

RESOLUTION 08-01-2012

DIGEST

Privacy and Confidentiality of HIV Tests

Amends Health and Safety Code sections 120975 and 121010 to expand the confidentiality provisions to include every form of test used to identify the HIV virus.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code sections 120975 and 121010 to expand the confidentiality provisions to include every form of test used to identify the HIV virus. This resolution should be approved in principle because it would make all forms of testing for HIV confidential.

The courts and our state legislature have taken steps to ensure the confidentiality of a person’s HIV/AIDS status; however, under the present Health and Safety Code section 120975, confidentiality is limited to blood tests for HIV antibodies. This resolution would expand the confidentiality provisions to every form of test used to identify the HIV virus including any clinical test, laboratory or otherwise, that is used to identify HIV, a component of HIV, or antibodies or antigens to HIV.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Association recommends that legislation be sponsored to amend Health and Safety Code sections 120975 and 121010 to read as follows:

1 § 120975

2 To protect the privacy of individuals who are the subject of ~~blood~~ testing for
3 ~~antibodies to~~ human immunodeficiency virus (HIV), the following shall apply:

4 Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be
5 compelled in any state, county, city, or other local civil, criminal, administrative,
6 legislative, or other proceedings to identify or provide identifying characteristics that
7 would identify any individual who is the subject of ~~a blood~~ a HIV test as defined in
8 subdivision (c) of Section 120775 to detect antibodies to HIV.

9

10 § 121010

11 Notwithstanding Section 120975 or 120980, the results of a ~~blood test~~ HIV test
12 as defined in subdivision (c) of Section 120775 to detect antibodies to the probable
13 causative agent of AIDS may be disclosed to any of the following persons without
14 written authorization of the subject of the test:

15 (a) To the subject of the test or the subject's legal representative, conservator, or

16 to any person authorized to consent to the test pursuant to subdivision (b) of Section
17 120990.

18 (b) To a test subject's provider of health care, as defined in subdivision (d) of
19 Section 56.05 of the Civil Code, except that for purposes of this section, "provider of
20 health care" does not include a health care service plan regulated pursuant to Chapter 2.2
21 (commencing with Section 1340) of Division 2.

22 (c) To an agent or employee of the test subject's provider of health care who
23 provides direct patient care and treatment.

24 (d) To a provider of health care who procures, processes, distributes, or uses a
25 human body part donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5
26 (commencing with Section 7150) of Part 1 of Division 7).

27 (e)(1) To the designated officer of an emergency response employee, and from
28 that designated officer to an emergency response employee regarding possible exposure
29 to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan
30 White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42
31 U.S.C. Sec. 201).

32 (2) For purposes of this subdivision, "designated officer" and "emergency
33 response employee" have the same meaning as these terms are used in the Ryan White
34 Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec.
35 201).

36 (3) The designated officer shall be subject to the confidentiality requirements
37 specified in Section 120980, and may be personally liable for unauthorized release of any
38 identifying information about the HIV results. Further, the designated officer shall inform
39 the exposed emergency response employee that the employee is also subject to the
40 confidentiality requirements specified in Section 120980, and may be personally liable
41 for unauthorized release of any identifying information about the HIV test results.
42

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Alameda County Bar Association

STATEMENT OF REASONS

Existing Law: Limits the confidentiality provisions of Health & Safety Code section 120975 to blood tests for HIV antibodies.

This Resolution: Would expand the confidentiality provisions to every form of test used to identify the HIV virus.

The Problem: The California legislature and courts have gone to great lengths to ensure the confidentiality of a person's HIV/AIDS status. Indeed, Part 4 of the Health and Safety Code regarding Human Immunodeficiency Virus (HIV) demonstrates the legislature's overwhelming concern about the confidentiality of a patient's HIV/AIDS status. Despite the intent to ensure confidentiality, however, Health & Safety Code sections 120975 and 121010 limit their applicability to blood tests. The proposed amendments are to ensure that confidentiality is given to every form of test used to

identify the HIV virus by referring to the definition in Health & Safety Code section 120775(c) which defines a "HIV test" as "any clinical test, laboratory or otherwise, used to identify HIV, a component of HIV, or antibodies or antigens to HIV."

As originally drafted and enacted these sections were limited to blood tests. Since that time testing has become more sophisticated and encompasses more tests than blood. For instance HIV antibody tests can be conducted with a urine or saliva sample. The proposed amendments reflect this and ensure that confidentiality is provided to all forms of tests scientifically known and those yet to be identified.

"[T]here are few matters of a more personal nature, and there are few decisions over which a person could have a greater desire to exercise control, than the manner in which he reveals [an AIDS] diagnosis to others." (*Doe v. Coughlin* (N.D.N.Y. 1988) 697 F. Supp. 1234, 1237; *see also Woods v. White* (W.D. Wis. 1988) 689 F. Supp. 874, 876 ("Given the most publicized aspect of the AIDS disease, namely that it is related more closely than most diseases to sexual activity and intravenous drug use, it is difficult to argue that information about this disease is not information of the most personal kind, or that an individual would not have an interest in protecting against the dissemination of such information.")) This resolution would help ensure that a person can keep their HIV diagnosis confidential even if it was discovered through a test other than a blood test.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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