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**Assembly Bill No. 2640**

## CHAPTER 670

An act to amend Section 120990 of the Health and Safety Code, relating to public health.

[ Approved by Governor September 26, 2016. Filed with Secretary of State September 26, 2016. ]

## LEGISLATIVE COUNSEL'S DIGEST

AB 2640, Gipson. Public health: HIV.

Existing law requires a medical care provider or person administering a test for HIV to, after receiving results indicating no infection for a patient who is known to be at high risk for HIV infection, advise the patient of the need for periodic retesting and explain the limitations of current testing technology and the current window period for verification of results.

This bill would instead require a medical care provider or person administering a test for HIV to provide patients who test negative for HIV infection and are determined to be at high risk for HIV infection by the medical provider or person administering the test with the above-described information and information about methods that prevent or reduce the risk of contracting HIV, including preexposure prophylaxis and postexposure prophylaxis, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 120990 of the Health and Safety Code is amended to read:

**120990.** (a) Prior to ordering a test that identifies infection of a patient with HIV, a medical care provider shall inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.

(b) Subdivision (a) does not apply when a person independently requests an HIV test from a medical care provider.

(c) Except as provided in subdivision (a), a person shall not administer a test for HIV infection unless the person being tested or his or her parent, guardian, conservator, or other person specified in Section 121020 has provided informed consent for the performance of the test. Informed consent may be provided orally or in writing, but the person administering the test shall maintain documentation of consent, whether obtained orally or in writing, in the client's medical record. This consent requirement does not apply to a test performed at an

alternative site pursuant to Section 120890 or 120895. This section does not authorize a person to administer a test for HIV unless that person is otherwise lawfully permitted to administer an HIV test.

(d) Subdivision (c) shall not apply when a person independently requests an HIV test from an HIV counseling and testing site that employs a trained HIV counselor, pursuant to Section 120917, provided that the person is provided with information required pursuant to subdivision (a) and his or her independent request for an HIV test is documented by the person administering the test.

(e) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a test to detect HIV on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

(f) (1) The requirements of subdivision (c) do not apply when blood is tested as part of a scientific investigation conducted either by a medical researcher operating under the approval of an institutional review board or by the department, in accordance with a protocol for unlinked testing.

(2) For purposes of this subdivision, "unlinked testing" means blood samples that are obtained anonymously, or that have the name or identifying information of the individual who provided the sample removed in a manner that prevents the test results from ever being linked to the particular individual who participated in the research or study.

(g) Nothing in this section permits a person to unlawfully disclose an individual's HIV status, or to otherwise violate provisions of Section 54 of the Civil Code, the Americans With Disabilities Act of 1990 (Public Law 101-336), or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), which prohibit discrimination against individuals who are living with HIV, who test positive for HIV, or who are presumed to be HIV-positive.

(h) After the results of a test performed pursuant to this section have been received, the medical care provider or the person who administers the test shall ensure that the patient receives timely information and counseling, as appropriate, to explain the results and the implications for the patient's health. If the patient tests positive for HIV infection, the medical provider or the person who administers the test shall inform the patient that there are numerous treatment options available and identify followup testing and care that may be recommended, including contact information for medical and psychological services. If the patient tests negative for HIV infection and is determined to be at high risk for HIV infection by the medical provider or person administering the test, the medical provider or the person who administers the test shall advise the patient of the need for periodic retesting, explain the limitations of current testing technology and the current window period for verification of results, and provide information about methods that prevent or reduce the risk of contracting HIV, including, but not limited to, preexposure prophylaxis and postexposure prophylaxis, consistent with guidance of the federal Centers for Disease Control and Prevention, and may offer prevention counseling or a referral to prevention counseling.

(i) This section shall not apply to a clinical laboratory.