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HOUSE DRH70233-MG-28 (01/09)

Short Title: Informed Consent for HIV/AIDS Testing. (Public)

Sponsors: Representative Mobley.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REORGANIZE THE PUBLIC HEALTH STATUTES PERTAINING TO
HIV/AIDS TESTING AND TO UPDATE INFORMED CONSENT REQUIREMENTS
FOR HIV/AIDS TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 130A of the General Statutes is amended by
adding a new Part to read:

"Part 1B. Testing for HIV/AIDS.

"§ 130A-151. Definitions.

The following definitions apply in this Part:

- (1) HIV/AIDS. – The human immunodeficiency virus that causes acquired immune deficiency syndrome.
- (2) Health care facility. – A facility licensed under Chapter 131E or Chapter 122C of the General Statutes that provides health care services to patients or the office of a health care provider.
- (3) Health care provider. – A physician, physician assistant, nurse, chiropractor, dentist, or podiatrist who is licensed to practice in North Carolina."

SECTION 2. G.S. 130A-148(a) is recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.1 and reads as rewritten:

"§ 130A-151.1. Laboratory certification to perform tests for HIV/AIDS.

(a) For the protection of the public health, the Commission shall adopt rules establishing standards for the certification of laboratories to perform tests for ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection.~~ HIV/AIDS. The rules shall address, but not be limited to, proficiency testing, record maintenance, adequate staffing and confirmatory testing. Tests for ~~AIDS virus infection~~ HIV/AIDS shall be performed only by laboratories certified pursuant to this ~~subsection~~ section and only on specimens submitted by a ~~physician licensed to practice medicine~~ health care provider.

(b) ~~This subsection shall not~~ section does not apply to testing performed solely for research purposes under the approval of an institutional review board."

SECTION 3. G.S. 130A-148(b) is recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.2. and reads as rewritten:

"§ 130A-151.2. Mandatory dissemination of information about HIV/AIDS to blood, semen, tissue, and organ donors.

(b) Prior to obtaining consent for donation of blood, semen, tissue or organs, a facility or institution seeking to obtain blood, tissue, semen or organs for transfusion, implantation, transplantation or administration shall provide the potential donor with information about ~~AIDS~~



~~virus transmission,~~the transmission of HIV/AIDS and information about who should not donate."

SECTION 4. G.S. 130A-148(c) through (e) are recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.3 and read as rewritten:

"§ 130A-151.3. Mandatory testing for HIV/AIDS prior to certain procedures; immunity from civil liability.

~~(e)(a)~~ No blood or semen may be transfused or administered when blood from the donor has not been tested or has tested positive for ~~AIDS virus infection~~HIV/AIDS by a standard laboratory test.

~~(d)(b)~~ No tissue or organs may be transplanted or implanted when blood from the donor has not been tested or has tested positive for ~~AIDS virus infection~~HIV/AIDS by a standard laboratory test unless consent is obtained from the recipient, or from the recipient's guardian or a responsible adult relative of the recipient if the recipient is not competent to give such consent.

~~(e)(c)~~ Any facility or institution that obtains or transfuses, implants, transplants, or administers blood, tissue, semen, or organs shall be immune from civil or criminal liability that otherwise might be incurred or imposed for transmission of ~~AIDS virus infection~~HIV/AIDS if the facility or institution has complied with the provisions specified in subsections ~~(b), (c), and (d) of this section have been complied with of this section.~~"

SECTION 5. G.S. 130A-148(f) is recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.4 and reads as rewritten:

"§ 130A-151.4. Informed consent for HIV/AIDS tests not required for research or epidemiologic purposes.

~~(f)~~ Specimens may be tested for ~~AIDS virus infection~~HIV/AIDS for research or epidemiologic purposes without consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing."

SECTION 6. G.S. 130A-148(g) is recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.5 and reads as rewritten:

"§ 130A-151.5. Notification and counseling about test results for HIV/AIDS.

~~(g)(a)~~ Persons tested for ~~AIDS virus infection~~HIV/AIDS shall be notified of test results and counseled appropriately. results. Persons who test positive shall be provided with a referral for treatment and supportive services and counseled appropriately. Counseling shall include at least all of the following elements:

(1) Instructions to the person to inform all sexual and needle-sharing partners of the person's positive test result.

(2) An offer to assist the person with notifying all sexual and needle-sharing partners of the person's positive test result or a referral of the person to the local health director for assistance with notifying all sexual and needle-sharing partners of the person's positive test result.

(b) The local health director shall make available to health care providers in their jurisdiction information on referral resources for individuals who test positive for HIV/AIDS, including available counseling, testing, needs assessment, treatment, and support services.

(c) This subsection shall section does not apply to tests performed by or for entities governed by Article 39 of Chapter 58 of the General Statutes, the Insurance Information and Privacy Protection Act, provided that said entities comply with the notice requirements thereof."

SECTION 7. G.S. 130A-148(h) is recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.6 and reads as rewritten:

"§ 130A-151.6. Authorization and informed consent to perform tests for HIV/AIDS.

(a) The Commission may authorize or require laboratory tests for ~~AIDS virus infection~~HIV/AIDS when necessary to protect the public health.

(b) ~~A test for AIDS virus infection may also be performed upon any person solely by order of a physician licensed to practice medicine in North Carolina who health care provider may order a test for HIV/AIDS to be performed upon any person to whom the health care provider is rendering medical services to that person~~services when, in the reasonable medical judgment of the ~~physician, health care provider,~~ the test is necessary for the appropriate treatment of the person; ~~however, the person shall be informed that a test for AIDS virus infection is to be conducted, and shall be given clear opportunity to refuse to submit to the test prior to it being conducted, and further if informed consent is not obtained, the test may not be performed.~~person, and the health care provider ensures that all of the following occur prior to administration of the test:

- (1) The person is informed that a test for HIV/AIDS will be administered.
- (2) The person is informed of the right to refuse the test for HIV/AIDS without any penalties associated with refusing the test.
- (3) Documentation of the informed consent is recorded in writing in the person's medical record.
- (4) The person receives pretest counseling, which may be provided verbally, in writing, by video, or a combination of these, as appropriate, based on the person's informational needs and testing history.

(c) A facility other than a health care facility may order a test for HIV/AIDS after ensuring that all of the following occur prior to administration of the test:

- (1) The person is informed that a test for HIV/AIDS will be administered.
- (2) The person is informed of the right to refuse the test for HIV/AIDS and any lawful penalties associated with refusing the test.
- (3) Documentation of the person's informed consent is recorded in writing on a form approved by the Department that is separate and distinct from any other consent form used by the facility. To demonstrate compliance with this subdivision, the facility shall include on the informed consent form (i) the person's signature or (ii) a patient identifying number obtained from an anonymous and confidential test site that has been approved by the Department.

(d) ~~A physician~~ health care provider or health care facility may order a test for ~~AIDS virus infection~~HIV/AIDS without the informed consent of the person tested if the person is incapable of providing or incompetent to provide such consent, others authorized to give consent for the person are not available, and testing is necessary for appropriate diagnosis or care of the person.

(e) ~~An~~ A health care provider or health care facility may administer a test for HIV/AIDS to an unemancipated minor may be tested for AIDS virus infection without the consent of the parent or legal guardian of the minor when the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infectionHIV/AIDS or that the child has been sexually abused."

SECTION 8. The first two paragraphs of G.S. 130A-148(i) are recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.7 and read as rewritten:

"§ 130A-151.7. Unlawful testing for HIV/AIDS; unlawful discrimination against persons with HIV/AIDS.

(i)(a) Except as provided in this section, no test for ~~AIDS virus infection~~HIV/AIDS shall be required, performed or used to determine suitability for continued employment, housing or public services, or for the use of places of public accommodation as defined in G.S. 168A-3(8), or public transportation. ~~Further it shall be~~

(b) It is unlawful to discriminate against any person having AIDS virus or HIV infectionHIV/AIDS on account of that infection in determining suitability for continued

employment, housing, or public services, or for the use of places of public accommodation, as defined in G.S. 168A-3(8), or public transportation."

SECTION 9. The last five paragraphs of G.S. 130A-148(i) are recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.8 and read as rewritten:

"§ 130A-151.8. Civil action for unlawful discrimination against persons with HIV/AIDS.

(a) Any person aggrieved by an act or discriminatory practice prohibited by ~~this subsection~~ G.S. 130A-151.7 relating to housing shall be entitled to institute a civil action pursuant to G.S. 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory practice prohibited by ~~this subsection~~ G.S. 130A-151.7 other than one relating to housing may bring a civil action to enforce rights granted or protected by ~~this subsection~~ that section, as provided in subsections (b) through (d) of this section.

(b) The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. ~~Such~~ The action shall be tried to the court without a jury. Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit ~~such an aggrieved person~~ such an aggrieved person to a labor organization.

(c) In a civil action brought to enforce provisions of ~~this subsection~~ G.S. 130A-151.7 relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this ~~subsection~~ section. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable. In any civil action brought under this ~~subsection~~ section, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as a part of costs.

(d) A civil action brought pursuant to this ~~subsection~~ section shall be commenced within 180 days after the date on which the aggrieved person became aware or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct.

(e) Nothing in this section shall be construed so as to prohibit an employer ~~from~~ from doing any of the following:

- (1) Requiring a test for ~~AIDS virus infection~~ HIV/AIDS for job applicants in preemployment medical examinations required by the ~~employer~~ employer.
- (2) Denying employment to a job applicant based solely on a confirmed positive test for ~~AIDS virus infection~~ HIV/AIDS.
- (3) Including a test for ~~AIDS virus infection~~ HIV/AIDS performed in the course of an annual medical examination routinely required of all employees by the ~~employer; or employer~~ employer.
- (4) Taking ~~the~~ appropriate employment action, including reassignment or termination of employment, if ~~the continuation by the~~ allowing an employee who has ~~AIDS virus or HIV infection of his~~ HIV/AIDS to continue the same work tasks would pose a significant risk to the health of the employee, coworkers, or the public, or if the employee is unable to perform the normally assigned duties of the job."

SECTION 10. G.S. 130A-148(j) is recodified in Part 1B of Article 6 of Chapter 130A of the General Statutes as G.S. 130A-151.9 and reads as rewritten:

"§ 130A-151.9. Lawful differences in health care treatment for persons with HIV/AIDS.

(i) It shall not be unlawful for a licensed health care provider or health care facility ~~to~~ to do any of the following:

- (1) Treat a person who has ~~AIDS virus or HIV infection~~ HIV/AIDS differently from persons who do not have that infection when such treatment is appropriate to protect the health care provider or employees of the provider

- 1 or employees of the facility while providing appropriate care for the person
2 who has ~~the AIDS virus or HIV infection; or HIV/AIDS.~~
3 (2) Refer a person who has ~~AIDS virus or HIV infection~~HIV/AIDS to another
4 licensed health care provider or facility when such referral is for the purpose
5 of providing more appropriate treatment for the person with ~~AIDS virus or~~
6 ~~HIV infection.~~HIV/AIDS."

7 **SECTION 11.** Part 1B of Article 6 of Chapter 130A of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 130A-151.10. Testing for HIV/AIDS in pregnant women.**

10 (a) A health care provider or health care facility that provides prenatal care, as defined
11 in G.S. 90-178.2, shall do all of the following:

- 12 (1) Notify each pregnant patient that she will be tested for HIV/AIDS as part of
13 the routine prenatal blood tests.
14 (2) Advise the pregnant patient that she has the right to refuse the test for
15 HIV/AIDS without any penalties associated with the refusal and document
16 in the medical record if the patient declines the test.
17 (3) Obtain informed consent from the pregnant patient prior to administering the
18 test for HIV/AIDS as provided in G.S. 130A-151.6(b).
19 (4) Provide the pretest counseling required by G.S. 130A-151.6(b), which shall
20 include at least all of the following:
21 a. Education on the effect of a positive test result for HIV/AIDS on the
22 pregnant patient and the fetus concerning the risk of transmission of
23 HIV/AIDS to the fetus.
24 b. Education on recognized methods of reducing that risk, including the
25 use of pharmaceuticals during pregnancy known to reduce the risk of
26 transmission of HIV/AIDS to the fetus.
27 (5) Administer the test for HIV/AIDS.
28 (6) Offer to each pregnant patient during the third trimester of pregnancy the
29 opportunity to take an HIV/AIDS test if the pregnant patient has not
30 previously been tested for HIV/AIDS earlier in the pregnancy.
31 (7) Consider routinely offering a repeat test for HIV/AIDS to all pregnant
32 women during the third trimester when all of the following circumstances
33 exist:
34 a. The health care provider is providing prenatal medical care to the
35 pregnant patient at a health care facility located in an area with a high
36 prevalence of HIV/AIDS.
37 b. The pregnant patient is at a high risk of acquiring HIV/AIDS.
38 (8) Provide a referral for treatment and supportive services.

39 (b) A health care provider or health care facility that provides labor and delivery
40 services to pregnant women shall offer all of the following:

- 41 (1) To pregnant patients with unknown or undocumented HIV/AIDS status, a
42 rapid test for HIV/AIDS during labor and delivery.
43 (2) To pregnant patients whose rapid test for HIV/AIDS is positive during labor
44 and delivery, an antiretroviral prophylaxis prior to receiving the results of a
45 confirmatory test for HIV/AIDS.

46 (c) A health care provider or health care facility acting in good faith to provide the
47 counseling required under subdivision (a)(4) of this section shall not be held liable in any cause
48 of action related to the pregnant patient's decision to consent or not to consent to a test for
49 HIV/AIDS."

50 **SECTION 12.** This act becomes effective October 1, 2013.