

AMENDED IN ASSEMBLY MAY 24, 2021

AMENDED IN ASSEMBLY MARCH 30, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 835

Introduced by Assembly Member Nazarian

February 17, 2021

An act to amend Section 120991 of the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 835, as amended, Nazarian. Hospital emergency departments: HIV testing.

Existing law requires that every patient who has blood drawn at a primary care clinic, as defined, and who has consented to the test, be offered a human immunodeficiency virus (HIV) test that is consistent with the United States Preventive Services Task Force recommendations for screening for HIV infection. Existing law specifies the manner in which the results of that test are provided.

Existing law authorized, from March 1, 2017, to February 28, 2019, inclusive, a pilot project, administered by the State Department of Public Health, to assess and make recommendations regarding the effectiveness of the routine offering of an HIV test in the emergency department of a hospital. Existing law required the department to select 4 hospitals, or fewer under specified circumstances, that have emergency departments to voluntarily participate in the pilot project. Existing law required the participating hospitals to offer an HIV test to any patient in the hospital emergency department, as provided, to collect specified information, and to report the information to the department. Existing

law required the department, by December 1, 2019, to complete a report to the Legislature on the findings of the hospitals in the pilot project and make recommendations about routine HIV testing in hospital emergency departments.

This bill would require every patient who has blood drawn at a hospital emergency department to be offered an HIV test, as specified. The bill would specify the manner in which the results of that test are provided. The bill would state that a hospital emergency department is not required to offer an HIV test to a patient if the department determines that the patient is being treated for a life-threatening emergency or if they determine the person lacks the capacity to consent to an HIV test. *The bill would require the State Department of Public Health to provide a hospital that has an emergency department with information about financial support for HIV testing and linkages to care for persons who are HIV positive.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Many Californians are still receiving primary medical care
- 4 in hospital emergency departments (ED). Despite the success of
- 5 the Affordable Care Act in covering more Californians with health
- 6 insurance, nearly one-half of all ED visits are for services that
- 7 could be provided appropriately in a primary care setting.
- 8 (b) The Centers for Disease Control and Prevention (CDC) and
- 9 the State Department of Public Health advise that knowing one's
- 10 HIV status is critical for getting into treatment and for modifying
- 11 behaviors that might expose others to infection.
- 12 (c) In 2018, there were 131,000 Californians living with HIV,
- 13 and in 2019, there were 4,396 new HIV diagnoses in California.
- 14 (d) The CDC says 14 to 15 percent of people living with HIV
- 15 don't know they have HIV and that they are unwittingly responsible
- 16 for 40 percent of the infections.
- 17 (e) In recent ED studies in the Cities of Los Angeles and San
- 18 Diego, it was additionally found that more than one-half of the
- 19 test results were "rediagnoses" of people who had previously tested
- 20 positive but had fallen out of care.

1 (f) In their pilot project report on HIV testing in emergency
2 departments, the State Department of Public Health Office of AIDS
3 found that there was a variation in the HIV testing strategies
4 employed across the 16 sites studied. Responses ranged from
5 routine opt-out testing to routine opt-in testing to no testing at all.

6 (g) The department reported that in calendar years 2016 to 2017,
7 the HIV positivity yield was 1.7 percent, which was nearly double
8 the national test positivity rate of 0.9 percent. This is consistent
9 with other national studies that have pegged ED testing positivity
10 rates at 2.2 percent to 3 percent.

11 (h) The CDC has long recommended routine HIV testing in all
12 health care delivery facilities. Over the past 30 years, California
13 law has facilitated more routine HIV testing in more settings
14 ranging from physicians' offices to public health clinics to
15 neighborhood sites.

16 (i) It is critical that persons seeking services from an emergency
17 department, the one health care provider that serves the broadest
18 community with a large percentage of people who are at risk of
19 HIV exposure, should be assured that they will be offered an HIV
20 test.

21 (j) As one Office of AIDS pilot project respondent stated, "You
22 really do need a champion" to start up an ED HIV testing program.

23 (k) Therefore, it is the intent of the Legislature that emergency
24 departments routinely offer an HIV test to patients and that the
25 state provide emergency departments with the flexibility to offer
26 these tests with minimum disruption to their ongoing operations.

27 SEC. 2. Section 120991 of the Health and Safety Code is
28 amended to read:

29 120991. (a) (1) Each patient who has blood drawn at a primary
30 care clinic and who has consented to the HIV test pursuant to
31 Section 120990 shall be offered an HIV test. The primary care
32 clinician shall offer an HIV test consistent with the United States
33 Preventive Services Task Force recommendation for screening
34 HIV infection. This subdivision shall not apply if the primary care
35 clinic has tested the patient for HIV or if the patient has been
36 offered the HIV test and declined the test within the previous 12
37 months. Any subsequent testing of a patient who has been tested
38 by the primary care clinic shall be consistent with the most recent
39 guidelines issued by the United States Preventive Services Task
40 Force.

(2) Each patient who has blood drawn at a hospital emergency department shall be offered an HIV test. An emergency department may use rapid HIV testing or, alternatively, may furnish a patient with a home HIV test kit. With the exception of subdivision (g), Section 120990 shall not apply to hospital emergency departments.

(b) HIV testing of minors 12 years of age or older shall comply with Section 6926 of the Family Code.

(c) This section shall not prohibit a primary care clinic or emergency department from charging a patient to cover the cost of HIV testing. The primary care clinic or emergency department shall be deemed to have complied with this section if an HIV test is offered.

(d) (1) A primary care clinic shall attempt to provide test results to the patient before the patient leaves the facility. If that is not possible, the facility may inform the patient who tests negative for HIV by letter or by telephone, and shall inform a patient with a positive test result in a manner consistent with state law. However, in any case, the primary care clinic shall comply with subdivision (g) of Section 120990.

(2) To the extent feasible as determined by the hospital, the hospital emergency department shall attempt to provide test results to the patient before the patient leaves the facility. If that is not possible, the emergency department may inform the patient who tests negative for HIV by letter or telephone, and may refer any patient for whom a test result has not been received prior to the patient's departure or any patient with a positive test to a county health department or other third party that is qualified to provide post-HIV testing counseling. However, in any case, the emergency department shall comply with subdivision (g) of Section 120990.

(e) A hospital emergency department shall not be required to comply with this section if medical personnel in the emergency department determine that the person is being treated for a life-threatening emergency or if they determine that the person lacks the capacity to consent to an HIV test.

(f) *The State Department of Public Health shall provide a hospital that has an emergency department with information about available state, federal, or private financial support for HIV testing and linkages to care for persons who are HIV positive to help offset costs of emergency department testing.*

(f)

1 (g) For purposes of this section, the following terms have the
2 following meanings:

3 (1) “Primary care clinic” means a primary care clinic as defined
4 in subdivision (a) of Section 1204 or subdivision (g), (h), or (j) of
5 Section 1206.

6 (2) “Hospital” means a general acute care hospital as defined
7 in subdivision (a) of Section 1250.

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