

CHAPTER 432 (SB 227)

AN ACT relating to acquired immunodeficiency syndrome.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 199.520 is amended to read as follows:

- (1) After hearing the case, the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption. In the judgment, the name of the child shall be changed to conform with the prayer of the petition. The judgment and all orders required to be entered and recorded in the order book, including the caption, shall contain only the names of the petitioners and the proposed adopted name of the child, without any reference to its former name or the names of its birth parents.
- (2) Upon entry of the judgment of adoption, from and after the date of the filing of the petition, the child shall be deemed the child of petitioners and shall be considered for purposes of inheritance and succession and for all other legal considerations, the natural child of the parents adopting it the same as if born of their bodies. Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent.
- (3) The clerk of the court shall notify the cabinet of any action of the court with respect to entering a judgment granting an adoption, the amendment of an adoption, or the denial or dismissal of a petition for adoption.
- (4) (a) The health history of biological parents and blood relatives of the adopted person, in writing, on a standardized form, provided by the cabinet, if known, shall be given by the cabinet or child-placing agency which has the information to the adoptive parents and to the Circuit Court not later than the date of finalization of the adoption proceedings. ***This information shall include the results of any tests for HIV or hepatitis A, B, and C;*** and
(b) The information provided for in paragraph (a) of this subsection, if known, shall, upon the request in person or in writing of the adult adopted person be made available in writing to that person. The information shall not be made available if it is of a nature that would tend to identify the biological parents of the adopted person except as provided in KRS 199.570 and 199.572.

Section 2. KRS 211.180 is amended to read as follows:

- (1) The cabinet shall enforce the administrative regulations promulgated by the secretary of the Cabinet for Health Services for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including but not limited to the following matters:
 - (a) Detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled;

- (b) The adoption of regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease. In adopting the regulations the cabinet shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. The cabinet shall require reporting of physician diagnosed cases of acquired immunodeficiency syndrome based upon diagnostic criteria from the Centers for Disease Control *and Prevention* of the United States Public Health Service. *No later than October 1, 2000*, the cabinet shall require reporting of cases of human immunodeficiency virus infection by *reporting of a unique code and other relevant data as requested by the Centers for Disease Control and Prevention and as further specified in Section 4 of this Act* ~~[July 1, 1990, but shall be prohibited from requiring the reporting of or collection of names and addresses. However, a code may be used, so long as in and of itself, it would not identify the patient]~~. Nothing in this section shall be construed to prohibit the cabinet from identifying infected patients when and if an effective cure for human immunodeficiency virus infection or any immunosuppression caused by human immunodeficiency virus is found or a treatment which would render a person noninfectious is found, for the purposes of offering or making the cure or treatment known to the patient.
- (c) The control of insects, rodents, and other vectors of disease; the safe handling of food and food products; the safety of cosmetics; the control of narcotics, barbiturates, and other drugs as provided by law; the sanitation of schools, industrial establishments, and other public and semipublic buildings; the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations; the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments; the licensure of hospitals; and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe and sanitary environment;
- (d) The construction, installation, and alteration of any on-site sewage disposal system, except for a system with a surface discharge;
- (e) Protection and improvement of the health of expectant mothers, infants, preschool, and school-age children;
- (f) The practice of midwifery, including the issuance of permits to and supervision of women who practice midwifery; and
- (g) Protection and improvement of the health of the people through better nutrition.
- (2) The secretary shall have authority to establish by regulation a schedule of reasonable fees, not to exceed twenty dollars (\$20) per inspector hour plus travel costs pursuant to state regulations for travel reimbursement, to cover the costs of inspections of manufacturers, retailers, and distributors of consumer products as defined in the Federal Consumer Product Safety Act, 15 U.S.C. secs. 2051 et seq.; 86 Stat. 1207 et seq. or amendments thereto, and of youth camps for the purpose of determining compliance with the provisions of this section

and the regulations adopted by the secretary pursuant thereto. Fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the

purpose of carrying out the provisions of this section. The balance of the account shall lapse to the general fund at the end of each biennium.

- (3) Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

SECTION 3. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services may create, to the extent permitted by available staffing and funding, an HIV and AIDS Advisory Council to consist of no more than twenty-five (25) members, for the purpose of advising the cabinet on the formulation of HIV and AIDS policy. Membership on the committee shall be drawn from the following:*
- (a) *The commissioner of the Department for Public Health;*
 - (b) *The commissioner of the Department for Medicaid Services;*
 - (c) *Representatives of other state agencies or boards that provide services to clients of HIV or AIDS services or that provide education to professionals who come into contact with HIV or AIDS clients, as designated by the Governor;*
 - (d) *Physicians representing different geographic regions of the state;*
 - (e) *HIV or AIDS clients; and*
 - (f) *Representatives of community-based organizations from different geographic regions of the state.*

To the extent possible, membership of the council shall reflect the epidemiology of the HIV/AIDS epidemic.

- (2) *The members designated under paragraphs (a) to (c) of subsection (1) of this section shall serve for the duration of service in their offices, subject to removal for cause by the Governor. These members shall not be paid for attending council meetings, but may receive reimbursement of expenses.*
- (3) *The members serving under paragraphs (d) to (f) of subsection (1) of this section shall be appointed by the cabinet from lists submitted by the appropriate licensing entities of the profession involved, by the cabinet, and by community-based organizations. These members shall serve for a term of four (4) years and may be reappointed, but the members shall not serve for more than two (2) consecutive terms.*
- (4) *The chair of the council shall be elected from the membership serving under paragraphs (d) to (f) of subsection (1) of this section.*
- (5) *The functions of the council shall include, but shall not be limited to:*
- (a) *Reporting its findings to the cabinet and monitoring the responsiveness of the cabinet to insure that the council's recommendations are being followed;*
 - (b) *Exploring the feasibility, design, cost, and necessary funding for centers of excellence to deliver comprehensive, coordinated medical and related care to all people with HIV or AIDS in the Commonwealth based on national clinical guidelines and practice standards. Coordinated medical care shall include, but not be limited to access to:*
 - 1. *AIDS primary care;*

2. *Drug therapy;*
 3. *Specialists' care, including psychiatric and other mental health providers;*
 4. *Case management services;*
 5. *Dental care;*
 6. *Chemical dependency treatment; and*
 7. *Basic needs, including but not limited to, housing and food;*
- (c) *Assessing resources and gaps in services provided for persons with HIV or AIDS;*
- (d) *Subdividing into necessary subcommittees. One (1) subcommittee may be formed that will consist solely of persons living with HIV or AIDS. This subcommittee shall make those recommendations as it deems necessary to the council, including recommendations on effective peer-based prevention programs; and*
- (e) *Reporting its findings and recommendations to the General Assembly and the Interim Joint Committee on Health and Welfare by September 1, 2001, and by September 1 of each year thereafter.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services shall establish a system for reporting, by the use of a unique code, of all persons who test positive for the human immunodeficiency virus (HIV) infection. The reporting shall include the data including, but not limited to, CD4 count and viral load, and other information that are necessary to comply with the confidentiality and reporting requirements of the most recent edition of the Centers for Disease Control and Prevention's (CDC) Guidelines for National Human Immunodeficiency Virus Case Surveillance. As recommended by the CDC, anonymous testing shall remain as an alternative. If less restrictive data identifying requirements are identified by the CDC, the cabinet shall evaluate the new requirements for implementation.*
- (2) *The reporting system established under subsection (1) of this section shall:*
- (a) *Use a unique code that consists of any combination of initials, the last four (4) numbers of the Social Security number, birth date, or other information to be determined by the cabinet;*
 - (b) *Attempt to identify all modes of HIV transmission, unusual clinical or virologic manifestations, and other cases of public health importance;*
 - (c) *Require collection of the unique code and data from all private and public sources of HIV-related testing and care services; and*
 - (d) *Use reporting methods that match the CDC's standards for completeness, timeliness, and accuracy, and follow up, as necessary, with the health care provider making the report to verify completeness, timeliness, and accuracy.*
- (3) *Authorized surveillance staff designated by the cabinet shall:*
- (a) *Match the information from the reporting system to other public health databases, wherever possible, to limit duplication and to better quantify the extent of HIV infection in the Commonwealth;*

- (b) *Conduct a biennial assessment of the HIV and AIDS reporting systems, insure that the assessment is available for review by the public and any state or federal agency, and forward a copy of the assessment to the Legislative Research Commission and the Interim Joint Committee on Health and Welfare;*
 - (c) *Document the security policies and procedures and insure their availability for review by the public or any state or federal agency;*
 - (d) *Minimize storage and retention of unnecessary paper or electronic reports and insure that related policies are consistent with CDC technical guidelines;*
 - (e) *Assure that electronic transfer of data is protected by encryption during transfer;*
 - (f) *Provide that records be stored in a physically secluded area and protected by coded passwords and computer encryption;*
 - (g) *Restrict access to data a minimum number of authorized surveillance staff who are designated by a responsible authorizing official, who have been trained in confidentiality procedures, and who are aware of penalties for unauthorized disclosure of surveillance information;*
 - (h) *Require that any other public health program that receives data has appropriate security and confidentiality protections and penalties;*
 - (i) *Restrict use of data, from which identifying information has been removed, to cabinet-approved research, and require all persons with this use to sign confidentiality statements;*
 - (j) *Prohibit release of any unique codes or any other identifying information that may have been received in a report to any person or organization, whether public or private, except in compliance with federal law or consultations with other state surveillance programs and reporting sources. Under no circumstances shall a unique code or any identifying information be reported to the CDC; and*
 - (k) *Immediately investigate any report of breach of reporting, surveillance, or confidentiality policy, report the breach to the CDC, develop recommendations for improvements in security measure, and take appropriate disciplinary action for any documented breach.*
- (4) *The cabinet shall require any physician or medical laboratory that receives a report of a positive test for the human immunodeficiency virus to report that information by reference to the unique code in accordance with the procedure for establishing the unique code established by the cabinet in an administrative regulation. The physician and medical laboratory shall maintain a log with the name of the patient who tested positive and the unique identifier assigned.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall:*
- (a) *Conduct a review of any guidelines for HIV or acquired immunodeficiency syndrome (AIDS) care coordination to insure:*
 - 1. *Consistency;*

2. *Comprehensive in service; and*
3. *That access to health care and sustaining individuals infected with HIV/AIDS in primary HIV-related medical care is the top priority for care coordinators;*
 - (b) *Conduct objective peer reviews, as necessary, of each care coordination agency to insure that care coordinators are in compliance with the care coordination guidelines;*
 - (c) *Conduct outcome evaluations, as necessary and as permitted by funding limitations, to measure the quality and impact of the care coordinator delivery system;*
 - (d) *Review the need for additional care coordinators to assure that client caseloads are manageable and, to the extent that funds are available, strive for a maximum client caseload of forty (40) to fifty (50) clients per care coordinator. If, after this review, the cabinet finds the need for additional staff, it may develop a plan and request funding for the hiring of additional care coordinators in the geographic areas of greatest need;*
 - (e) *Review eligibility criteria for persons who wish to receive treatment medications through the Kentucky AIDS Drug Assistance Program to insure that these funds are the funds of last resort;*
 - (f) *Review the data collected under Section 4 of this Act to determine whether allocated resources are sufficiently distributed to meet the geographic distribution of reported HIV and AIDS cases;*
 - (g) *Work with other agencies, departments, and cabinets to advise on their development of educational HIV and AIDS programs that are mandated by law;*
 - (h) *Urge access to Spanish-speaking interpreters to provide prevention, treatment, and service efforts where needed in the Commonwealth;*
 - (i) *Provide for consistent and comprehensive HIV and AIDS counseling and testing education in all public health departments as needed;*
 - (j) *Require collaboration between HIV prevention educators and HIV care coordinators with the goal of reducing the further transmission of HIV by those already infected; and*
 - (k) *Encourage community-based organizations to develop an outreach program designed to foster active partnerships with willing faith-based communities. These partnerships may be used to educate community members about illegal drug use, the value of harm reduction programs, and HIV and AIDS prevention and services.*
- (2) *Authorized surveillance staff designated by the cabinet shall review all known cases of newborns with perinatal exposure to HIV infection or with HIV infection.*
- (3) *Any pharmacy or clinic that provides HIV or AIDS-related medications through the Kentucky AIDS Drug Assistance Program or any other state assistance program shall:*
 - (a) *Be encouraged to provide pharmacological consultation reimbursement with written documentation. Documentation may include date of interview, assessment of timely drug refills, side effects, problems, remediation, outcomes noted, and the pharmacist's HIV specialized physician; and*
 - (b) *Be encouraged to seek HIV pharmacological certification in addition to already recommended continuing education training on HIV and AIDS.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

The cabinet may make available information about grant opportunities to nonprofit clinics in the Commonwealth that are established to provide treatment in a multidisciplinary team approach for patients with HIV and AIDS.

Section 7. KRS 214.181 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.
- (4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:
 - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
 - (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.
- (5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed

consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

- (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
- (c) No person~~[,]~~ who has obtained or has knowledge of a test result pursuant to this section~~[,]~~ shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
1. The subject of the test or the subject's legally authorized representative;
 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
 3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
 4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
 6. A health facility or health-care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
 8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
 9. A person allowed access by a court order ~~that~~~~[which]~~ is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human-immunodeficiencyvirus-related testing or which

may lead to discrimination. This paragraph shall not apply to blood bank donor records;

- b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
- c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he *or she* is not already a party;
- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing ***that***~~[which]~~ includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for Health Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 212. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;
- (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;
- (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. ***If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the unique code and other information specified under Section 4 of this Act shall be reported to the cabinet.*** The cabinet shall continue to provide for anonymous testing and counseling;

- (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other private or public facility established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
- (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
 - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
 - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
 - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
 - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
 - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
 - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
 - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
 - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;
 - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he *or she* does not advertise or hold himself out to the

public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
- (9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
- (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 8. KRS 214.625 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests~~[-]~~ is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.
- (4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:
 - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or

- (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.
- (5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
- (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
 - (c) No person~~[-]~~ who has obtained or has knowledge of a test result pursuant to this section~~[-]~~ shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
 1. The subject of the test or the subject's legally authorized representative;
 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
 3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
 4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
 6. A health facility or health-care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to July 13, 1990, for the purpose of artificial insemination;
 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
 8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
 9. A parent, foster parent, or legal guardian of a minor; a crime victim; or a person specified in KRS 438.250;
 10. A person allowed access by a court order which is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if

the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

- b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
- c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;
- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for Health Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;
- (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;
- (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis,

dependent on the patient's desire. ***If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the unique code and other information specified in Section 4 of this Act shall be reported to the cabinet.*** The cabinet shall continue to provide for anonymous testing and counseling;

- (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
- (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
 - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
 - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
 - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
 - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
 - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
 - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
 - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;

- (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;
 - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he *or she* does not advertise or hold himself *or herself* out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
 - (9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
 - (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 9. KRS 222.421 is amended to read as follows:

- (1) Any person may request treatment from a physician or alcohol and other drug abuse program licensed or approved by the Cabinet for Health Services to provide alcohol and other drug abuse treatment services. ***Persons infected with HIV, hepatitis B, or hepatitis C shall have priority access to any licensed treatment services.***
- (2) Every alcohol and other drug abuse program that provides intervention or treatment services to a person with an alcohol and other drug abuse problem or prevention programming to any persons in the community shall, upon request of the Cabinet for Health Services, make a statistical report to the secretary, in a form and manner the secretary shall prescribe, of persons provided prevention, intervention, and treatment services during a specified period of time. The name or address of any person to whom prevention, intervention, or treatment services were provided shall not be reported. The secretary of the Cabinet for Health Services shall provide compilations of the statistical information to other appropriate agencies upon request.

Section 10. KRS 311.282 is amended to read as follows:

- (1) A physician licensed pursuant to KRS Chapter 311 shall not be civilly or criminally liable for the disclosure of otherwise confidential information under the following circumstances:
 - (a) If a patient of the physician has tested positive for human immunodeficiency virus discloses to the physician the identity of a spouse or sexual partner with whom the patient has cohabitated for more than one (1) year; and
 - (b) The physician recommends the patient notify the spouse or sexual partner of the positive test and refrain from engaging in sexual activity in a manner likely to transmit the virus and the patient refuses;~~and~~
 - (c) If, pursuant to a perceived civil duty or the ethical guidelines of the profession, the physician reasonably and in good faith advises the spouse of the patient or sexual partner with whom the patient has cohabitated for more than one (1) year of the positive test and facts concerning the transmission of the virus; ***and***

(d) *The physician reports information about HIV status to the Cabinet for Health Services pursuant to administrative regulations promulgated by the cabinet.*

- (2) Notwithstanding the foregoing, a physician licensed pursuant to KRS Chapter 311 shall not be civilly or criminally liable for failure to disclose information relating to a positive test result for human immunodeficiency virus of a patient to a spouse.

Section 11. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, *a health care professional who is licensed or certified under the laws of the Commonwealth, an employee of the health care professional, an employee of a health care facility that is licensed under the laws of the Commonwealth*, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing of the blood for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.
- (2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Approved April 21, 2000