

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The State Finance Act is amended by changing
5 Section 5.666 as follows:

6 (30 ILCS 105/5.666)

7 (Section scheduled to be repealed on July 1, 2016)

8 Sec. 5.666. The African-American HIV/AIDS Response Fund.

9 This Section is repealed on July 1, 2026 ~~2016~~.

10 (Source: P.A. 94-797, eff. 1-1-07; 95-331, eff. 8-21-07.)

11 Section 10. The African-American HIV/AIDS Response Act is
12 amended by changing Section 27 as follows:

13 (410 ILCS 303/27)

14 (Section scheduled to be repealed on July 1, 2016)

15 Sec. 27. African-American HIV/AIDS Response Fund.

16 (a) The African-American HIV/AIDS Response Fund is created
17 as a special fund in the State treasury. Moneys deposited into
18 the Fund shall, subject to appropriation, be used for grants
19 for programs to prevent the transmission of HIV and other
20 programs and activities consistent with the purposes of this
21 Act, including, but not limited to, preventing and treating

1 HIV/AIDS, the creation of an HIV/AIDS service delivery system,
2 and the administration of the Act. Moneys for the Fund shall
3 come from appropriations by the General Assembly, federal
4 funds, and other public resources.

5 (b) The Fund shall provide resources for communities in
6 Illinois to create an HIV/AIDS service delivery system that
7 reduces the disparity of HIV infection and AIDS cases between
8 African-Americans and other population groups in Illinois that
9 may be impacted by the disease by, including but, not limited
10 to:

11 (1) developing, implementing, and maintaining a
12 comprehensive, culturally sensitive HIV Prevention Plan
13 targeting communities that are identified as high-risk in
14 terms of the impact of the disease on African-Americans;

15 (2) developing, implementing, and maintaining a stable
16 HIV/AIDS service delivery infrastructure in Illinois
17 communities that will meet the needs of African-Americans;

18 (3) developing, implementing, and maintaining a
19 statewide HIV/AIDS testing program;

20 (4) providing funding for HIV/AIDS social and
21 scientific research to improve prevention and treatment;

22 (5) providing comprehensive technical and other
23 assistance to African-American community service
24 organizations that are involved in HIV/AIDS prevention and
25 treatment;

26 (6) developing, implementing, and maintaining an

1 infrastructure for African-American community service
2 organizations to make them less dependent on government
3 resources; and

4 (7) creating and maintaining at least 17 one-stop
5 shopping HIV/AIDS facilities across the State.

6 (c) When providing grants pursuant to this Fund, the
7 Department of Public Health shall give priority to the
8 development of comprehensive medical and social services to
9 African-Americans at risk of infection from or infected with
10 HIV/AIDS in areas of the State determined to have the greatest
11 geographic prevalence of HIV/AIDS in the African-American
12 population.

13 (d) The Section is repealed on July 1, 2026 ~~2016~~.

14 (Source: P.A. 94-797, eff. 1-1-07.)

15 Section 15. The AIDS Confidentiality Act is amended by
16 changing Sections 3, 4, and 9 as follows:

17 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

18 Sec. 3. Definitions. When used in this Act:

19 (a) "AIDS" means acquired immunodeficiency syndrome.

20 (b) "Authority" means the Illinois Health Information
21 Exchange Authority established pursuant to the Illinois Health
22 Information Exchange and Technology Act.

23 (c) "Business associate" has the meaning ascribed to it
24 under HIPAA, as specified in 45 CFR 160.103.

1 (d) "Covered entity" has the meaning ascribed to it under
2 HIPAA, as specified in 45 CFR 160.103.

3 (e) "De-identified information" means health information
4 that is not individually identifiable as described under HIPAA,
5 as specified in 45 CFR 164.514(b).

6 (f) "Department" means the Illinois Department of Public
7 Health or its designated agents.

8 (g) "Disclosure" has the meaning ascribed to it under
9 HIPAA, as specified in 45 CFR 160.103.

10 (h) "Health care operations" has the meaning ascribed to it
11 under HIPAA, as specified in 45 CFR 164.501.

12 (i) "Health care professional" means (i) a licensed
13 physician, (ii) a physician assistant to whom the physician
14 assistant's supervising physician has delegated the provision
15 of AIDS and HIV-related health services, (iii) an advanced
16 practice registered nurse who has a written collaborative
17 agreement with a collaborating physician which authorizes the
18 provision of AIDS and HIV-related health services, (iv) an
19 advanced practice nurse or physician assistant who practices in
20 a hospital or ambulatory surgical treatment center and
21 possesses appropriate clinical privileges, (v) a licensed
22 dentist, (vi) ~~(v)~~ a licensed podiatric physician, or (vii) ~~(vi)~~
23 an individual certified to provide HIV testing and counseling
24 by a state or local public health department.

25 (j) "Health care provider" has the meaning ascribed to it
26 under HIPAA, as specified in 45 CFR 160.103.

1 (k) "Health facility" means a hospital, nursing home, blood
2 bank, blood center, sperm bank, or other health care
3 institution, including any "health facility" as that term is
4 defined in the Illinois Finance Authority Act.

5 (l) "Health information exchange" or "HIE" means a health
6 information exchange or health information organization that
7 oversees and governs the electronic exchange of health
8 information that (i) is established pursuant to the Illinois
9 Health Information Exchange and Technology Act, or any
10 subsequent amendments thereto, and any administrative rules
11 adopted thereunder; (ii) has established a data sharing
12 arrangement with the Authority; or (iii) as of August 16, 2013,
13 was designated by the Authority Board as a member of, or was
14 represented on, the Authority Board's Regional Health
15 Information Exchange Workgroup; provided that such designation
16 shall not require the establishment of a data sharing
17 arrangement or other participation with the Illinois Health
18 Information Exchange or the payment of any fee. In certain
19 circumstances, in accordance with HIPAA, an HIE will be a
20 business associate.

21 (m) "Health oversight agency" has the meaning ascribed to
22 it under HIPAA, as specified in 45 CFR 164.501.

23 (n) "HIPAA" means the Health Insurance Portability and
24 Accountability Act of 1996, Public Law 104-191, as amended by
25 the Health Information Technology for Economic and Clinical
26 Health Act of 2009, Public Law 111-05, and any subsequent

1 amendments thereto and any regulations promulgated thereunder.

2 (o) "HIV" means the human immunodeficiency virus.

3 (p) "HIV-related information" means the identity of a
4 person upon whom an HIV test is performed, the results of an
5 HIV test, as well as diagnosis, treatment, and prescription
6 information that reveals a patient is HIV-positive, including
7 such information contained in a limited data set. "HIV-related
8 information" does not include information that has been
9 de-identified in accordance with HIPAA.

10 (q) "Informed consent" means:

11 (1) where a health care provider, health care
12 professional, or health facility has implemented opt-in
13 testing, a process by which an individual or their legal
14 representative receives pre-test information, has an
15 opportunity to ask questions, and consents verbally or in
16 writing to the test without undue inducement or any element
17 of force, fraud, deceit, duress, or other form of
18 constraint or coercion; or

19 (2) where a health care provider, health care
20 professional, or health facility has implemented opt-out
21 testing, the individual or their legal representative has
22 been notified verbally or in writing that the test is
23 planned, has received pre-test information, has been given
24 the opportunity to ask questions and the opportunity to
25 decline testing, and has not declined testing; where such
26 notice is provided, consent for opt-out HIV testing may be

1 incorporated into the patient's general consent for
2 medical care on the same basis as are other screening or
3 diagnostic tests; a separate consent for opt-out HIV
4 testing is not required. ~~a written or verbal agreement by~~
5 ~~the subject of a test or the subject's legally authorized~~
6 ~~representative without undue inducement or any element of~~
7 ~~force, fraud, deceit, duress, or other form of constraint~~
8 ~~or coercion, which entails at least the following pre test~~
9 ~~information:~~

10 ~~(1) a fair explanation of the test, including its~~
11 ~~purpose, potential uses, limitations, and the meaning of~~
12 ~~its results;~~

13 ~~(2) a fair explanation of the procedures to be~~
14 ~~followed, including the voluntary nature of the test, the~~
15 ~~right to withdraw consent to the testing process at any~~
16 ~~time, the right to anonymity to the extent provided by law~~
17 ~~with respect to participation in the test and disclosure of~~
18 ~~test results, and the right to confidential treatment of~~
19 ~~information identifying the subject of the test and the~~
20 ~~results of the test, to the extent provided by law; and~~

21 In addition, ~~(3)~~ where the person providing informed
22 consent is a participant in an HIE, informed consent requires a
23 fair explanation that the results of the patient's HIV test
24 will be accessible through an HIE and meaningful disclosure of
25 the patient's opt-out right under Section 9.6 of this Act.

26 A health care provider, health care professional, or health

1 facility undertaking an informed consent process for HIV
2 testing under this subsection may combine a form used to obtain
3 informed consent for HIV testing with forms used to obtain
4 written consent for general medical care or any other medical
5 test or procedure, provided that the forms make it clear that
6 the subject may consent to general medical care, tests, or
7 procedures without being required to consent to HIV testing,
8 and clearly explain how the subject may decline HIV testing.
9 Health facility clerical staff or other staff responsible for
10 the consent form for general medical care may obtain consent
11 for HIV testing through a general consent form.

12 ~~Pre-test information may be provided in writing, verbally,~~
13 ~~or by video, electronic, or other means. The subject must be~~
14 ~~offered an opportunity to ask questions about the HIV test and~~
15 ~~decline testing. Nothing in this Act shall prohibit a health~~
16 ~~care provider or health care professional from combining a form~~
17 ~~used to obtain informed consent for HIV testing with forms used~~
18 ~~to obtain written consent for general medical care or any other~~
19 ~~medical test or procedure provided that the forms make it clear~~
20 ~~that the subject may consent to general medical care, tests, or~~
21 ~~medical procedures without being required to consent to HIV~~
22 ~~testing and clearly explain how the subject may opt out of HIV~~
23 ~~testing.~~

24 (r) "Limited data set" has the meaning ascribed to it under
25 HIPAA, as described in 45 CFR 164.514(e) (2) .

26 (s) "Minimum necessary" means the HIPAA standard for using,

1 disclosing, and requesting protected health information found
2 in 45 CFR 164.502(b) and 164.514(d).

3 (s-1) "Opt-in testing" means an approach where an HIV test
4 is presented by offering the test and the patient accepts or
5 declines testing.

6 (s-3) "Opt-out testing" means an approach where an HIV test
7 is presented such that a patient is notified that HIV testing
8 may occur unless the patient declines.

9 (t) "Organized health care arrangement" has the meaning
10 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

11 (u) "Patient safety activities" has the meaning ascribed to
12 it under 42 CFR 3.20.

13 (v) "Payment" has the meaning ascribed to it under HIPAA,
14 as specified in 45 CFR 164.501.

15 (w) "Person" includes any natural person, partnership,
16 association, joint venture, trust, governmental entity, public
17 or private corporation, health facility, or other legal entity.

18 (w-5) "Pre-test information" means:

19 (1) a reasonable explanation of the test, including its
20 purpose, potential uses, limitations, and the meaning of
21 its results; and

22 (2) a reasonable explanation of the procedures to be
23 followed, including the voluntary nature of the test, the
24 availability of a qualified person to answer questions, the
25 right to withdraw consent to the testing process at any
26 time, the right to anonymity to the extent provided by law

1 with respect to participation in the test and disclosure of
2 test results, and the right to confidential treatment of
3 information identifying the subject of the test and the
4 results of the test, to the extent provided by law.

5 Pre-test information may be provided in writing, verbally,
6 or by video, electronic, or other means and may be provided as
7 designated by the supervising health care professional or the
8 health facility.

9 For the purposes of this definition, a qualified person to
10 answer questions is a health care professional or, when acting
11 under the supervision of a health care professional, a
12 registered nurse, medical assistant, or other person
13 determined to be sufficiently knowledgeable about HIV testing,
14 its purpose, potential uses, limitations, the meaning of the
15 test results, and the testing procedures in the professional
16 judgment of a supervising health care professional or as
17 designated by a health care facility.

18 (x) "Protected health information" has the meaning
19 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

20 (y) "Research" has the meaning ascribed to it under HIPAA,
21 as specified in 45 CFR 164.501.

22 (z) "State agency" means an instrumentality of the State of
23 Illinois and any instrumentality of another state that,
24 pursuant to applicable law or a written undertaking with an
25 instrumentality of the State of Illinois, is bound to protect
26 the privacy of HIV-related information of Illinois persons.

1 (aa) "Test" or "HIV test" means a test to determine the
2 presence of the antibody or antigen to HIV, or of HIV
3 infection.

4 (bb) "Treatment" has the meaning ascribed to it under
5 HIPAA, as specified in 45 CFR 164.501.

6 (cc) "Use" has the meaning ascribed to it under HIPAA, as
7 specified in 45 CFR 160.103, where context dictates.

8 (Source: P.A. 98-214, eff. 8-9-13; 98-1046, eff. 1-1-15.)

9 (410 ILCS 305/4) (from Ch. 111 1/2, par. 7304)

10 Sec. 4. Informed consent. No person may order an HIV test
11 without first providing pre-test information, as defined under
12 subsection (w-5) of Section 3 of this Act, and receiving the
13 ~~documented~~ informed consent of the subject of the test or the
14 subject's legally authorized representative in accordance with
15 paragraph (1) or (2) of subsection (q) of Section 3 of this
16 Act.

17 A health care provider, health care professional, or health
18 care facility conducting opt-in testing and obtaining informed
19 consent pursuant to paragraph (1) of subsection (q) of Section
20 3 shall document verbal or written consent in the general
21 consent for medical care, a separate consent form, or elsewhere
22 in the medical record.

23 A health care provider, health care professional, or health
24 care facility conducting opt-out testing pursuant to paragraph
25 (2) of subsection (q) of Section 3 shall document the subject's

1 or the subject's legally authorized representative's
2 declination of the test in the medical record. Individual
3 documentation of the provision of pre-test information to each
4 test subject is not required. A health care provider, health
5 care professional, or health facility conducting opt-out
6 testing and shall establish and implement a written procedure
7 for conducting opt-out testing pursuant to paragraph (2) of
8 subsection (q) of Section 3 and for providing pre-test
9 information, as that term is defined under subsection (w-5) of
10 Section 3 of this Act. ~~A health care facility or provider may~~
11 ~~offer opt-out HIV testing where the subject or the subject's~~
12 ~~legally authorized representative is informed that the subject~~
13 ~~will be tested for HIV unless he or she refuses. The health~~
14 ~~care facility or provider must document the provision of~~
15 ~~informed consent, including pre-test information, and whether~~
16 ~~the subject or the subject's legally authorized representative~~
17 ~~declined the offer of HIV testing.~~

18 (Source: P.A. 95-7, eff. 6-1-08.)

19 (410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

20 Sec. 9. (1) No person may disclose or be compelled to
21 disclose HIV-related information, except to the following
22 persons:

23 (a) The subject of an HIV test or the subject's legally
24 authorized representative. A physician may notify the
25 spouse or civil union partner of the test subject, if the

1 test result is positive and has been confirmed pursuant to
2 rules adopted by the Department, provided that the
3 physician has first sought unsuccessfully to persuade the
4 patient to notify the spouse or civil union partner or
5 that, a reasonable time after the patient has agreed to
6 make the notification, the physician has reason to believe
7 that the patient has not provided the notification. This
8 paragraph shall not create a duty or obligation under which
9 a physician must notify the spouse or civil union partner
10 of the test results, nor shall such duty or obligation be
11 implied. No civil liability or criminal sanction under this
12 Act shall be imposed for any disclosure or non-disclosure
13 of a test result to a spouse or civil union partner by a
14 physician acting in good faith under this paragraph. For
15 the purpose of any proceedings, civil or criminal, the good
16 faith of any physician acting under this paragraph shall be
17 presumed.

18 (b) Any person designated in a legally effective
19 authorization for release of the HIV-related information
20 executed by the subject of the HIV-related information or
21 the subject's legally authorized representative.

22 (c) An authorized agent or employee of a health
23 facility or health care provider if the health facility or
24 health care provider itself is authorized to obtain the
25 test results, the agent or employee provides patient care
26 or handles or processes specimens of body fluids or

1 tissues, and the agent or employee has a need to know such
2 information.

3 (d) The Department and local health authorities
4 serving a population of over 1,000,000 residents or other
5 local health authorities as designated by the Department,
6 in accordance with rules for reporting, preventing, and
7 controlling the spread of disease and the conduct of public
8 health surveillance, public health investigations, and
9 public health interventions, as otherwise provided by
10 State law. The Department, local health authorities, and
11 authorized representatives shall not disclose HIV test
12 results and HIV-related information, publicly or in any
13 action of any kind in any court or before any tribunal,
14 board, or agency. HIV test results and HIV-related
15 information shall be protected from disclosure in
16 accordance with the provisions of Sections 8-2101 through
17 8-2105 of the Code of Civil Procedure.

18 (e) A health facility, health care provider, or health
19 care professional which procures, processes, distributes
20 or uses: (i) a human body part from a deceased person with
21 respect to medical information regarding that person; or
22 (ii) semen provided prior to the effective date of this Act
23 for the purpose of artificial insemination.

24 (f) Health facility staff committees for the purposes
25 of conducting program monitoring, program evaluation or
26 service reviews.

1 (f-5) A court in accordance with the provisions of
2 Section 12-5.01 of the Criminal Code of 2012.

3 (g) (Blank).

4 (h) Any health care provider, health care
5 professional, or employee of a health facility, and any
6 firefighter or EMR, EMT, A-EMT, paramedic, PHRN, or EMT-I,
7 involved in an accidental direct skin or mucous membrane
8 contact with the blood or bodily fluids of an individual
9 which is of a nature that may transmit HIV, as determined
10 by a physician in his medical judgment.

11 (i) Any law enforcement officer, as defined in
12 subsection (c) of Section 7, involved in the line of duty
13 in a direct skin or mucous membrane contact with the blood
14 or bodily fluids of an individual which is of a nature that
15 may transmit HIV, as determined by a physician in his
16 medical judgment.

17 (j) A temporary caretaker of a child taken into
18 temporary protective custody by the Department of Children
19 and Family Services pursuant to Section 5 of the Abused and
20 Neglected Child Reporting Act, as now or hereafter amended.

21 (k) In the case of a minor under 18 years of age whose
22 test result is positive and has been confirmed pursuant to
23 rules adopted by the Department, the health care
24 professional who ordered the test shall make a reasonable
25 effort to notify the minor's parent or legal guardian if,
26 in the professional judgment of the health care

1 professional, notification would be in the best interest of
2 the child and the health care professional has first sought
3 unsuccessfully to persuade the minor to notify the parent
4 or legal guardian or a reasonable time after the minor has
5 agreed to notify the parent or legal guardian, the health
6 care professional has reason to believe that the minor has
7 not made the notification. This subsection shall not create
8 a duty or obligation under which a health care professional
9 must notify the minor's parent or legal guardian of the
10 test results, nor shall a duty or obligation be implied. No
11 civil liability or criminal sanction under this Act shall
12 be imposed for any notification or non-notification of a
13 minor's test result by a health care professional acting in
14 good faith under this subsection. For the purpose of any
15 proceeding, civil or criminal, the good faith of any health
16 care professional acting under this subsection shall be
17 presumed.

18 (2) All information and records held by a State agency,
19 local health authority, or health oversight agency pertaining
20 to HIV-related information shall be strictly confidential and
21 exempt from copying and inspection under the Freedom of
22 Information Act. The information and records shall not be
23 released or made public by the State agency, local health
24 authority, or health oversight agency, shall not be admissible
25 as evidence nor discoverable in any action of any kind in any
26 court or before any tribunal, board, agency, or person, and

1 shall be treated in the same manner as the information and
2 those records subject to the provisions of Part 21 of Article
3 VIII of the Code of Civil Procedure, except under the following
4 circumstances:

5 (A) when made with the written consent of all persons
6 to whom the information pertains; or

7 (B) when authorized by Section 5-4-3 of the Unified
8 Code of Corrections.

9 Disclosure shall be limited to those who have a need to
10 know the information, and no additional disclosures may be
11 made.

12 (Source: P.A. 97-1046, eff. 8-21-12; 97-1150, eff. 1-25-13;
13 98-973, eff. 8-15-14; 98-1046, eff. 1-1-15; revised 10-1-14.)

14 (410 ILCS 305/5 rep.)

15 Section 20. The AIDS Confidentiality Act is amended by
16 repealing Section 5.