



Rep. La Shawn K. Ford

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LRB099 04835 JLK 34415 a

1 AMENDMENT TO HOUSE BILL 1004

2 AMENDMENT NO. _____. Amend House Bill 1004, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

7 (30 ILCS 105/5.666)

8 (Section scheduled to be repealed on July 1, 2016)

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

10 This Section is repealed on July 1, 2026 ~~2016~~.

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

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

14 (410 ILCS 303/27)

1 (Section scheduled to be repealed on July 1, 2016)

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

3 (a) The African-American HIV/AIDS Response Fund is created
4 as a special fund in the State treasury. Moneys deposited into
5 the Fund shall, subject to appropriation, be used for grants
6 for programs to prevent the transmission of HIV and other
7 programs and activities consistent with the purposes of this
8 Act, including, but not limited to, preventing and treating
9 HIV/AIDS, the creation of an HIV/AIDS service delivery system,
10 and the administration of the Act. Moneys for the Fund shall
11 come from appropriations by the General Assembly, federal
12 funds, and other public resources.

13 (b) The Fund shall provide resources for communities in
14 Illinois to create an HIV/AIDS service delivery system that
15 reduces the disparity of HIV infection and AIDS cases between
16 African-Americans and other population groups in Illinois that
17 may be impacted by the disease by, including but, not limited
18 to:

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

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

26 (3) developing, implementing, and maintaining a

1 statewide HIV/AIDS testing program;

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

4 (5) providing comprehensive technical and other
5 assistance to African-American community service
6 organizations that are involved in HIV/AIDS prevention and
7 treatment;

8 (6) developing, implementing, and maintaining an
9 infrastructure for African-American community service
10 organizations to make them less dependent on government
11 resources; and

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

14 (c) When providing grants pursuant to this Fund, the
15 Department of Public Health shall give priority to the
16 development of comprehensive medical and social services to
17 African-Americans at risk of infection from or infected with
18 HIV/AIDS in areas of the State determined to have the greatest
19 geographic prevalence of HIV/AIDS in the African-American
20 population.

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

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

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

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

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

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

4 (b) "Authority" means the Illinois Health Information
5 Exchange Authority established pursuant to the Illinois Health
6 Information Exchange and Technology Act.

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

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

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

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

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

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

20 (i) "Health care professional" means (i) a licensed
21 physician, (ii) a physician assistant to whom the physician
22 assistant's supervising physician has delegated the provision
23 of AIDS and HIV-related health services, (iii) an advanced
24 practice registered nurse who has a written collaborative
25 agreement with a collaborating physician which authorizes the
26 provision of AIDS and HIV-related health services, (iv) an

1 advanced practice nurse or physician assistant who practices in
2 a hospital or ambulatory surgical treatment center and
3 possesses appropriate clinical privileges, (v) a licensed
4 dentist, (vi) ~~(v)~~ a licensed podiatric physician, or (vii) ~~(vi)~~
5 an individual certified to provide HIV testing and counseling
6 by a state or local public health department.

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

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

13 (l) "Health information exchange" or "HIE" means a health
14 information exchange or health information organization that
15 oversees and governs the electronic exchange of health
16 information that (i) is established pursuant to the Illinois
17 Health Information Exchange and Technology Act, or any
18 subsequent amendments thereto, and any administrative rules
19 adopted thereunder; (ii) has established a data sharing
20 arrangement with the Authority; or (iii) as of August 16, 2013,
21 was designated by the Authority Board as a member of, or was
22 represented on, the Authority Board's Regional Health
23 Information Exchange Workgroup; provided that such designation
24 shall not require the establishment of a data sharing
25 arrangement or other participation with the Illinois Health
26 Information Exchange or the payment of any fee. In certain

1 circumstances, in accordance with HIPAA, an HIE will be a
2 business associate.

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

5 (n) "HIPAA" means the Health Insurance Portability and
6 Accountability Act of 1996, Public Law 104-191, as amended by
7 the Health Information Technology for Economic and Clinical
8 Health Act of 2009, Public Law 111-05, and any subsequent
9 amendments thereto and any regulations promulgated thereunder.

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

11 (p) "HIV-related information" means the identity of a
12 person upon whom an HIV test is performed, the results of an
13 HIV test, as well as diagnosis, treatment, and prescription
14 information that reveals a patient is HIV-positive, including
15 such information contained in a limited data set. "HIV-related
16 information" does not include information that has been
17 de-identified in accordance with HIPAA.

18 (q) "Informed consent" means:

19 (1) where a health care provider, health care
20 professional, or health facility has implemented opt-in
21 testing, a process by which an individual or their legal
22 representative receives pre-test information, has an
23 opportunity to ask questions, and consents verbally or in
24 writing to the test without undue inducement or any element
25 of force, fraud, deceit, duress, or other form of
26 constraint or coercion; or

1 (2) where a health care provider, health care
2 professional, or health facility has implemented opt-out
3 testing, the individual or their legal representative has
4 been notified verbally or in writing that the test is
5 planned, has received pre-test information, has been given
6 the opportunity to ask questions and the opportunity to
7 decline testing, and has not declined testing; where such
8 notice is provided, consent for opt-out HIV testing may be
9 incorporated into the patient's general consent for
10 medical care on the same basis as are other screening or
11 diagnostic tests; a separate consent for opt-out HIV
12 testing is not required. ~~a written or verbal agreement by~~
13 ~~the subject of a test or the subject's legally authorized~~
14 ~~representative without undue inducement or any element of~~
15 ~~force, fraud, deceit, duress, or other form of constraint~~
16 ~~or coercion, which entails at least the following pre test~~
17 ~~information:~~

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

21 ~~(2) a fair explanation of the procedures to be~~
22 ~~followed, including the voluntary nature of the test, the~~
23 ~~right to withdraw consent to the testing process at any~~
24 ~~time, the right to anonymity to the extent provided by law~~
25 ~~with respect to participation in the test and disclosure of~~
26 ~~test results, and the right to confidential treatment of~~

~~information identifying the subject of the test and the results of the test, to the extent provided by law; and~~

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

A health care provider, health care professional, or health facility undertaking an informed consent process for HIV testing under this subsection may combine a form used to obtain informed consent for HIV testing with forms used to obtain written consent for general medical care or any other medical test or procedure, provided that the forms make it clear that the subject may consent to general medical care, tests, or procedures without being required to consent to HIV testing, and clearly explain how the subject may decline HIV testing. Health facility clerical staff or other staff responsible for the consent form for general medical care may obtain consent for HIV testing through a general consent form.

~~Pre-test information may be provided in writing, verbally, or by video, electronic, or other means. The subject must be offered an opportunity to ask questions about the HIV test and decline testing. Nothing in this Act shall prohibit a health care provider or health care professional from combining a form used to obtain informed consent for HIV testing with forms used to obtain written consent for general medical care or any other~~

1 ~~medical test or procedure provided that the forms make it clear~~
2 ~~that the subject may consent to general medical care, tests, or~~
3 ~~medical procedures without being required to consent to HIV~~
4 ~~testing and clearly explain how the subject may opt out of HIV~~
5 ~~testing.~~

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

8 (s) "Minimum necessary" means the HIPAA standard for using,
9 disclosing, and requesting protected health information found
10 in 45 CFR 164.502(b) and 164.514(d).

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

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

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

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

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

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

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

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

4 (2) a reasonable explanation of the procedures to be
5 followed, including the voluntary nature of the test, the
6 availability of a qualified person to answer questions, the
7 right to withdraw consent to the testing process at any
8 time, the right to anonymity to the extent provided by law
9 with respect to participation in the test and disclosure of
10 test results, and the right to confidential treatment of
11 information identifying the subject of the test and the
12 results of the test, to the extent provided by law.

13 Pre-test information may be provided in writing, verbally,
14 or by video, electronic, or other means and may be provided as
15 designated by the supervising health care professional or the
16 health facility.

17 For the purposes of this definition, a qualified person to
18 answer questions is a health care professional or, when acting
19 under the supervision of a health care professional, a
20 registered nurse, medical assistant, or other person
21 determined to be sufficiently knowledgeable about HIV testing,
22 its purpose, potential uses, limitations, the meaning of the
23 test results, and the testing procedures in the professional
24 judgment of a supervising health care professional or as
25 designated by a health care facility.

26 (x) "Protected health information" has the meaning

1 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

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

4 (z) "State agency" means an instrumentality of the State of
5 Illinois and any instrumentality of another state that,
6 pursuant to applicable law or a written undertaking with an
7 instrumentality of the State of Illinois, is bound to protect
8 the privacy of HIV-related information of Illinois persons.

9 (aa) "Test" or "HIV test" means a test to determine the
10 presence of the antibody or antigen to HIV, or of HIV
11 infection.

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

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

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

17 (410 ILCS 305/4) (from Ch. 111 1/2, par. 7304)

18 Sec. 4. Informed consent. No person may order an HIV test
19 without first providing pre-test information, as defined under
20 subsection (w-5) of Section 3 of this Act, and receiving the
21 ~~documented~~ informed consent of the subject of the test or the
22 subject's legally authorized representative in accordance with
23 paragraph (1) or (2) of subsection (q) of Section 3 of this
24 Act.

25 A health care provider, health care professional, or health

1 care facility conducting opt-in testing and obtaining informed
2 consent pursuant to paragraph (1) of subsection (q) of Section
3 3 shall document verbal or written consent in the general
4 consent for medical care, a separate consent form, or elsewhere
5 in the medical record.

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

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

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

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

5 (a) The subject of an HIV test or the subject's legally
6 authorized representative. A physician may notify the
7 spouse or civil union partner of the test subject, if the
8 test result is positive and has been confirmed pursuant to
9 rules adopted by the Department, provided that the
10 physician has first sought unsuccessfully to persuade the
11 patient to notify the spouse or civil union partner or
12 that, a reasonable time after the patient has agreed to
13 make the notification, the physician has reason to believe
14 that the patient has not provided the notification. This
15 paragraph shall not create a duty or obligation under which
16 a physician must notify the spouse or civil union partner
17 of the test results, nor shall such duty or obligation be
18 implied. No civil liability or criminal sanction under this
19 Act shall be imposed for any disclosure or non-disclosure
20 of a test result to a spouse or civil union partner by a
21 physician acting in good faith under this paragraph. For
22 the purpose of any proceedings, civil or criminal, the good
23 faith of any physician acting under this paragraph shall be
24 presumed.

25 (b) Any person designated in a legally effective

1 authorization for release of the HIV-related information
2 executed by the subject of the HIV-related information or
3 the subject's legally authorized representative.

4 (c) An authorized agent or employee of a health
5 facility or health care provider if the health facility or
6 health care provider itself is authorized to obtain the
7 test results, the agent or employee provides patient care
8 or handles or processes specimens of body fluids or
9 tissues, and the agent or employee has a need to know such
10 information.

11 (d) The Department and local health authorities
12 serving a population of over 1,000,000 residents or other
13 local health authorities as designated by the Department,
14 in accordance with rules for reporting, preventing, and
15 controlling the spread of disease and the conduct of public
16 health surveillance, public health investigations, and
17 public health interventions, as otherwise provided by
18 State law. The Department, local health authorities, and
19 authorized representatives shall not disclose HIV test
20 results and HIV-related information, publicly or in any
21 action of any kind in any court or before any tribunal,
22 board, or agency. HIV test results and HIV-related
23 information shall be protected from disclosure in
24 accordance with the provisions of Sections 8-2101 through
25 8-2105 of the Code of Civil Procedure.

26 (e) A health facility, health care provider, or health

1 care professional which procures, processes, distributes
2 or uses: (i) a human body part from a deceased person with
3 respect to medical information regarding that person; or
4 (ii) semen provided prior to the effective date of this Act
5 for the purpose of artificial insemination.

6 (f) Health facility staff committees for the purposes
7 of conducting program monitoring, program evaluation or
8 service reviews.

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

11 (g) (Blank).

12 (h) Any health care provider, health care
13 professional, or employee of a health facility, and any
14 firefighter or EMR, EMT, A-EMT, paramedic, PHRN, or EMT-I,
15 involved in an accidental direct skin or mucous membrane
16 contact with the blood or bodily fluids of an individual
17 which is of a nature that may transmit HIV, as determined
18 by a physician in his medical judgment.

19 (i) Any law enforcement officer, as defined in
20 subsection (c) of Section 7, involved in the line of duty
21 in a direct skin or mucous membrane contact with the blood
22 or bodily fluids of an individual which is of a nature that
23 may transmit HIV, as determined by a physician in his
24 medical judgment.

25 (j) A temporary caretaker of a child taken into
26 temporary protective custody by the Department of Children

1 and Family Services pursuant to Section 5 of the Abused and
2 Neglected Child Reporting Act, as now or hereafter amended.

3 (k) In the case of a minor under 18 years of age whose
4 test result is positive and has been confirmed pursuant to
5 rules adopted by the Department, the health care
6 professional who ordered the test shall make a reasonable
7 effort to notify the minor's parent or legal guardian if,
8 in the professional judgment of the health care
9 professional, notification would be in the best interest of
10 the child and the health care professional has first sought
11 unsuccessfully to persuade the minor to notify the parent
12 or legal guardian or a reasonable time after the minor has
13 agreed to notify the parent or legal guardian, the health
14 care professional has reason to believe that the minor has
15 not made the notification. This subsection shall not create
16 a duty or obligation under which a health care professional
17 must notify the minor's parent or legal guardian of the
18 test results, nor shall a duty or obligation be implied. No
19 civil liability or criminal sanction under this Act shall
20 be imposed for any notification or non-notification of a
21 minor's test result by a health care professional acting in
22 good faith under this subsection. For the purpose of any
23 proceeding, civil or criminal, the good faith of any health
24 care professional acting under this subsection shall be
25 presumed.

26 (2) All information and records held by a State agency,

1 local health authority, or health oversight agency pertaining
2 to HIV-related information shall be strictly confidential and
3 exempt from copying and inspection under the Freedom of
4 Information Act. The information and records shall not be
5 released or made public by the State agency, local health
6 authority, or health oversight agency, shall not be admissible
7 as evidence nor discoverable in any action of any kind in any
8 court or before any tribunal, board, agency, or person, and
9 shall be treated in the same manner as the information and
10 those records subject to the provisions of Part 21 of Article
11 VIII of the Code of Civil Procedure, except under the following
12 circumstances:

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

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

17 Disclosure shall be limited to those who have a need to
18 know the information, and no additional disclosures may be
19 made.

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

22 (410 ILCS 305/5 rep.)

23 Section 20. The AIDS Confidentiality Act is amended by
24 repealing Section 5."