

Sec. 20. 1984 Iowa Acts, chapter 1279, section 44, is amended to read as follows:

SEC. 44. Sections 26 through 33 of this Act are enacted as a new division of chapter 237 entitled "Foster Care Review". Sections 26 through 33 of this Act are repealed July 1, 1988.

Sec. 21. TIME SCHEDULE FOR ADDITIONAL LOCAL BOARDS. The state foster care review board, in establishing local foster care review boards throughout the state as required by this Act, shall establish local boards in additional judicial districts as moneys become available for that purpose.

Approved May 12, 1988

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## CHAPTER 1234

### AIDS TESTING

*H.F. 2294*

**AN ACT** relating to testing for and confidentiality of human immunodeficiency virus-related matters and providing penalties.

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

Section 1. **NEW SECTION. 135I.1 DEFINITIONS.**

As used in this chapter, unless the context otherwise requires:

1. "AIDS" means acquired immune deficiency syndrome as defined by the centers for disease control of the United States department of health and human services.
2. "ARC" means an AIDS-related complex as defined by the centers for disease control of the United States department of health and human services.
3. "Department" means the Iowa department of public health.
4. "Health care provider" means a person providing health care services of any kind.
5. "Health facility" means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant centers and procurement agencies, or other health care institution.
6. "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.
7. "HIV-related test" means a test for the antibody or antigen to HIV.
8. "Legal guardian" means a person appointed by a court pursuant to chapter 633. In the case of a minor, "legal guardian" also means a parent or other person responsible for the care of the minor.
9. "Release of test results" means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

Sec. 2. **NEW SECTION. 135I.2 TESTING.**

1. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject of the test or the subject's legal guardian, except when the provisions of section 135I.2, subsection 6, apply, shall be provided with preliminary counseling which shall include but is not limited to the following:

- a. An explanation of the test, including the test's purposes, potential uses, limitations, and the meaning of both positive and negative results.
- b. An explanation of the nature of AIDS and ARC, including the relationship between the test results and the diseases.

c. An explanation of the procedures to be followed, including the fact that the test is entirely voluntary and can be performed anonymously if requested.

d. Information concerning behavioral patterns known to expose a person to the possibility of contracting AIDS and methods for minimizing the risk of exposure.

2. A person seeking an HIV-related test shall have the right to remain anonymous. A health care provider shall provide for the anonymous administration of the test at the subject's request or shall confidentially refer the subject to a site which provides anonymous testing.

3. At any time that a subject is informed of test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. Any additional testing that is advisable shall be explained to the subject and arrangements for the testing shall be made.

4. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject shall be given written notice of the provisions of this section.

5. Notwithstanding subsections 1 through 4, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the Uniform Anatomical Gift Act, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to assure medical acceptability of such gift or semen for the purposes intended.

b. The performance of an HIV-related test by licensed medical personnel in medical emergencies when the subject of the test is unable to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that posttest counseling shall be required.

c. A person engaged in the business of insurance who is subject to section 505.16.

6. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for AIDS and other sexually transmitted diseases, directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, if the person seeking the treatment is a minor who has personally made application for services, screening, or treatment, the fact that the minor sought services or is receiving services, screening, or treatment shall not be reported or disclosed, except for statistical purposes. Notwithstanding any other provision of law, however, the minor shall be informed prior to testing that upon confirmation according to prevailing medical technology of a positive test result the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or center for disease control guidelines, from informing the legal guardian is exempt from the notification requirement, but not from the requirement for an assistance program. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

### Sec. 3. NEW SECTION. 135I.3 CONFIDENTIALITY OF RECORDS.

1. A person possessing information regulated by this chapter shall not disclose the identity of any other person upon whom an HIV-related test is performed or the results of such a test in a manner which would permit identification of another person and a person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed,

or the results of the test in a manner which permits identification of the subject of the test, except to any of the following persons:

a. The subject of the test or the subject's legal guardian subject to the provisions of section 135I.2, subsection 6, when applicable.

b. Any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. An authorized agent or employee of a health facility or health care provider if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a medical need to know such information.

d. Licensed medical personnel providing care to the subject of the test, when knowledge of the test results is necessary to provide care or treatment.

e. The department in accordance with reporting requirements for an HIV-related condition.

f. A health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. A person allowed access to a record by a court order which is issued in compliance with the following provisions:

(1) There is a court finding that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

h. An employer, if the test is authorized to be required under any other provision of law.

2. A person to whom the results of an HIV-related test have been disclosed pursuant to subsection 1 shall not disclose the test results to another person except as authorized by subsection 1, or by a court order issued pursuant to subsection 1.

3. If disclosure is made pursuant to this section, the disclosure shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

Sec. 4. NEW SECTION. 135I.4 REMEDIES AND PENALTIES.

1. A person who violates a provision of section 135I.2 or 135I.3, is subject to a civil penalty not to exceed one thousand dollars for each violation. Civil penalties collected pursuant to this subsection shall be forwarded to the treasurer of the state for deposit in the general fund of the state.

2. A person aggrieved by a violation of this chapter shall have a right of action for damages in district court.

3. An action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

4. The attorney general may maintain a civil action to enforce this chapter.

5. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

6. This chapter shall not be construed to impose civil liability or criminal sanction for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control of the United States public health service.

Sec. 5. NEW SECTION. 135I.5 RULES ADOPTED.

The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person's death.

The department, in cooperation with the department of public safety, and persons who represent those who attend dead bodies shall establish for all emergency medical providers including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, or firefighters, who provide emergency care services to a person, and shall establish for all persons who attend dead bodies, protocol, and procedures for the use of universal precautions to prevent the transmission of contagious and infectious diseases.

Sec. 6. NEW SECTION. 246.515 HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS — EXEMPTION.

The provision of chapters 135H and 135I relating to knowledge and consent do not apply to persons committed to the custody of the department. The department may provide for medically acceptable procedures to inform employees, visitors, and persons committed to the department of possible infection and to protect them from possible infection.

Sec. 7. NEW SECTION. 505.16 APPLICATIONS FOR INSURANCE — TEST RESTRICTIONS — DUTIES OF COMMISSIONER.

1. A person engaged in the business of insurance shall not require a test of an individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual provides a written release on a form approved by the insurance commissioner. The form shall include information regarding the purpose, content, use, and meaning of the test, disclosure of test results including information explaining the effect of releasing the information to a person engaged in the business of insurance, the purpose of which the test results may be used, and other information approved by the insurance commissioner. The form shall also authorize the person performing the test to provide

the results of the test to the insurance company subject to rules of confidentiality, consistent with section 135L.3, approved by the insurance commissioner. As used in this section, "a person engaged in the business of insurance" includes hospital service corporations organized under chapter 514 and health maintenance organizations subject to chapter 514B.

2. The insurance commissioner shall approve rules for carrying out this section including rules relating to the preparation of information to be provided before and after a test and the protection of confidentiality of personal and medical records of insurance applicants and policyholders.

Sec. 8. The Code editor shall, as appropriate, codify the provisions of this Act, with the exception of section 7 of this Act, and Senate File 2157 and other appropriate Acts approved by the general assembly into one chapter relating to acquired immune deficiency syndrome and shall provide appropriate divisions within that chapter.

Sec. 9. Section 135C.23, subsection 2, Code Supplement 1987, is amended to read as follows:

2. A health care facility shall not knowingly admit or retain a resident:

- a. Who is dangerous to the resident or other residents.
- b. Who is in an acute stage of alcoholism, drug addiction, or mental illness, ~~or an active state of communicable disease.~~
- c. Whose condition or conduct is such that the resident would be unduly disturbing to other residents.
- d. Who is in need of medical procedures, as determined by a physician, or services which cannot be or are not being carried out in the facility.

This section does not prohibit the admission of a patient with a history of dangerous or disturbing behavior to an intermediate care facility, skilled nursing facility, or county care facility when the intermediate care facility, skilled nursing facility, or county care facility has a program which has received prior approval from the department to properly care for and manage the patient. An intermediate care facility, skilled nursing facility, or county care facility is required to transfer or discharge a resident with dangerous or disturbing behavior when the intermediate care facility, skilled nursing facility, or county care facility cannot control the resident's dangerous or disturbing behavior. The department, in coordination with the state mental health and mental retardation commission, shall adopt rules pursuant to chapter 17A for programs to be required in intermediate care facilities, skilled nursing facilities, and county care facilities that admit patients or have residents with histories of dangerous or disturbing behavior.

The denial of admission of a person to a health care facility shall not be based upon the patient's condition, which is the existence of a specific disease in the patient, but the decision to accept or deny admission of a patient with a specific disease shall be based solely upon the ability of the health care facility to provide the level of care required by the patient.

Approved May 12, 1988