

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1382

Introduced by Assembly Member Roger Hernández

February 18, 2011

An act to amend Section 120917 of the Health and Safety Code, relating to communicable diseases.

LEGISLATIVE COUNSEL'S DIGEST

AB 1382, as amended, Roger Hernández. HIV counselors.

Existing law establishes the Office of AIDS in the State Department of Public Health and defines human immunodeficiency virus (HIV) as the etiologic agent of acquired ~~immune deficiency~~ *immunodeficiency* syndrome (AIDS). Existing law authorizes HIV counselors that meet specified requirements to perform skin punctures for purposes of withdrawing blood for HIV test purposes.

This bill would ~~make technical, nonsubstantive changes to these provisions, including deleting an obsolete cross-reference~~ *authorize HIV counselors to perform hepatitis C virus (HCV) or combined HIV/HCV tests in addition to HIV tests, as specified.*

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

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

- 1 SECTION 1. Section 120917 of the Health and Safety Code
- 2 is amended to read:
- 3 120917. (a) An HIV counselor who meets the requirements
- 4 of subdivision (e) may do all of the following:

1 (1) Perform any HIV, *hepatitis C virus (HCV)*, or combination
2 *HIV/HCV* test that is classified as waived under the federal Clinical
3 Laboratory Improvement Act (CLIA) (42 U.S.C. Sec. 263a and
4 following) if all of the following conditions exist:

5 (A) The performance of the HIV, *HCV*, or combination
6 *HIV/HCV* test meets the requirements of CLIA and, subject to
7 subparagraph (B), Chapter 3 (commencing with Section 1200) of
8 Division 2 of the Business and Professions Code.

9 (B) Notwithstanding Section 1246 of the Business and
10 Professions Code, an HIV counselor may perform skin punctures
11 for the purpose of withdrawing blood for HIV, *HCV*, or
12 combination *HIV/HCV* testing, upon specific authorization from
13 a licensed physician and surgeon, provided that the person meets
14 both of the following requirements:

15 (i) He or she works under the direction of a licensed physician
16 and surgeon.

17 (ii) He or she has been trained in both rapid HIV, *HCV*, or
18 combination *HIV/HCV* test proficiency for skin puncture blood
19 tests and oral swab tests and in universal infection control
20 precautions, consistent with best infection control practices
21 established by the Division of Occupational Safety and Health in
22 the Department of Industrial Relations and the federal Centers for
23 Disease Control and Prevention.

24 (C) The person performing the HIV, *HCV*, or combination
25 *HIV/HCV* test meets the requirements for the performance of
26 waived laboratory testing pursuant to subdivision (a) of Section
27 1206.5 of the Business and Professions Code. For purposes of this
28 subdivision and subdivision (a) of Section 1206.5 of the Business
29 and Professions Code, an HIV counselor who meets the
30 requirements of subdivision (e) shall be “other health care
31 personnel providing direct patient care” as referred to in paragraph
32 (13) of subdivision (a) of Section 1206.5 of the Business and
33 Professions Code.

34 (D) The patient is informed that the preliminary result of the
35 test is indicative of the likelihood of HIV infection and that the
36 result must be confirmed by an additional more specific test, or,
37 if approved by the federal Centers for Disease Control and
38 Prevention for that purpose, a second different rapid HIV, *HCV*,
39 or combination *HIV/HCV* test. Nothing in this subdivision shall
40 be construed to allow an HIV counselor to perform any HIV, *HCV*,

1 *or combination HIV/HCV* test that is not classified as waived under
2 the CLIA.

3 (2) Notwithstanding Section 1246.5 of the Business and
4 Professions Code, order and report HIV, *HCV, or combination*
5 *HIV/HCV* test results from tests performed pursuant to paragraph
6 (1) to patients without authorization from a licensed health care
7 professional or his or her authorized representative. Patients with
8 indeterminate or positive test results from tests performed pursuant
9 to paragraph (1) shall be referred to a licensed health care provider
10 whose scope of practice includes the authority to refer patients for
11 laboratory testing for further evaluation.

12 (b) An HIV counselor who has been certified pursuant to
13 subdivision (b) of Section 120871 prior to September 1, 2009, and
14 who will administer rapid HIV, *HCV, or combination HIV/HCV*
15 skin puncture tests shall obtain training required by clause (ii) of
16 subparagraph (B) of paragraph (1) of subdivision (a) prior to
17 September 1, 2011. The HIV counselor shall not, unless also
18 certified as a limited phlebotomist technician, perform a skin
19 puncture pursuant to this section until he or she has completed the
20 training required by that clause.

21 (c) An HIV counselor who meets the requirements of this section
22 with respect to performing any HIV, *HCV, or combination*
23 *HIV/HCV* test that is classified as waived under the CLIA may not
24 perform any other test unless that person meets the statutory and
25 regulatory requirements for performing that other test.

26 (d) This section shall not be construed to certify an HIV
27 counselor as a phlebotomy technician or a limited phlebotomy
28 technician, or to fulfill any requirements for certification as a
29 phlebotomy technician or a limited phlebotomy technician, unless
30 the HIV counselor has otherwise satisfied the certification
31 requirements imposed pursuant to Section 1246 of the Business
32 and Professions Code.

33 (e) (1) An HIV counselor shall meet one of the following
34 criteria:

35 (A) Is trained by the Office of AIDS and working in an HIV
36 counseling and testing site funded by the department through a
37 local health jurisdiction, or its agents.

38 (B) Is working in an HIV counseling and testing site that meets
39 both of the following criteria:

- 1 (i) Utilizes HIV counseling staff who are trained by the Office
- 2 of AIDS or its agents.
- 3 (ii) Has a quality assurance plan approved by the local health
- 4 department in the jurisdiction where the site is located and has
- 5 HIV counseling and testing staff who comply with the quality
- 6 assurance requirements specified in Section 1230 of Article 1 of
- 7 Group 9 of Subchapter 1 of Chapter 2 of Division 1 of Title 17 of
- 8 the California Code of Regulations.
- 9 (2) (A) The Office of AIDS or its agents may charge a fee for
- 10 training HIV counseling staff.
- 11 (B) The local health department may charge a fee for the quality
- 12 assurance plan approval.