

Arizona removes informed consent requirement for HIV testing

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Arizona has repealed a law requiring informed consent for HIV testing.

On May 20, Gov. Doug Ducey signed a bill repealing a requirement that before administering an HIV test a health care provider give the patient "informed consent information," which the statute defined as "information that explains HIV infection and the meaning of a positive test result and that indicates that the patient may ask questions and decline testing."

HIV testing will now be covered under general consent for treatment.

Dr. Ravi Grivois-Shah, CEO of the Southern Arizona AIDS Foundation, who testified in favor of the bill, told the House Health and Human Services Committee this is already standard for other tests.

"I can order your A1C, your cholesterol, your anemia test; I can order, if you're at risk, syphilis and chlamydia, gonorrhea and hepatitis screenings, but when we get to HIV, we have to stop and ask for specialized consent for HIV testing," Grivois-Shah said. "This can be scary at times because we're stopping everything. We're doing all this testing and all these things that are important for people's health, but then we stop when we get to HIV."

The bill's sponsor, Rep. Amish Shah, D-Phoenix, told the Senate Health and Human Services Committee the statute the bill repeals dates back 30 years to a time when

there more stigma around HIV.

"Times have changed quite a lot," Shah said. "What we'd really like to do is be able to do these tests without having redundant paperwork."

The bill received broad bipartisan support, passing the House 51-8 and getting no 'no' votes in the Senate. A number of organizations signed on in support of the bill, including the Arizona Medical Association, Planned Parenthood Advocates of Arizona and the Human Rights Campaign.

The Arizona HIV/AIDS nonprofit Aunt Rita's Foundation also supported the bill. Director of Programs Juan Lopez told The Arizona Republic that patients will still be able to opt-out of HIV testing.

While Lopez said he doesn't know what the laws are that govern consent for routine testing, he said generally health care providers will tell patients what they are going to be testing for. He said the goal of this law change is to make HIV testing a part of routine testing.

CDC recommends opt-out screening

Centers for Disease Control and Prevention guidelines say that "general informed consent for medical care that notifies the patient that an HIV test will be performed unless the patient declines (opt-out screening) should be considered sufficient to encompass informed consent for HIV testing."

Catherine Hanssens, Executive Director and Founder of the Center for HIV Law and Policy, a national HIV advocacy group, told the Republic that opt-out testing is the law in most states.

The CDC recommends everyone between the ages of 13 and 64 get tested for HIV at least once as part of routine health care. For those at increased risk of contracting HIV, such as men who have sex with men and IV drug users, the CDC recommends getting tested at least once a year.

According to the CDC, an estimated 1.2 million people in the United States have HIV, including about 161,800 people who are unaware of their status. Nearly 40% of new HIV infections are transmitted by people who don't know they have the virus, the CDC says.

Maricopa County is considered an HIV "hotspot" - one of 50 local areas that together make up more than half of new HIV diagnoses.

'A barrier to HIV testing in our community'

Grivois-Shah, a family physician of over 20 years, told the House Health and Human Services Committee that requiring special consent for HIV tests can serve as a barrier to people getting tested. He said during initial prenatal visits, when the special consent requirement would pop up on the electronic health record, he's seen nurse stop, be worried and not order tests. The CDC says all pregnant women should be tested for HIV, as identification early in pregnancy can help prevent transmission to the baby in utero.

"We've seen months later, when we were doing audits at one point a few years ago, that we had a whole slew of our prenatal patients that never got their HIV test done early on in their pregnancy," Grivois-Shah said. "And we realized that months later, and we had to catch up and make sure we weren't missing anything."

"So this statute currently puts an undue, unnecessary burden on healthcare regulation. It adds stigmatization to HIV testing and HIV in general. And it adds a barrier to HIV testing in our community."

Lopez told the Republic that, under the special consent requirement, health care providers would typically not offer HIV tests unless the patient asked for one.

He said some providers have even denied patients HIV tests, telling them they didn't need one as they weren't high risk.

"(This change) just makes it part of a routine where it's just easier for (patients) to get the test done without having to face that barrier of being afraid of being turned down or being looked at differently by a provider simply because they're asking for an HIV test," Lopez said.

'Your cholesterol is fine. Oh, and by the way, you're positive for HIV.'

However, Hanssens said removing the requirement that health care providers give patients information and get informed consent before testing them for HIV is harmful, as patients generally want to be able to decide if and when they get an HIV test and should be prepared to receive the results.

The trust between patient and provider could be damaged if patients find out they were tested for HIV when they weren't expecting it, she said.

"The notion that somebody will be told, 'Your cholesterol is fine. Oh, and by the way, you're positive for HIV,'" Hanssens said, "as if those two pieces of information would be exactly the same and that that person would feel okay and trusting of the physician is ... hard to understand."

Hanssens said the real solution to health care providers not giving patients HIV tests is to train providers to be comfortable talking with patients about HIV.

"There is data that shows that lots of doctors, people who are medically trained, whose job it is to look after our bodies, are not comfortable talking about sex or STIs or tests related to that ..." Hanssens said. "And instead of addressing that problem, the response seems to be frequently, 'Well then, we're just not going to make them talk about it.'"

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