec. 12. Section 142A.9, subsection 3, Code 2011, is amended to read as follows:

3. To the greatest extent possible, the youth program shall be directed by youth for youth participants. State and local administrators associated with the initiative shall consult with and utilize the youth program participants in the media, marketing, and communications program; education efforts; and other aspects of the initiative including evaluation, and collaboration, and enforcement.

Sec. 13. Section 453A.2, subsections 4, 6, and 7, Code 2011, are amended to read as follows:

4. The ~~Iowa alcoholic beverages division of the department of public health commerce, a county health department, a city health department, or a city~~ may directly enforce this section in district court and initiate proceedings pursuant to section 453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.

6. If a county ~~health department, a city health department, or a city~~ has not assessed a penalty pursuant to section 453A.22, subsection 2, for a violation of subsection 1, within sixty days of the adjudication of the violation, the matter shall be transferred to and be the exclusive responsibility of the Iowa alcoholic beverages division of the department of public health commerce. Following transfer of the matter, if the violation is contested, the Iowa alcoholic beverages division of the department of public health commerce shall request an administrative hearing before an administrative law judge, assigned by the division of administrative hearings of the department of inspections and appeals in accordance with the provisions of section 10A.801, to adjudicate the matter pursuant to chapter 17A.

7. A tobacco compliance employee training fund is created in the office of the treasurer of state. The fund shall consist of civil penalties assessed by the Iowa alcoholic beverages division of the department of public health commerce under section 453A.22 for violations of this section. Moneys in the fund are appropriated to the alcoholic beverages division of the department of commerce and shall be used to develop and administer the tobacco compliance employee training program under section 453A.5. Moneys deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. Notwithstanding section 8.33, any unexpended balance in the fund at the end of the fiscal year shall be retained in the fund.

Sec. 14. Section 453A.13, subsection 2, paragraph c, Code 2011, is amended to read as follows:

c. The department, or a city or county, shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this subsection to the Iowa alcoholic beverages division of the department of public health commerce within thirty days of the issuance. The alcoholic beverages division of the department of commerce shall submit the current list of all retail permits issued to the Iowa department of public health by the first day of each quarter of a state fiscal year.

Sec. 15. Section 453A.22, subsection 2, unnumbered paragraph 1, Code 2011, is amended to read as follows:

If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the Iowa alcoholic beverages division of the department of public health commerce following transfer of the matter to the Iowa alcoholic beverages division of the department of public health commerce pursuant to section 453A.2, subsection 6, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

Sec. 16. Section 453A.22, subsection 7, Code 2011, is amended to read as follows:

7. The department or local authority shall report the suspension or revocation of a retail permit under this section to the Iowa alcoholic beverages division of the department of public health commerce within thirty days of the suspension or revocation of the retail permit.

Sec. 17. Section 453A.47A, subsection 6, Code 2011, is amended to read as follows:

6. *Issuance.* Cities shall issue retail permits to retailers within their respective limits. County boards of supervisors shall issue retail permits to retailers in their respective counties, outside of the corporate limits of cities. The city or county shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this section to the Iowa alcoholic beverages division of the department of public health commerce within thirty days of issuance. The alcoholic beverages division of the department of commerce shall submit the current list of all retail permits issued to the Iowa department of public health by the first day of each quarter of a state fiscal year.

DIVISION II COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

Sec. 18. Section 139A.2, subsections 5 and 8, Code 2011, are amended to read as follows:

5. *“Contagious or infectious disease”* means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, tuberculosis, and any other disease, ~~with the exception of AIDS or HIV infection as defined in section 141A.1,~~ determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

8. *“Exposure”* means ~~the risk of contracting disease as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department~~ a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

Sec. 19. Section 139A.2, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 23A. *“Significant exposure”* means a situation in which there is a risk of contracting disease through exposure to a person’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

Sec. 20. Section 139A.19, Code 2011, is amended to read as follows:

139A.19 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains ~~an a~~ significant exposure from an individual while rendering health care services or other services, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of ~~an a~~ a significant exposure report by the care provider to the hospital, clinic, other health facility, or other person specified in this section to whom the individual is delivered by the care provider as determined by rule. The exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

b. The hospital, clinic, or other health facility in which the significant exposure occurred or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number and ~~shall not otherwise identify the individual tested.~~

c. A hospital, clinic, or other health facility, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall

inform the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

d. Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

2. a. If the test results are positive, the hospital, clinic, other health facility, or other person performing the test shall notify the subject of the test and make any required reports to the department pursuant to sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

b. If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, other health facility, or other person conducting the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider.

3. ~~The notification to the care provider shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the care provider seek medical attention.~~

c. The notification to the care provider shall be provided as soon as is reasonably possible following determination that the individual subject of the test has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained an a significant exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

4. ~~This section does not require or permit, unless otherwise provided, a hospital, health care provider, or other person to administer a test for the express purpose of determining the presence of a contagious or infectious disease, except that testing may be performed if the individual consents and if the requirements of this section are satisfied.~~

5. ~~3.~~ This section does not preclude a hospital, clinic, other health facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinics,¹ other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

6. ~~4.~~ A hospital, clinic, other health facility, or health care provider, or other person participating in good faith in complying with provisions authorized or required under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

7. ~~5.~~ A hospital's, clinic's, other health facility's, or health care provider's duty of notification to notify under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to which notification under this section applies the individual who was the source of the significant exposure.

6. Notwithstanding subsection 5, the hospital, clinic, or other health facility may provide a procedure for notifying the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information

¹ See chapter 131, §54, 158 herein

regarding the source individual's contagious or infectious disease status to the exposed care provider.

~~8.~~ 7. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under this section who performs the test in compliance with this section or who fails to perform the test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

~~9.~~ 8. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the test authorized.

~~10.~~ 9. The department shall adopt rules pursuant to chapter 17A to administer this section. The department may determine by rule the contagious or infectious diseases for which testing is reasonable and appropriate and which may be administered under this section.

~~11.~~ 10. The employer of a care provider who sustained ~~an~~ a significant exposure under this section shall pay the costs of testing for the individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall ~~pay the costs of testing for the assist an~~ individual who is the source of the significant exposure ~~and in finding resources to pay for the costs of the testing of the~~ and shall assist a care provider who renders direct aid without compensation in finding resources ~~to pay for the cost of the test.~~

Sec. 21. Section 139A.33, Code 2011, is amended to read as follows:

139A.33 Determination of source — partner notification program.

~~The local board or the department shall use every available means to determine the source and spread of any infectious case of sexually transmitted disease or infection which is reported.~~

1. The department shall maintain a partner notification program for persons known to have tested positive for a reportable sexually transmitted disease or infection.

2. In administering the program, the department shall provide for all of the following:

a. A person who voluntarily participates in the program shall receive post-test counseling during which time the person shall be encouraged to refer for counseling and testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

3. The department may delegate its partner notification duties under this section to local health authorities or a physician or other health care provider, as provided by rules adopted by the department.

4. In making contact with sexual or drug equipment-sharing partners, the department or its designee shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of the persons contacted.

5. a. This section shall not be interpreted as creating a duty to warn third parties of the danger of exposure to a sexually transmitted disease or infection through contact with a person who tests positive for a sexually transmitted disease.

b. This section shall not be interpreted to require the department to provide partner notification services to all persons who have tested positive for a sexually transmitted disease or infection.

DIVISION III AIDS UPDATE

Sec. 22. Section 141A.1, subsections 2, 11, 13, 15, and 18, Code 2011, are amended to read as follows:

2. "AIDS-related conditions" means any condition resulting from the human immunodeficiency virus infection that meets the definition of AIDS as established by the centers for disease control and prevention of the United States department of health and human services.

11. “*HIV-related condition*” means any condition resulting from the human immunodeficiency virus infection.

13. “*Infectious bodily fluids*” means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

15. “*Nonblinded epidemiological studies*” means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.

18. “*Significant exposure*” means ~~the~~ a situation in which there is a risk of contracting HIV infection by means of ~~through~~ exposure to a person’s infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

Sec. 23. Section 141A.1, Code 2011, is amended by adding the following new subsection:
NEW SUBSECTION. 6A. “Exposure” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

Sec. 24. Section 141A.2, subsection 5, Code 2011, is amended to read as follows:

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of ~~the infection~~ HIV.

Sec. 25. Section 141A.3, subsection 2, paragraph b, Code 2011, is amended to read as follows:

b. Provide health information to the public regarding HIV ~~infection~~, including information about how ~~the infection~~ HIV is transmitted and how transmittal can be prevented. The department shall prepare and distribute information regarding HIV ~~infection~~ transmission and prevention.

Sec. 26. Section 141A.4, subsection 1, Code 2011, is amended to read as follows:

1. HIV testing and education shall be offered to persons who are at risk for HIV infection including all of the following:

- a. Males who have had sexual relations with other males.
- b. All persons testing positive for a sexually transmitted disease.
- ~~b.~~ c. All persons having a history of injecting drug abuse.
- ~~c.~~ d. Male and female sex workers and those who trade sex for drugs, money, or favors.
- ~~d.~~ e. Sexual partners of HIV-infected persons.
- ~~e.~~ f. Persons whose sexual partners are identified in paragraphs “a” through “d” “e”.

Sec. 27. Section 141A.5, subsection 2, paragraph c, subparagraph (1), subparagraph division (a), Code 2011, is amended to read as follows:

(a) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV ~~infection~~ transmission to the third party.

Sec. 28. Section 141A.6, subsection 1, Code 2011, is amended to read as follows:

1. Prior to undergoing ~~an~~ a voluntary HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV ~~infection~~ transmission and risk reduction. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the specific purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent form for the performance of medical tests and procedures or the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing an HIV-related test. If an individual is unable to provide consent, the individual’s legal guardian may provide consent. If the individual’s legal guardian cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

Sec. 29. Section 141A.9, subsection 2, paragraph i, Code 2011, is amended to read as follows:

i. Pursuant to ~~section~~ sections 915.42 and 915.43, to a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim if requested by the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "victim" means victim as defined in section 915.40.

Sec. 30. Section 141A.9, subsection 3, Code 2011, is amended to read as follows:

3. Release may be made of medical or epidemiological information for research or statistical purposes in a manner such that no individual person can be identified.

Sec. 31. Section 141A.10, subsection 2, Code 2011, is amended to read as follows:

2. A health care provider attending a person who tests positive for the HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

Sec. 32. REPEAL. Section 141A.8, Code 2011, is repealed.

DIVISION IV MISCELLANEOUS PROVISIONS

Sec. 33. Section 135.11, subsection 13, Code 2011, is amended to read as follows:

13. ~~Administer the statewide public health nursing, homemaker-home health aide, and senior health programs~~ healthy aging and essential public health services by approving grants of state funds to the local boards of health ~~and the county boards of supervisors for the purposes of promoting healthy aging throughout the lifespan and enhancing health promotion and disease prevention services, and by providing guidelines for the approval of the grants and allocation of the state funds. Program direction~~ Guidelines, evaluation requirements, and formula allocation procedures for ~~each of the programs~~ services shall be established by the department by rule.

Sec. 34. Section 135A.5, subsection 1, Code 2011, is amended to read as follows:

1. A governmental public health evaluation committee is established to develop, and implement, and evaluate the evaluation of the governmental public health system and voluntary accreditation program. The committee shall meet at least quarterly. The committee shall consist of no fewer than eleven members and no more than thirteen members. The members shall be appointed by the director of the department. The director may solicit and consider recommendations from professional organizations, associations, and academic institutions in making appointments to the committee.

Sec. 35. REPEAL. Section 135.162, Code 2011, is repealed.

Sec. 36. PILOT OR DEMONSTRATION RESEARCH PROJECTS — PRACTICE OF PHARMACY.

1. Notwithstanding any provision of section 147.107, subsection 2, to the contrary, the board of pharmacy may approve a pilot or demonstration research project of innovative applications in the practice of pharmacy relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care.

2. The board of pharmacy shall adopt rules and procedures pursuant to chapter 17A for application for and approval of such projects. The rules may include exceptions to any

existing rules under the purview of the board of pharmacy as necessary for completion of the project, limited to the duration of the project. The duration of any project approved by the board of pharmacy shall not exceed eighteen months and shall comply with the rules and procedures adopted for such projects.

3. The board of pharmacy shall not approve any project that expands the practice of pharmacy as defined in section 155A.3.

4. The board of pharmacy shall submit a report to the chairpersons and ranking members of the joint appropriations subcommittee on health and human services regarding the approval or denial of any projects.

Approved April 14, 2011