State of Wisconsin
1997 - 1998 LEGISLATURE

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1997 SENATE BILL 461

February 12, 1998 – Introduced by Senator RUDE, cosponsored by Representatives HUEBSCH, JOHNSRUD and MEYER. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

AN ACT ***to repeal*** 252.15 (1) (e), 252.15 (2) (b) and 252.15 (8) and (9); and ***to amend*** 146.50 (12) (a), 252.13 (1m), 252.15 (1) (d), 252.15 (2) (a) (intro.), 252.15 (2) (a) 2., 252.15 (2) (am) 1., 252.15 (2) (am) 2. a., 252.15 (3), 252.15 (4) (a) and 895.85 (2) of the statutes; **relating to:** informed consent for HIV testing and disclosure and the penalties for disclosing HIV test results.

Analysis by the Legislative Reference Bureau

Under current law, prior to administering a test for the presence of the human immunodeficiency virus (HIV), antigen or nonantigenic products of HIV or an antibody to HIV (test for HIV), the administrator of the test must, with certain exceptions, obtain the written consent of the test subject. The consent must be given on an informed consent form for testing or disclosure, which must be signed and which must contain all of the following:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care instrument and has been found to be incapacitated, the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed under certain circumstances

3. Spaces specifically designated for the signature of the potential test subject, or, if the potential test subject has executed a power of attorney for health care instrument and has been found to be incapacitated, of the health care agent,

providing informed consent for the testing and the date on which the consent form is signed.

4. The name of a person to whom the potential test subject, or, if the potential test subject has executed a power of attorney for health care instrument and has been found to be incapacitated, the health care agent, authorizes that disclosure of test results may be made, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

This bill eliminates the requirement that an informed consent to testing and disclosure form be obtained before administering a test for HIV. Under the bill, informed consent, either oral or in writing, must be obtained, with certain exceptions prior to administering a test for HIV. Disclosure of the test results must follow the current law on informed consent for disclosure of any patient records.

In addition, this bill discontinues the penalties that currently apply to unauthorized disclosure of HIV test results, so that the penalties that apply to unauthorized disclosure of most medical records apply to unauthorized disclosure of those results.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.50 (12) (a) of the statutes is amended to read:

146.50 **(12)** (a) All records made by an ambulance service provider, an emergency medical technician or a first responder—defibrillation in administering emergency care procedures to and handling and transporting sick, disabled or injured individuals shall be maintained as confidential patient health care records subject to ss. 146.81 to 146.84 and, if applicable, s. 252.15 (5) (a) (intro.)~~,~~ and (6)~~, (8) and (9)~~. For the purposes of this paragraph, an ambulance service provider, an emergency medical technician or a first responder—defibrillation shall be considered to be a health care provider under s. 146.81 (1). Nothing in this paragraph permits disclosure to an ambulance service provider, an emergency medical technician or a first responder—defibrillation under s. 252.15 (5) (a), except under s. 252.15 (5) (a) 11.

SECTION 2. 252.13 (1m) of the statutes is amended to read:

252.13 **(1m)** Except as provided under sub. (3), any blood bank, blood center or plasma center in this state that purchases or receives whole blood, blood plasma, a blood product or a blood derivative shall, prior to its distribution or use and with the test subject's informed consent ~~under the requirements of s. 252.15 (2) (b)~~, as defined in s. 252.15 (1) (d), subject that blood, plasma, product or derivative to a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. This subsection does not apply to a blood bank that purchases or receives whole blood, blood plasma, a blood product or a blood derivative from a blood bank, blood center or plasma center in this state if the whole blood, blood plasma, blood product or blood derivative has previously been subjected to a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

SECTION 3. 252.15 (1) (d) of the statutes is amended to read:

252.15 **(1)** (d) "Informed consent ~~for testing or disclosure~~" means consent, orally or in writing ~~on an informed consent for testing or disclosure form,~~ by a person to the administration of a test to him or her for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV ~~or~~, except that, with respect to the disclosure to another specified person of the results of a test administered to the person consenting, "informed consent" has the meaning given in s. 146.81 (2).

SECTION 4. 252.15 (1) (e) of the statutes is repealed.

SECTION 5. 252.15 (2) (a) (intro.) of the statutes is amended to read:

252.15 **(2)** (a) (intro.) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent ~~for testing or disclosure as specified under par. (b)~~, except that consent to testing is not required for any of the following:

SECTION 6. 252.15 (2) (a) 2. of the statutes is amended to read:

252.15 **(2)** (a) 2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining ~~written~~ consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

SECTION 7. 252.15 (2) (am) 1. of the statutes is amended to read:

252.15 **(2)** (am) 1. A health care provider who procures, processes, distributes or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with the proposed donor's informed consent ~~under the requirements of par. (b)~~, test the proposed donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall

perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

SECTION 8. 252.15 (2) (am) 2. a. of the statutes is amended to read:

252.15 **(2)** (am) 2. a. A health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with the proposed donor's informed consent ~~under the requirements of par. (b)~~, test the proposed donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended, only if the state epidemiologist finds that use of donated human ova provides a significant risk of transmitting HIV to a donee and if, notwithstanding ss. 227.01 (13) and 227.10 (1), the secretary of health and family services issues an order specifying the requirements for the testing.

SECTION 9. 252.15 (2) (b) of the statutes is repealed.

SECTION 10. 252.15 (3) of the statutes is amended to read:

252.15 **(3)** WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV ~~under sub. (2) (b)~~ or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any

time subsequent to providing informed consent for disclosure ~~under sub. (2) (b)~~ and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

SECTION 11. 252.15 (4) (a) of the statutes is amended to read:

252.15 **(4)** (a) Obtain from the subject informed consent ~~for testing or disclosure, as provided under sub. (2)~~.

SECTION 12. 252.15 (8) and (9) of the statutes are repealed.

SECTION 13. 895.85 (2) of the statutes is amended to read:

895.85 **(2)** SCOPE. This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9), 51.61 (7), 103.96 (2), 153.85, 252.14 (4), ~~252.15 (8) (a),~~ 943.245 (2) and (3) and 943.51 (2) and (3).

(END)