

**214.181 Legislative findings -- General consent to testing for HIV -- Emergency procedures -- Disclosures of test results -- Voluntary testing programs in each county.**

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that knowledge of HIV status is increasingly important for all persons since treatment using antiretroviral medications can slow disease progression, prolong and improve the lives of HIV-positive individuals, and reduce the likelihood of perinatal mother-to-child transmission. Many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor or advanced practice registered nurse orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(d) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.
- (4) The physician or advanced practice registered nurse who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician or advanced practice registered nurse shall also be responsible for either:
  - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
  - (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.
- (5) (a) No person in this state shall perform a test designed to identify the human

immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

- (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
- (c)
  - 1. Nothing in this subsection shall be construed as prohibiting the disclosure to the patient of preliminary positive results from HIV rapid tests if results are delivered with an explanation of the following:
    - a. The meaning of a reactive rapid test;
    - b. The importance of confirmatory testing; and
    - c. The importance of taking precautions to reduce the risk of infecting others while awaiting the results of confirmatory testing.
  - 2. In special cases where immediate actions may be necessary to protect a patient, such as potential perinatal transmission or incidents warranting post-exposure prophylaxis, a preliminary positive result from a HIV rapid test may be disclosed to the patient and used as a basis to recommend options for prophylaxis or treatment.
- (d) No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
  - 1. The subject of the test or the subject's legally authorized representative;
  - 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
  - 3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
  - 4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
  - 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
  - 6. A health facility or health-care provider which procures, processes, distributes, or uses:
    - a. A human body part from a deceased person, with respect to medical information regarding that person; or
    - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
  - 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;

8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
9. A person allowed access by a court order that is issued in compliance with the following provisions:
  - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if 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 testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human-immunodeficiency-virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;
  - b. 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;
  - c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;
  - d. 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;
  - e. 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 have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing that 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 such information without the specific written consent

of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6)
  - (a) The Cabinet for Health and Family Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 212. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate.
  - (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test.
  - (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the name and other information specified under KRS 214.645 shall be reported to the cabinet. The cabinet shall continue to provide for anonymous testing and counseling.
  - (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other private or public facility shall be established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
  - (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
  - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
  - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
  - (d) Informed consent shall be required prior to testing. Informed consent shall be

preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

- (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
  - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
  - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
  - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
  - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet; and
  - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he or she does not advertise or hold himself or herself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
- (9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
- (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 85, sec. 73, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 150, sec. 1, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 99, sec. 454, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 102, sec. 2, effective July 13, 2004. -- Amended 2000 Ky. Acts ch. 432, sec. 7, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 426, sec. 401, effective July 15, 1998. -- Created 1990 Ky. Acts ch. 495, sec. 18, effective January 1, 1991.

**Legislative Research Commission Note (7/15/2008).** 2008 Ky. Acts ch. 150, sec. 1, inserted an additional paragraph into subsection (5) of this section and changed the

existing paragraph (c) to paragraph (d), but that Act failed to include a conforming amendment to change the reference to that paragraph in subsection (2) of this statute. Under KRS 7.136(1)(e), that change has now been made.