

2007 DRAFTING REQUEST

Bill

Received: 12/11/2006

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Sheldon Wasserman (608) 266-7671**

By/Representing: **Joe Hoey (aide)**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - AIDS**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wasserman@legis.wisconsin.gov**

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Permit testing for HIV unless patient refuses consent

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 02/09/2007	kfollett 03/02/2007		_____			
/1			nmatzke 03/02/2007	_____	sbasford 03/02/2007		
/2	dkennedy 05/30/2007	kfollett 05/31/2007	rschluet 05/31/2007	_____	lparisi 05/31/2007		
/3	dkennedy	kfollett	nmatzke	_____	sbasford		S&L

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	10/24/2007	11/07/2007	11/07/2007	_____	11/07/2007		
/4	dkennedy 01/31/2008	kfollett 02/01/2008	nnatzke 02/04/2008	_____	lparisi 02/04/2008	mbarman 03/10/2008	

FE Sent For: *at intro*
3/13

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/3	dkennedy	kfollett 14 kjf 2/1	nmatzke nwh 2/1	_____	sbasford		nwn/pg 2/4

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		BKGF 11/7	nwm 11/7	nwm/rs 11/7			

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5317 <END>

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/?	dkennedy	1/1 kjf 3/2	nwn 3/2	nwn/sb 3/2			

FE Sent For:

<END>

4/8/07 From Joe Haey
Clarification:

Is seeking a draft that wd. implement the CDC's "opt out screening" concept for consent to ^{HIV} testing: that the pt. be informed that, as a routine medical matter, ^{HIV} testing will be performed - pt. has option to decline or defer testing. If pt. doesn't decline or defer, consent is implied.

Does not want to affect current law in 252.15 re consent to disclosure.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1092/7

DAK...*kit*

3/2 comb

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Gen

- 1 AN ACT ...; **relating to:** changing informed consent requirements for HIV testing.

Analysis by the Legislative Reference Bureau

Currently, before administering a test for the presence of the human immunodeficiency virus (HIV), antigen or nonantigenic products of HIV, or an antibody to HIV (test) and before disclosing the test results, the administrator of the test or the discloser 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 without consent under certain circumstances.

X or C 3. Spaces specifically designated for the signatures 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 consent on an informed consent to testing and disclosure form be obtained before administering a test for HIV. Instead, the bill requires that a health care provider, blood bank, blood center, or plasma center first orally inform the potential test subject that, as routine health care, a test will be performed unless the potential test subject declines to provide or defers providing consent. If the potential test subject does not so decline or defer, the health care provider, blood bank, blood center, or plasma center may infer that the potential test subject has given informed consent for testing.

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

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

2 252.13 (1m) Except as provided under sub. (3), any blood bank, blood center
3 or plasma center in this state that purchases or receives whole blood, blood plasma,
4 a blood product or a blood derivative shall, prior to its distribution or use and after
5 complying with ~~informed consent under~~ the requirements of s. 252.15 (2) (b) (intro.)
6 for inferring consent to testing, subject that blood, plasma, product or derivative to
7 a test or series of tests that the state epidemiologist finds medically significant and
8 sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or
9 nonantigenic products of HIV or an antibody to HIV. This subsection does not apply
10 to a blood bank that purchases or receives whole blood, blood plasma, a blood product
11 or a blood derivative from a blood bank, blood center or plasma center in this state
12 if the whole blood, blood plasma, blood product or blood derivative has previously
13 been subjected to a test or series of tests that the state epidemiologist finds medically
14 significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV,
15 antigen or nonantigenic products of HIV or an antibody to HIV.

History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

16 **SECTION 2.** 252.15 (1) (d) of the statutes is amended to read:

1 252.15 (1) (d) "Informed consent for testing or disclosure" means, under the
 2 requirements of sub. (2) (b), inferred consent to testing or consent in writing on an
 3 informed consent for testing or disclosure form by a person to the administration of
 4 a test to him or her for the presence of HIV, antigen or nonantigenic products of HIV
 5 or an antibody to HIV or to the disclosure to another specified person of the results
 6 of a test administered to the person consenting.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

7 **SECTION 3.** 252.15 (1) (e) of the statutes is amended to read:

8 252.15 (1) (e) "Informed consent for testing or disclosure form" means a printed
 9 document on which a person may signify his or her informed consent for to authorize
 10 the disclosure of results obtained from testing him or her for the presence of HIV,
 11 antigen or nonantigenic products of HIV or an antibody to HIV ~~or authorize the~~
 12 disclosure of any test results obtained.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

13 **SECTION 4.** 252.15 (2) (a) (intro.) of the statutes is amended to read:

14 252.15 (2) (a) (intro.) No health care provider, blood bank, blood center or
 15 plasma center may subject a person to a test for the presence of HIV, antigen or
 16 nonantigenic products of HIV or an antibody to HIV ~~unless~~ ^{if} the subject of the test first
 17 provides has declined to provide or deferred providing informed consent for testing
 18 or disclosure as specified under par. (b), except that consent to testing is not required
 19 for any of the following:

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

20 **SECTION 5.** 252.15 (2) (a) 4. of the statutes is amended to read:

21 252.15 (2) (a) 4. A health care provider may subject an individual to a test for
 22 the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV,

1 without ~~obtaining~~ complying with the requirements under par. (b) (intro.) for
2 inferring consent to the testing from the individual, if all of the following apply:

3 a. The individual has been adjudicated incompetent in this state, is under 14
4 years of age or is unable to give decline to provide consent or defer consent because
5 he or she is unable to communicate due to a medical condition.

6 b. The health care provider ~~obtains~~ complies with the requirements under par.
7 (b) (intro.) with respect to inferring consent for the testing from the individual's
8 guardian, if the individual is adjudicated incompetent in this state; from the
9 individual's parent or guardian, if the individual is under 14 years of age; or from the
10 individual's closest living relative or another with whom the individual has a
11 meaningful social and emotional relationship if the individual is not a minor nor
12 adjudicated incompetent.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

13 **SECTION 6. 252.15 (2) (am) 1.** of the statutes is amended to read:

14 **252.15 (2) (am) 1.** A health care provider who procures, processes, distributes
15 or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior
16 to the distribution or use and after complying with informed consent under the
17 requirements of par. (b) (intro.) for inferring consent to testing, test the proposed
18 donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody
19 to HIV in order to assure medical acceptability of the gift for the purpose intended.
20 The health care provider shall use as a test for the presence of HIV, antigen or
21 nonantigenic products of HIV or an antibody to HIV a test or series of tests that the
22 state epidemiologist finds medically significant and sufficiently reliable under s.
23 252.13 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV
24 or an antibody to HIV. The health care provider shall test the donor initially and, if

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

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

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

8 252.15 (2) (am) 2. A health care provider who procures, processes, distributes
9 or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to
10 the distribution or use and after complying with ~~informed consent~~ under the
11 requirements of par. (b) (intro.) for inferring consent to testing, test the proposed
12 donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody
13 to HIV in order to assure medical acceptability of the gift for the purpose intended.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

14 **SECTION 8. 252.15 (2) (b) (intro.) of the statutes is amended to read:**

15 252.15 (2) (b) (intro.) The A health care provider, blood bank, blood center, or
16 plasma center that subjects a person to a test for the presence of HIV, antigen or
17 nonantigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall,
18 in instances under those paragraphs in which informed consent for testing is
19 required, provide first orally inform the potential test subject ~~with an informed~~
20 ~~consent form for testing or disclosure that shall contain the following information~~
21 ~~and on the form shall obtain the potential test subject's signature or may, if the~~
22 potential test subject has executed a power of attorney for health care instrument
23 under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead

1 ~~obtain the signature of the health care agent that, as routine health care, such a test~~
 2 ~~will be performed unless the potential test subject or, if applicable, agent declines to~~
 3 ~~provide or defers providing consent. If the potential test subject or agent does not~~
 4 ~~so decline or defer, the health care provider, blood bank, blood center, or plasma~~
 5 ~~center may infer that the potential test subject or agent has given informed consent~~
 6 ~~for testing. If consent for the testing is inferred, the health care provider, blood bank,~~
 7 ~~blood center, or plasma center shall provide the potential test subject or, if applicable,~~
 8 ~~agent, with an informed consent form for disclosure that shall contain the following~~
 9 ~~information and on the form shall obtain the potential test subject's or, if applicable,~~
 10 ~~agent's signature:~~

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

11 **SECTION 9.** 252.15 (2) (b) 1. of the statutes is amended to read:

12 252.15 (2) (b) 1. The name of the potential test subject ~~who is giving consent~~
 13 ~~and~~ whose test results may be disclosed and, if the potential test subject has executed
 14 a power of attorney for health care instrument under ch. 155 and has been found to
 15 be incapacitated under s. 155.05 (2), the name of the health care agent.

16 **SECTION 10.** 252.15 (2) (b) 3. (intro.) and b. of the statutes ^{are} consolidated,
 17 renumbered 252.15 (2) (b) 3. and amended to read:

18 252.15 (2) (b) 3. Spaces A space specifically designated for the following
 19 purposes: ~~The name of a person to whom the potential test subject or, if the potential~~
 20 test subject has executed a power of attorney for health care instrument under ch.
 21 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent,
 22 authorizes that disclosure of test results be made, if any, the date on which the

1 consent to disclosure is signed, and the time period during which the consent to
2 disclosure is effective.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 11. 252.15 (2) (b) 3. a. of the statutes is repealed.**

4 **SECTION 12. 252.15 (4) (a) of the statutes is amended to read:**

5 252.15 (4) (a) ~~Obtain from the subject informed consent for testing or~~
6 ~~disclosure, as provided under Comply with sub. (2).~~

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

7 **SECTION 13. 252.15 (4) (b) of the statutes is amended to read:**

8 **252.15 (4) (b) Maintain a record of the consent received of compliance with the**
9 **requirement under par. (a).**

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

10

(END)

4/30/07 From Joe Hoey: Redraft 1092/1

① Relax rules for testing + disclosure -
when pt. has been informed + not opted
out

252.15 (1)(d) + (e)

testing and disclosure

(2)(a) 2. "written" - shd. elin.

(2)(b) (intro.)

^
Cut (2)(b) 3. ~~opt~~ Repeal

252.15 (3) - written consent to
disclosure - ^{oppor.} whether want
not to disclosure
could list

legal right to identify people to whom
they want disclosure or want to refuse
disclosure

he-provide/furnish means by wh/indicate
whd wants or doesn't want
+ put in medical record



By AS 4
June
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1092/2

DAK:kjf:awn

D-NOTE

2007 BILL

REGENERATE
CATALOG

1 AN ACT *to repeal* 252.15 (2) (b) 3. a., *to consolidate, renumber and amend*
2 252.15 (2) (b) 3. (intro.) and b., and *to amend* 252.13 (1m), 252.15 (1) (d), 252.15
3 (1) (e), 252.15 (2) (a) (intro.), 252.15 (2) (a) 4., 252.15 (2) (am) 1., 252.15 (2) (am)
4 2., 252.15 (2) (b) (intro.), 252.15 (2) (b) 1., 252.15 (4) (a) and 252.15 (4) (b) of the
5 statutes; **relating to:** changing informed consent requirements for HIV
6 testing *and disclosure of test results*

Analysis by the Legislative Reference Bureau

Currently, before administering a test for the presence of the human immunodeficiency virus (HIV), antigen or nonantigenic products of HIV, or an antibody to HIV (test) and before disclosing the test results, the administrator of the test or the discloser 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 without consent under certain circumstances.
3. Spaces specifically designated for the signatures of the potential test subject, or, if the potential test subject has executed a power of attorney for health care

BILL

for testing for HIV be obtained

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 consent on an informed consent to testing and disclosure form be obtained before administering a test for HIV. Instead, the bill requires that a health care provider, blood bank, blood center, or plasma center first orally inform the potential test subject that, as routine health care, a test will be performed unless the potential test subject declines to provide or defers providing consent. If the potential test subject does not so decline or defer, the health care provider, blood bank, blood center, or plasma center may infer that the potential test subject has given informed consent for testing.

X
X

INSERT
A

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

RESTORE TO
PLAIN TEXT

for testing

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

2 252.13 (1m) Except as provided under sub. (3), any blood bank, blood center
3 or plasma center in this state that purchases or receives whole blood, blood plasma,
4 a blood product or a blood derivative shall, prior to its distribution or use and after
5 complying with ~~informed consent under~~ the requirements of s. 252.15 (2) (b) ~~(intro)~~
6 ~~for inferring consent to testing~~, subject that blood, plasma, product or derivative to
7 a test or series of tests that the state epidemiologist finds medically significant and
8 sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or
9 nonantigenic products of HIV or an antibody to HIV. This subsection does not apply
10 to a blood bank that purchases or receives whole blood, blood plasma, a blood product
11 or a blood derivative from a blood bank, blood center or plasma center in this state
12 if the whole blood, blood plasma, blood product or blood derivative has previously
13 been subjected to a test or series of tests that the state epidemiologist finds medically

BILL

1 significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV,
2 antigen or nonantigenic products of HIV or an antibody to HIV.

3 **SECTION 2.** 252.15 (1) (d) of the statutes is amended to read:

4 252.15 (1) (d) "Informed consent for testing or disclosure" means, under the
5 requirements of sub. (2) (b), inferred consent to testing or ^{disclosure} consent in writing on an
6 informed consent for testing or disclosure form by a person to the administration of
7 a test to him or her for the presence of HIV, antigen or nonantigenic products of HIV
8 or an antibody to HIV or to the disclosure to another specified person of the results
9 of a test administered to the person consenting.

10 **SECTION 3.** 252.15 (1) (e) of the statutes is amended to read:

11 252.15 (1) (e) "Informed consent for testing or disclosure form" means a printed
12 document on which a person may signify his or her informed consent for to authorize
13 the disclosure of results obtained from testing him or her for the presence of HIV,
14 antigen or nonantigenic products of HIV or an antibody to HIV or authorize the
15 disclosure of any test results obtained.

16 **SECTION 4.** 252.15 (2) (a) (intro.) of the statutes is amended to read:

17 252.15 (2) (a) (intro.) No health care provider, blood bank, blood center or
18 plasma center may subject ~~a person~~ ^{an individual} to a test for the presence of HIV, antigen or
19 nonantigenic products of HIV ² or an antibody to HIV unless if the subject of the test
20 first provides has declined to provide or ^{has} deferred providing informed consent for
21 testing or disclosure as specified under par. (b), except that consent to testing ^{unformed} is not
22 required ^{under sub. (5m) or} for any of the following: ^{for}

23 **SECTION 5.** 252.15 (2) (a) 4. of the statutes is amended to read:

24 252.15 (2) (a) 4. A health care provider may subject an individual to a test for
25 the presence of HIV, antigen or nonantigenic products of HIV ³ or an antibody to HIV,

INSERT

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INSERT

3-22

BILL

SECTION 5

RESTORE TO PLAIN TEXT

informed

for testing

1 without obtaining complying with the requirements under par. (b) (intro) for
2 inferring consent to the testing from the individual, if all of the following apply:

3 a. The individual has been adjudicated incompetent in this state, is under 14
4 years of age or is unable to give decline to provide consent or defer consent because
5 he or she is unable to communicate due to a medical condition.

6 b. The health care provider obtains complies with the requirements under par.
7 (b) (intro.) with respect to inferring consent for the testing from the individual's
8 guardian, if the individual is adjudicated incompetent in this state; from the
9 individual's parent or guardian, if the individual is under 14 years of age; or from the
10 individual's closest living relative or another with whom the individual has a
11 meaningful social and emotional relationship if the individual is not a minor nor
12 adjudicated incompetent.

but is unable to communicate due to a medical condition

INSERT
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SECTION 6. 252.15 (2) (am) 1. of the statutes is amended to read:

14 252.15 (2) (am) 1. A health care provider who procures, processes, distributes
15 or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior
16 to the distribution or use and after obtaining informed consent under the
17 requirements of par. (b) (intro) for inferring consent to testing, test the proposed
18 donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody
19 to HIV in order to assure medical acceptability of the gift for the purpose intended.
20 The health care provider shall use as a test for the presence of HIV, antigen or
21 nonantigenic products of HIV or an antibody to HIV a test or series of tests that the
22 state epidemiologist finds medically significant and sufficiently reliable under s.
23 252.13 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV
24 or an antibody to HIV. The health care provider shall test the donor initially and, if
25 the initial test result is negative, shall perform a 2nd test on a date that is not less

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TO PLAIN TEXT

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

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

7 252.15 (2) (am) 2. A health care provider who procures, processes, distributes
8 or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to
9 the distribution or use and ~~after complying with informed consent~~ under the
10 requirements of par. (b) ~~(intro.) for inferring consent to~~ testing, test the proposed
11 donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody
12 to HIV in order to assure medical acceptability of the gift for the purpose intended.

13 SECTION 8. 252.15 (2) (b) (intro.) of the statutes is amended to read:

14 252.15 (2) (b) ~~(intro.)~~ The A health care provider, blood bank, blood center, or
15 plasma center that subjects a person to a test for the presence of HIV, antigen or
16 nonantigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall,
17 in instances under those paragraphs in which informed consent for testing is
18 required, provide first orally inform the potential test subject with an informed
19 consent form for testing or disclosure that shall contain the following information
20 and on the form shall obtain the potential test subject's signature or may, if the
21 potential test subject has executed a power of attorney for health care instrument
22 under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead
23 obtain the signature of the health care agent that, as routine health care, such a test
24 will be performed unless the potential test subject or, if applicable, agent declines to
25 provide or defers providing consent. If the potential test subject or agent does not

Change component

after obtained

informed consent

renumbered 252.15 (2) (b) and

⊕ ← strike colon

BILL

1 so decline or defer, the health care provider, blood bank, blood center, or plasma
 2 center may infer that the potential test subject or agent has given informed consent
 3 for testing. If consent for the testing is inferred, the health care provider, blood bank,
 4 blood center, or plasma center shall provide the potential test subject or, if applicable,
 5 agent, with an informed consent form for disclosure that shall contain the following
 6 information and on the form shall obtain the potential test subject's or, if applicable,
 7 agent's signature.

8 **SECTION 9.** 252.15 (2) (b) 1. of the statutes is amended to read: *repealed.*

9 252.15 (2) (b) 1. The name of the potential test subject who is giving consent
 10 and whose test results may be disclosed and, if the potential test subject has executed
 11 a power of attorney for health care instrument under ch. 155 and has been found to
 12 be incapacitated under s. 155.05 (2), the name of the health care agent.

13 **SECTION 10.** 252.15 (2) (b) 3. (intro.) and b. of the statutes are consolidated,
 14 renumbered 252.15 (2) (b) 3. and amended to read:

15 252.15 (2) (b) 3. ~~Spaces~~ A space specifically designated for the following
 16 purposes: ~~b.~~ The name of a person to whom the potential test subject or, if the
 17 potential test subject has executed a power of attorney for health care instrument
 18 under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health
 19 care agent, authorizes that disclosure of test results be made, if any, the date ~~on~~
 20 ~~which the consent to disclosure is signed,~~ and the time period during which the
 21 consent to disclosure is effective.

22 **SECTION 11.** 252.15 (2) (b) 3. ~~a.~~ of the statutes is repealed.

23 **SECTION 12.** 252.15 (4) (a) of the statutes is amended to read: *repealed.*

24 252.15 (4) (a) Obtain from the subject informed consent for testing or
 25 disclosure, as provided under Comply with sub. (2).

change component

change component

INSERT 6-21

INSERT 6-22

INSERT A

The bill also eliminates the requirement that consent for disclosure of HIV test results be obtained on an informed consent to testing and disclosure form before disclosure may be made. Instead, the bill requires that a health care provider, blood bank, blood center, or plasma center inform the HIV test subject (or the test subject's health care agent, under certain circumstances) that the test subject or agent has the right to identify persons to whom the test results may be disclosed, to identify persons to whom test results may not be disclosed, and to specify the time period for the authorization or refusal to disclose. The health care provider, blood bank, blood center, or plasma center must furnish the means by which this authorization or refusal may be indicated by the test subject or agent and must provide the test subject or agent with a statement of explanation about persons to whom disclosure may be made without consent under certain circumstances and a listing of those persons and circumstances. The bill clarifies that the health care provider, blood bank, blood center, or plasma center that tests an individual must maintain in the individual's health care record a record of informed consent, refusal to consent, or deferral of consent made; a record of persons to whom disclosure may be made or from whom disclosure must be withheld; and a record of test results obtained. In addition, the bill makes numerous technical changes to the laws restricting use of an HIV test.

INSERT 3-15

1 **SECTION 1.** 252.15 (1) (cw) of the statutes is created to read:

2 252.15 (1) (cw) "Informed consent for disclosure" means, under the
3 requirements of sub. (3), consent by an individual to the disclosure to a specified
4 person of the results of a test for the presence of HIV, antigen or nonantigenic
5 products of HIV, or an antibody to HIV that is administered to the individual
6 consenting.

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

8 252.15 (1) (d) "Informed consent for testing or disclosure" means consent in
9 ~~writing on an informed consent for testing or disclosure form, under the~~
10 requirements of sub. (2) (b), inferred consent by a person an individual to the
11 administration of a test to him or her for the presence of HIV, antigen or nonantigenic

1 products of HIV or an antibody to HIV ~~or to the disclosure to another specified person~~
2 ~~of the results of a test administered to the person consenting.~~

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 3.** 252.15 (1) (e) of the statutes is repealed.

4 **SECTION 4.** 252.15 (2) (title) of the statutes is amended to read:

5 252.15 (2) (title) INFORMED CONSENT FOR TESTING ~~OR DISCLOSURE.~~

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

INSERT 3-22

6 **SECTION 5.** 252.15 (2) (a) 1. of the statutes is amended to read:

7 252.15 (2) (a) 1. Except as provided in subd. 1g., a health care provider who
8 procures, processes, distributes or uses a human body part or human tissue donated
9 as specified under s. 157.06 (6) (a) or (b) shall, without obtaining informed consent
10 ~~to the~~ for testing, test for the presence of HIV, antigen or nonantigenic products of
11 HIV, or an antibody to HIV in order to assure medical acceptability of the gift for the
12 purpose intended. The health care provider shall use as a test for the presence of
13 HIV, antigen or nonantigenic products of HIV, or an antibody to HIV a test or series
14 of tests that the state epidemiologist finds medically significant and sufficiently
15 reliable to detect the presence of HIV, antigen or nonantigenic products of HIV, or an
16 antibody to HIV. If the validated test result of the donor from the test or series of tests
17 performed is positive, the human body part or human tissue donated for use or
18 proposed for donation may not be used.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

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

20 252.15 (2) (a) 2. The department, a laboratory certified under 42 USC 263a, or
21 a health care provider, blood bank, blood center, or plasma center may, for the

1 purpose of research and without first obtaining ~~written~~ informed consent ~~to the for~~
 2 testing, subject any body fluids or tissues to a test for the presence of HIV, antigen
 3 or nonantigenic products of HIV, or an antibody to HIV if the testing is performed in
 4 a manner by which the identity of the test subject is not known and may not be
 5 retrieved by the researcher.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

6 **SECTION 7. 252.15 (2) (a) 3.** of the statutes is renumbered 252.15 (2) (a) 3.
 7 (intro.) and amended to read:

8 252.15 (2) (a) 3. (intro.) The medical director of a center for the developmentally
 9 disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01
 10 (12), may, without obtaining informed consent ~~to the for~~ testing, subject a resident
 11 or patient of the center or institute to a test for the presence of HIV, antigen or
 12 nonantigenic products of HIV, or an antibody to HIV if he or she determines that the
 13 conduct of the resident or patient poses a significant risk of transmitting HIV to
 14 another resident or patient of the center or institute. The medical director shall
 15 provide the test subject and the test subject's guardian, if the test subject is an
 16 individual found incompetent in this state, with all of the following:

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

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17 **SECTION 8. 252.15 (2) (a) 6.** of the statutes is amended to read:

18 252.15 (2) (a) 6. A health care professional acting under an order of the court
 19 under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining
 20 informed consent ~~to the for~~ testing, subject an individual to a test or a series of tests
 21 to detect the presence of HIV, antigen or nonantigenic products of HIV, or an antibody
 22 to HIV. No sample used for laboratory test purposes under this subdivision may

1 disclose the name of the test subject, and, ~~notwithstanding sub. (4) (e)~~, the test
2 results may not be made part of the individual's permanent medical record.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 9.** 252.15 (2) (a) 7. ar. of the statutes is amended to read:

4 252.15 (2) (a) 7. ar. The individual, if capable of consenting, has been given an
5 opportunity to ~~be tested with his or her~~ provide informed consent for testing and has
6 ~~not consented~~ declined.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

INSERT 6-21

7 **SECTION 10.** 252.15 (2) (b) 2. of the ~~statutes~~ is renumbered 252.15 (3) (c) and
8 amended to read:

9 252.15 (3) (c) ~~A~~ Provide to the individual a statement of explanation to the
10 potential test subject that the test results may be disclosed as specified under sub.
11 (5) (a) and either a listing that duplicates the persons or circumstances specified
12 under sub. (5) (a) 2. to ~~19.~~ 20. or a statement that the listing is available upon request.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

INSERT 6-22

13 **SECTION 11.** 252.15 (2) (bm) (intro.) of the statutes is repealed.

14 **SECTION 12.** 252.15 (2) (bm) 1. of the statutes is renumbered 252.15 (2) (a) 3.

15 a.

16 **SECTION 13.** 252.15 (2) (bm) 2. of the statutes is renumbered 252.15 (2) (a) 3.

17 b.

18 **SECTION 14.** 252.15 (2) (bm) 2. of the statutes is renumbered 252.15 (2) (a) 3.

19 b. and amended to read:

20 252.15 (2) (a) 3. b. A statement of explanation that the test results may be
21 disclosed as specified under sub. (5) (a) and either a listing that duplicates the

1 persons or circumstances specified under sub. (5) (a) 2. to ~~18. 20.~~ or a statement that
2 the listing is available upon request.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 21; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 15.** 252.15 (3) of the statutes is repealed and recreated to read:

4 **252.15 (3) INFORMED CONSENT FOR DISCLOSURE; REFUSAL OF DISCLOSURE.** A health
5 care provider, blood bank, blood center, or plasma center that subjects an individual
6 to a test for the presence of HIV, antigen or nonantigenic products of HIV, or an
7 antibody to HIV under sub. (2) (a) or (am) shall do all of the following:

8 (a) Inform the individual or, if the individual has executed a power of attorney
9 for health care instrument under ch. 155 and has been found to be incapacitated
10 under s. 155.05 (2), the individual's health care agent that, except as provided under
11 sub. (5), the individual or health care agent has the right to do all of the following:

12 1. Identify persons to whom the individual or health care agent authorizes that
13 test results may be disclosed and the time period in which disclosure may be made.

14 2. Identify persons to whom test results may not be disclosed and the time
15 period for refusal of disclosure.

16 (b) Furnish the means by which the individual or the health care agent may
17 indicate his or her authorization under par. (a) 1., refusal under par. (a) 2., or both.

18 **SECTION 16.** 252.15 (4) (intro.) of the statutes is amended to read:

19 **252.15 (4) RECORD MAINTENANCE.** (intro.) A health care provider, blood bank,
20 blood center, or plasma center that obtains from ~~a person~~ an individual a specimen
21 of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or

1 nonantigenic products of HIV, or an antibody to HIV shall maintain in the
2 individual's health care record all of the following:

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

INSERT 7-3

3 **SECTION 17.** 252.15 (4) (b) of the statutes is amended to read:

4 252.15 (4) (b) ~~Maintain a~~ A record of the informed consent received, refusal of
5 consent, or deferral of consent made under par. (a) sub. (2) (b).

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

6 **SECTION 18.** 252.15 (4) (bm) of the statutes is created to read:

7 252.15 (4) (bm) A record of any persons identified by the individual under sub.
8 (3) (a) 1. or 2.

9 **SECTION 19.** 252.15 (4) (c) of the statutes is amended to read:

10 252.15 (4) (c) Maintain Except for a record made under the circumstances
11 described in sub. (2) (a) 6. or 7m. or s. 968.38 (4) (intro.) or (5) (intro.), a record of the
12 test results obtained. ~~A record that is made under the circumstances described in~~
13 ~~sub. (2) (a) 7m. may not reveal the identity of the test subject.~~

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

14 **SECTION 20.** 252.15 (5) (title) of the statutes is repealed and recreated to read:

15 252.15 (5) (title) TEST CONFIDENTIALITY; EXCEPTIONS.

16 **SECTION 21.** 252.15 (5) (a) (intro.) of the statutes is amended to read:

17 252.15 (5) (a) (intro.) An individual who is the subject of a test for the presence
18 of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV or the
19 individual's health care agent, if the individual has executed a power of attorney for
20 health care instrument under ch. 155 and has been found to be incapacitated under
21 s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who

1 is neither the individual nor the individual's health care agent may not, unless he
2 or she is specifically authorized under sub. (3) by the individual or health care agent
3 to do so, disclose the individual's test results except to the following persons or under
4 the following circumstances:

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

5 **SECTION 22.** 252.15 (5) (a) 1. of the statutes is amended to read:

6 252.15 (5) (a) 1. To the subject of the test and, if the test subject has executed
7 a power of attorney for health care instrument under ch. 155 and has been found to
8 be incapacitated under s. 155.05 (2), the test subject's health care agent.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

9 **SECTION 23.** 252.15 (5) (a) 10. (intro.) of the statutes is amended to read:

10 252.15 (5) (a) 10. (intro.) ~~To~~ Except as provided in par. (b), to a person who
11 conducts research, for the purpose of research, if the researcher:

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

12 **SECTION 24.** 968.38 (4) (intro.) of the statutes is amended to read:

13 968.38 (4) (intro.) The court shall set a time for a hearing on the matter under
14 sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the
15 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)
16 applies; after conviction or a finding of not guilty by reason of mental disease or
17 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that
18 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district
19 attorney and the defendant notice of the hearing at least 72 hours prior to the
20 hearing. The defendant may have counsel at the hearing, and counsel may examine
21 and cross-examine witnesses. If the court finds probable cause to believe that the
22 defendant has significantly exposed the victim or alleged victim, the court shall order

1 the defendant to submit to a test or a series of tests administered by a health care
2 professional to detect the presence of HIV, antigen or nonantigenic products of HIV,
3 an antibody to HIV, or a sexually transmitted disease. The court shall require the
4 health care professional who performs the test to disclose the test results to the
5 defendant. The court shall require the health care professional who performs the
6 test to refrain, notwithstanding s. 252.15 (4) (e), from making the test results part
7 of the defendant's permanent medical record and to disclose the results of the test
8 to any of the following:

9 History: 1991 a. 269; 1993 a. 27, 32, 183, 227, 495; 1995 a. 456; 1997 a. 182; 1999 a. 188; 2005 a. 277.

9 **SECTION 25. 968.38 (5) (intro.)** of the statutes is amended to read:

10 **968.38 (5) (intro.)** The court shall set a time for a hearing on the matter under
11 sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the
12 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)
13 applies; after conviction or a finding of not guilty by reason of mental disease or
14 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that
15 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district
16 attorney and the defendant notice of the hearing at least 72 hours prior to the
17 hearing. The defendant may have counsel at the hearing, and counsel may examine
18 and cross-examine witnesses. If the court finds probable cause to believe that the
19 act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried
20 a potential for transmitting a communicable disease to the victim or alleged victim
21 and involved the defendant's blood, semen, vomit, saliva, urine or feces or other
22 bodily substance of the defendant, the court shall order the defendant to submit to
23 a test or a series of tests administered by a health care professional to detect the
24 presence of any communicable disease that was potentially transmitted by the act

1 or alleged act of the defendant. The court shall require the health care professional
2 who performs the test to disclose the test results to the defendant. The court shall
3 require the health care professional who performs the test to refrain,
4 notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of
5 the defendant's permanent medical record and to disclose the results of the test to
6 any of the following:

History: 1991 a. 269; 1993 a. 27, 32, 183, 227, 495; 1995 a. 456; 1997 a. 182; 1999 a. 188; 2005 a. 277.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1092/2dn

DAK:kjf:nnw ✓

Date

To Representative Wasserman:

I have made numerous statutory changes in this bill, to clarify s. 252.15, stats., and to eliminate redundancies. ✓

In drafting, I noticed what seems to be an inconsistency about HIV test disclosure between s. 252.15 (2) (a) 7. c. and 7m., stats.; the first provision states that a health care provider may not disclose test results to an individual, and the second allows disclosure. Would you be interested in resolving this inconsistency? If so, it might be helpful to contact DHFS to see what the interpretation of the state epidemiologist is with respect to these provisions.

Please let me know if I may provide further assistance with this bill.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1092/2dn
DAK:kjf:rs

May 31, 2007

To Representative Wasserman:

I have made numerous statutory changes in this bill, to clarify s. 252.15, stats., and to eliminate redundancies.

In drafting, I noticed what seems to be an inconsistency about HIV test disclosure between s. 252.15 (2) (a) 7. c. and 7m., stats.; the first provision states that a health care provider may not disclose test results to an individual, and the second allows disclosure. Would you be interested in resolving this inconsistency? If so, it might be helpful to contact DHFS to see what the interpretation of the state epidemiologist is with respect to these provisions.

Please let me know if I may provide further assistance with this bill.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

From Joe Heey.
7/18/07 Redraft

- 1092/2

✓ ① Remove deferring consent

✓ ② Define test to detect HIV - define for chapter 252 as whole

✓ ③ p. 252.15 (1)(d) add "oral ~~to~~ inferred consent consent" after "means" in def.

✓ ④ p. 8, l. 12 - delete "routine health care" + sub "as a routine part of medical care"

see 9/27/07 X ⑤ 252.15 (7)(c) 1. - repeal

see 9/27/07 ⑥ add to 252.15 (7) ~~(b)~~

Joe Heey will look with me to
The likely type of sexual contact that resulted in transmission, if known
The gender of the indiv. involved in the sexual contact that ~~was~~ if known

✓ ⑦ N/W chapter, pub health officials may notify an indiv. that it is likely that the indiv. has been significantly exposed.
→ N/W 146.82+

X ⑧ Anonymous testing - Joe H. will send to me N/W 252.15 (4) (b) + (c)?

✓ ⑨ "lifting penalties" - Joe H. will let me know.

Kennedy, Debora

From: Hoey, Joseph
Sent: Wednesday, July 18, 2007 4:01 PM
To: Kennedy, Debora

Thanks for all your help. Here's the language from the bill that just passed in Illinois -

X Any individual seeking an HIV test shall have the right to anonymous testing, unless identification of the test subject is otherwise required. Anonymous testing shall be performed after pre-test information is provided and informed consent is obtained, using a coded system that does not link individual identity with the request or result. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where it is available.

9/27/07 - From Joe Hoey

✓ (1) Lapping penalties

✓ 252.15 (9) - Double current - financial part only

✓ (2) " 252.14 (4) - Double current &

✓ (3) 252.15 (7) (c) 1. - Do NOT repeal

✓ (4) CR; 252.15 (7) (b) ^{5m.} ~~add~~ add "mode of transmission"

X (5) language in e-mail:

✓ 9/28/07 - Nothing about anonymous testing

10/11/07 From Joe Hoey: ① Define "HIV test" to mean a test for the presence of HIV, ^{For chapter} antigen or nonantigenic products of HIV, or an antibody to ~~the~~ HIV" look at 252.13 (1m)

② Define "validated test result" to be ^{For chapter} a result of an HIV test that meets the validation requirements determined to be necessary by the state epidemiologist"

③ Clean up extraneous language re "antigen or nonantigenic" throughout

Searches:

"Validated test result"

(in addition to)

"antigen or nonantigenic"

- | | |
|---------------------|---|
| ✓ 49.686(1)(g) | ✓ 48.371(1)(a) |
| ✓ 252.01(8) | ✓ 59.69(15)(m) |
| ✓ 252.13(2) | ✓ 60.63(10m) |
| ✓ 252.14(2)(intro.) | ✓ 62.23(7)(i)9m. |
| ✓ 252.15(2)(a)1. | ✓ 103.15(2)(a) |
| ✓ (am)1. | ✓ (b) |
| ✓ (7)(a) | ✓ (3) |
| ✓ (b)(intro.) | ✓ 118.125(2m)(b) |
| ✓ (7m)(intro.) | ✓ 149.12(1)(intro.) |
| | ✓ 252.13(1m) Ⓢ |
| | ✗ (1r)(intro.) |
| | ✓ (5) |
| | ✓ 252.15(1)(d) |
| | ✗ (e) |
| | ✓ 252.15(2)(a)(intro.) |

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

	"test" in ch. 252	✓	at.
✓	252.01(8) 252.11 (5m)	✓	av.
✓	252.01(8) 252.12 (2)(a) 3. d. ?	✓	b.
✓	252.01(8) 5.	✓	c.
✓	7. (title)	✓	d.
X	(3)	✓	7m.
✓	252.13 (title)	✓	252.15 (2) (am) 1.
✓	(1m)	✓	2.
✓	(1r)(intro)	✓	(b)(intro.)
✓	(a)	✓	1.
✓	(b)	✓	2.
✓	(3)	✓	3. a.
✓	(4)	✓	b.
✓	(5)	✓	(bm)(intro.)
✓	252.14 (2) (intro.)	✓	1.
✓	(3)	✓	2.
✓	252.15 (title)	✓	(3)
✓	(1) (d.)	✓	(4) (intro.)
✓	(e)	✓	(a)
✓	(2) (title)	✓	(c)
✓	(a) (intro.)	✓	(5) (title)
✓	1.	✓	(a) (intro.)
✓	1g.	✓	1.
✓	2.	✓	2.
✓	3.	✓	4. (intro.)
✓	4. (intro.)	✓	a.
✓	6.	✓	b.
✓	7. a.	✓	10. c.
✓	a.k.	✓	13.
✓	an.	✓	14.
✓	ap.	✓	15.
✓	ar.	✓	19.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

- ✓ 252.15 (5) (b)
- ✓ (x) → (5m) (title) + (intro.)
- ✓ (a)
- ✓ (b)
- ✓ (c)
- ✓ (5r) + title
- ✓ (6)
- ✓ (7) (title)
- ✓ (a)
- ✓ (b) (intro.)
- ✓ 3.
- ✓ 4.
- ✓ 5.
- ✓ (c) 1.
- ✓ 2.
- ✓ (7m) (intro.)
- ✓ (a)
- ✓ (b)
- ✓ (8) (a)
- ✓ (9)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

✓	252.15 (2)(a) 2.	✓	968.38(2)(intro.)
⊗	3.	✓	968.38(4)(intro.)
✓	4. (intro.)	✓	973.017(4)(b) 1.
✓	6.	✓	2.
✓	7.a.		
✓	am.		
✓	ap.		"medically significant"
✓	at.	✓	252.13 (1m)
✓	av.	✓	252.15(2)(a) 1.
✓	c.	✓	(2)(am) 1.
✓	(am) 2.	✓	631.90(3)(a)
✓	(b) (intro.)		
✗	(bm) (intro.)		
✓	(3)		
✓	(4)(intro.)		
✓	(5)(a)(intro.)		
✓	(5m)(intro.)		
✓	(a)		
✓	(c)		
✗	(5r) - DO NOT DO - DN		
✓	(6)		
✓	631.90(2)(a)		
✓	(b)		
✓	(c)		
✓	(3)(a)		
✓	(b)		
✓	901.05(2)(intro.)		
✓	938.296(2)(intro.)		
✓	(4)(intro.)		
✓	938.346(1)(e)		
✓	938.371(1)(a)		