

# California HIV/AIDS Laws, 2009

California Department of Public Health  
Center for Infectious Diseases  
Office of AIDS

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# Table of Contents

<b>INTRODUCTION</b> .....	1
<b>VOLUNTARY HIV TESTING</b> .....	1
Prohibitions Against Mandatory Testing	
Mandatory Offering of HIV/AIDS Information and/or Testing	
Anonymous Testing	
Confidential Testing	
Rapid HIV Testing	
Consent Required for Testing	
Training of HIV Test Counselors	
<b>MANDATORY HIV TESTING</b> .....	5
Professional Boxers and Martial Arts Fighters	
HIV Testing Within the Criminal Justice System	
<b>REPORTING OF HIV AND AIDS CASES</b> .....	8
HIV	
AIDS	
CD4+ T-Cell Test Results	
<b>DISCLOSURE OF HIV TEST RESULTS AND CONFIDENTIAL RECORDS</b> .....	9
Laboratory Test Results	
HIV/AIDS Confidential Public Health Records	
HIV/AIDS Confidential Research Records	
Written Authorization Requirements and Disclosure of HIV Test Results	
<b>HIV EXPOSURE WITH INTENT</b> .....	13
<b>OCCUPATIONAL EXPOSURE</b> .....	13
Prehospital Emergency Medical Personnel	
Health Care Providers and First Responders	
Funeral Directors	
Forensic Scientists and Others	
<b>POST-EXPOSURE PROPHYLAXIS (PEP)</b> .....	14
<b>HYPODERMIC NEEDLES AND SYRINGES</b> .....	15
Pharmacy Sale of Syringes	
Clean Needle and Syringe Exchange Programs	
<b>INSURANCE AND MEDICAL PLANS</b> .....	16
Insurance Coverage for HIV Testing	
Insurance Eligibility	
Use of an HIV Test	
Insurance Coverage of Transplantation Services	
AIDS Vaccine	

# Table of Contents

<b>WORKERS' COMPENSATION</b> .....	17
Release of Medical Information	
Death Benefits	
<b>MEDI-CAL (MEDICAID)</b> .....	17
Drug Treatment Services	
HIV/AIDS Pharmacy Pilot Program	
<b>TISSUE DONATION</b> .....	18
Sperm Donation	
<b>BLOOD SUPPLY</b> .....	19
HIV Testing of Blood Donors	
Transfusion-Related AIDS Cases	
<b>STATEWIDE AFRICAN AMERICAN INITIATIVE</b> .....	19
<b>HIV/AIDS EDUCATION PREVENTION IN SCHOOLS</b> .....	19
<b>FACILITATING THE ADOPTION OF HIV-POSITIVE CHILDREN</b> .....	21
<b>HIV/AIDS AND DISCRIMINATION</b> .....	21
Federal Law	
State Law	
<b>APPENDIX A</b>	
California Code and California Code of Regulation Sections	
Specifically Mentioning HIV/AIDS.....	23
<b>APPENDIX B</b>	
Glossary of Selected Terms.....	34
<b>APPENDIX C</b>	
Legislation 2007-2009 Relating to HIV/AIDS.....	36

## Introduction

The Office of AIDS (OA), Center for Infectious Diseases, California Department of Public Health (CDPH) is designated by California Health and Safety (H&S) Code Section 131019, as the lead agency responsible for coordinating state programs, services, and activities relating to HIV/AIDS. Information about OA programs and services can be found at <http://www.cdph.ca.gov/programs/AIDS/>.

*California HIV/AIDS Laws, 2009* presents select Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) statutes and regulations, including newly enacted statutes as of January 1, 2010. This guide focuses on laws relating to HIV/AIDS testing, confidentiality, disclosure, and discrimination, but does not provide the full text of any referenced law, or reference court decisions that may interpret the laws. Our objective is to provide a generalized view HIV/AIDS laws by topic and is not intended to address all aspects of HIV/AIDS law or to offer legal interpretation or advice. When technical assistance is needed, OA issues policy letters to offer guidance about laws to assist local public health officials, providers, laboratories, and stakeholders. These [OA legislative policy letters](#) can be found on the OA Web site.

California codes and regulations and relevant judicial case reports should be consulted directly if more detailed information is needed. [California Code and Regulations \(CCR\)](#) and judicial decisions are accessible at law libraries and most public libraries. Although current at the time of this release, legislative, and/or judicial acts may be amended, deleted, or added to California codes and regulations at any time. Current Senate and Assembly bill information as well as California laws are

available on the Official California Legislative Information Web site <http://www.leginfo.ca.gov>.

Additional references for HIV-related laws can be found in the appendices at the end of this document, including a list of recent legislation. For convenience, this document, includes links to OA's Web site and California law (statutes, regulations, and legislation). *California HIV/AIDS Laws, 2009* can be downloaded from the OA Web site, <http://www.cdph.ca.gov/programs/AIDS/>.

## Voluntary HIV Testing

For most individuals, the decision to test for HIV infection is voluntary. In some situations, such as for employment or health insurance, mandatory HIV testing is prohibited. In other situations, such as for pregnant women, testing is voluntary, but HIV information and/or testing must be offered. This section covers the types of voluntary testing and the laws governing consent for testing.

### Prohibitions Against Mandatory Testing

#### Employment

Health and Safety (H&S) Code Section 120980 prohibits the use of HIV testing to determine suitability for employment.

#### Insurance

H&S Code Section 120980 prohibits insurance providers from using an HIV test as a prerequisite to obtaining insurance. H&S Code Section 1389.1 requires that health insurance applications carry a prominently displayed notice that California law prohibits health care service plans from requiring or using an HIV test as a condition of obtaining coverage. Insurance Code Sections 799-799.10 allow an exception for life and disability income insurance (see "Insurance and Medical Plans").

## Mandatory Offering of HIV/AIDS Information and/or Testing

### Marriage

An HIV test is not required prior to obtaining a marriage license in California. However, Family Code Section 358 requires that information concerning AIDS and the availability of HIV testing be distributed to marriage license applicants.

### Pregnant Women

H&S Code Section 125107 requires a prenatal care provider to offer HIV information and counseling to every pregnant patient for whose prenatal care the provider has primary responsibility. This information shall include:

- A description of the modes of HIV transmission;
- A discussion of risk reduction behavior modifications including methods to reduce the risk of perinatal transmission;
- If appropriate, referral information to other HIV prevention and psychological services including anonymous and confidential test sites approved by OA.

H&S Code Section 125085 specifies that the blood specimen of a pregnant woman be tested for HIV and the results reported to the physician and surgeon or other person engaged in the prenatal care of the woman, and to the local health officer pursuant to Title 17 of the California Code of Regulations.

Per H&S Code Section 125090, Section 125085 is not applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending at the time of the delivery has knowledge that the woman has previously

been determined to be chronically infected with hepatitis B or HIV and accepts responsibility for the accuracy of the information.

H&S Code Section 125090 requires the licensed physician and surgeon, other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery, to inform the woman of the:

- Intent to perform a test for HIV infection;
- Routine nature, purpose, risks and benefits of the test;
- Risk of perinatal transmission of HIV and that approved treatments are known to decrease the risks of perinatal transmission of HIV;
- Right to decline the test.

If during the final review of standard prenatal care medical tests, the medical provider engaged in the prenatal care of the woman or attending the woman at the time of labor or delivery finds the woman's medical records do not document an HIV test, the provider shall inform the woman, as noted above, and if not declined, the woman's blood shall be tested by a method that will ensure the earliest possible results and the results shall be reported to both the physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery and; the woman tested.

After the tests results are received, the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or postpartum care shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the mother's

and infant's health, including any follow up testing and care that is indicated. If the woman tests positive for HIV, she shall be referred to a provider, provider group, or institution specializing in prenatal and postpartum care for HIV-positive women and their infants.

H&S Code Section 125092 requires OA, in consultation with other stakeholders including but not limited to professional medical and public health advocacy groups, providers of health care to women and infants infected with or exposed to HIV, and women living with HIV, to develop culturally sensitive informational material in English, Spanish, and other languages used by CDPH when providing information to clients under the Medi-Cal program.

### **Anonymous Testing**

In anonymous HIV testing, the identity of the test subject is not linked to the test result. In accordance with H&S Code Sections 120885-120895, anonymous testing is available at alternative test sites (ATS) administered by county health departments. HIV tests at these sites are free and test site counselors do not collect any identifying information (e.g., name, Social Security Number, driver's license, etc.) from test subjects. Instead, test subjects receive a unique number that corresponds to their specimen and test result. H&S Code Section 120895 requires that, at a minimum, individuals testing at an ATS be informed about the validity and accuracy of the HIV antibody test before it is performed, and that the results of this test are given in person.

### **Confidential Testing**

In contrast to anonymous testing, confidential testing links the test subject's identity to the test result. However, the confidentiality

of test results is specifically protected by California law, which prohibits unauthorized disclosure (see "Disclosure of Test Results and Confidential Records"). Confidential testing is available at publicly-funded confidential test sites as well as private health care settings. To protect the privacy of individuals taking an HIV test, H&S Code Section 120975 provides that no person shall be compelled in any civil, criminal, administrative, legislative, or other proceedings to identify any individual who takes an HIV test.

### **Rapid HIV Testing**

A rapid HIV test is a screening test that produces results quickly enough to allow for same-day results to be given to the patient. H&S Code Section 120917 authorizes an HIV counselor who is trained by OA and working in an HIV counseling and testing site funded by the California Department of Public Health through a local health jurisdiction or its agents may, under specified conditions, perform any HIV test that is classified as waived under the federal Clinical Laboratory Improvement Act and, order and report HIV test results to the patient.

Patients must be informed that the preliminary result of the test is indicative of the likelihood of HIV infection and that the result must be confirmed by an additional more specific test, or, if approved by the Centers for Disease Control and Prevention (CDC), a second different rapid HIV test. Patients with an indeterminate or positive test result must be referred to a licensed health care provider whose scope of practice includes authority to refer patients for laboratory testing for further evaluation.

An HIV counselor may perform skin punctures for the purpose of withdrawing blood for HIV

testing, upon specific authorization from a licensed physician and surgeon, provided that the person meets both the following requirements:

- He or she works under the direction of a licensed physician and surgeon.
- He or she has been trained in both rapid HIV test proficiency for skin puncture blood tests and oral swab tests and in universal infection control precautions, consistent with best infection control practices established by the California Division of Occupational Safety and Health and the CDC.

Beginning October 11, 2009 H&S Code Section 120917 requires HIV counselors certified before September 1, 2009 and who are not licensed limited phlebotomy technicians (LPTs) to obtain the required skin puncture and universal precautions training before September 1, 2011 in order to perform skin puncture rapid HIV testing.

An HIV counselor shall not, unless he or she is also a certified LPT, perform a skin puncture for testing until he or she has completed the required training. Furthermore this section of H&S Code cannot be construed to certify an HIV counselor as a phlebotomy technician (PT) or a LPT or fulfill any requirements for certification as a PT or a LPT.

### Consent Required for Testing

#### In General

California law has eliminated the requirement for separate, written consent for HIV testing. H&S Code Section 120990 requires a medical care provider, prior to ordering an HIV test, to:

- Inform the patient that an HIV test is planned;

- Provide information about the HIV test;
- Inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested;
- Advise the patient that he or she has the right to decline the HIV test; and if the patient declines the HIV test, document that fact in the patient's medical file.

These bulleted requirements shall not apply when a person independently requests an HIV test from the provider.

#### At an ATS

H&S Code Section 120990 does not apply to tests performed at an ATS, tests on a cadaver, donated body parts, or blood tested anonymously as part of a scientific investigation.

#### Incompetent Persons and Minors

In the case of an incompetent person, H&S Code Section 121020 authorizes a parent, guardian, conservator, or other person legally authorized to make health care decisions to give written consent for an HIV test. Minors under the age of 12 are considered not competent to give consent. Minors who are wards of the court may receive written consent from the court.

### Training of HIV Test Counselors

H&S Code Section 120871 requires CDPH to authorize the establishment of training programs for counselors for publicly-funded HIV testing programs, by specified nonprofit community-based organizations. Participating organizations are required to follow curriculum content and design for these trainings that is approved by CDPH.

## Mandatory HIV Testing

### Professional Boxers and Martial Arts Fighters

Business and Professions Code Section 18712 requires that any person applying for a new or renewed license as a professional boxer or professional martial arts fighter shall present evidence that he or she has tested negative for HIV within 30 days of the date of the application. All medical information obtained under this Section, including the HIV test result, is confidential. If the State Athletic Commission denies or revokes a license due to a positive HIV test, the stated cause for denial shall be “medical reasons.” An applicant or licensee may request a closed hearing to appeal the commission’s decision.

### HIV Testing Within the Criminal Justice System

Under some circumstances, individuals accused or convicted of certain crimes may be required to take an HIV test and the results may be disclosed to the crime victim and used to enhance the penalty for certain subsequent crimes. In addition, individuals confined in correctional settings may also be required to take an HIV test under certain circumstances and the test results disclosed to specified persons. These testing and disclosure provisions are exceptions to the general prohibitions against HIV testing and disclosure without consent (see “Voluntary HIV Testing”).

#### Certain Sex Offenses Other Than Prostitution

Penal Code Section 1202.1 requires persons convicted of certain sex offenses and minors adjudged wards of the court or placed on probation for such offenses, to submit to an HIV test. These offenses include rape (statutory and spousal rape), and unlawful sodomy or oral copulation. In addition, testing

is required for individuals convicted of lewd or lascivious acts with a child if the court finds there is probable cause to believe that a bodily fluid capable of transmitting HIV was transferred from the defendant to the victim. The clerk of the court must convey the test results to the California Department of Justice and the local health officer. The prosecutor must advise the victim of the right to receive the test results and refer the victim to the local health officer for counseling. The local health officer must release the test results to the crime victim if the victim so requests. The victim, in turn, may disclose the test results as he or she deems necessary to protect his or her health and safety, or the health and safety of his or her family or sexual partner. The local health officer must also disclose the test results to the test subject and provide appropriate counseling. The California Department of Justice must disclose the test results of any previously convicted sex offender upon the request of the prosecutor or defense attorney in connection with any subsequent investigation or prosecution of the test subject for prostitution or certain sex crimes.

Penal Code Section 12022.85 provides for a three-year sentence enhancement for a conviction of rape (statutory and spousal rape), or unlawful sodomy or oral copulation, if the defendant knew that he or she was HIV positive at the time of the commission of the offense. An HIV test result obtained pursuant to Penal Code Section 1202.1 or Penal Code Section 1202.6 may be used to prove this knowledge.

In contrast to Penal Code Section 1202.1, which requires HIV testing of persons convicted of certain sex crimes, H&S Code Section 121055 permits testing of persons, including minors, charged with certain sex crimes. These crimes include, but are not

limited to, rape (statutory and spousal rape), unlawful sodomy or oral copulation, and lewd or lascivious acts with a child. At the request of the alleged victim, if the court finds probable cause to believe that a transfer of a bodily fluid took place between the defendant and the alleged victim during the alleged crime, the court shall order the defendant to submit to an HIV test. The test results must be provided to the defendant, the alleged victim, and if the defendant is incarcerated or detained, to the officer in charge and the chief medical officer of the detention facility. H&S Code Section 121065 forbids the use of test results as evidence in any criminal proceeding.

#### Prostitution

Penal Code Section 1202.6 requires that individuals convicted of prostitution complete instruction in the causes and consequences of AIDS and submit to an HIV test. The test results must be disclosed to the test subject, the court, and CDPH. The court and CDPH must maintain the confidentiality of the report; however, CDPH must furnish copies of the report to a district attorney upon request.

If an individual has a previous conviction for prostitution or any of the sex offenses listed in Penal Code Section 1202.1(c), tested positive for HIV in connection with that conviction, and was informed of the test results, Penal Code Section 647f elevates any subsequent prostitution conviction from a misdemeanor to a felony.

#### HIV Exposure From an Arrestee

H&S Code Section 121060 permits any peace officer, firefighter, custodial officer, custody assistant, non-sworn uniformed employee of a law enforcement agency whose job entails the care or control of inmates in a detention facility, or emergency medical personnel who, while acting within the scope of his or her duties, is

exposed to an arrestee's blood or body fluids to petition for court-ordered testing for HIV, hepatitis B (HBV), and hepatitis C (HCV).

Prior to filing a petition with the court, a licensed health care provider shall notify the arrestee of the bloodborne pathogen exposure and make a good faith effort to obtain the voluntary informed consent of the arrestee or the arrestee's authorized legal representative to perform testing. Once voluntary informed consent is given in writing, the arrestee shall provide three blood specimens for testing.

If voluntary informed consent is not given in writing, the affected individual may petition, ex parte, the court for an order requiring a test. The petition shall include a written certification by a health care professional that an exposure, including the nature of the exposure, has occurred.

If the court finds that probable cause exists to believe that a possible bloodborne pathogen exposure took place, the court shall order that the arrestee to provide three blood specimens for HIV, HBV and HCV testing.

Copies of the test results shall be sent to the arrestee (upon written consent), each person named in the petition and his or her employing agency, officer, or entity, and if the person is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained. The person whose blood specimen was tested shall be advised that he or she will be informed of the HIV, HBV, and HCV results only if he or she wishes to be informed. If the person consents to be informed of the test results, then he or she shall sign a form documenting that consent. The person's refusal to sign that form shall be construed to be a refusal to be informed of the test results.

H&S Code Section 121065 forbids use of the test results as evidence in any criminal proceeding and requires that all recipients of the results other than the accused maintain the confidentiality of the accused's identity. An exception is made for disclosures that may be necessary to obtain medical or psychological care or advice.

#### Persons Charged With a Crime

Penal Code Section 1524.1 allows, at the request of the crime victim, court-ordered HIV testing of any person charged with a crime. Before issuing a search warrant for the defendant's blood, the court must find that there is probable cause to believe that blood, semen, or other bodily fluids have been transferred from the defendant to the victim and that there is probable cause to believe the defendant committed the alleged offense. A victim may also request HIV testing of the accused in the case of certain alleged sex crimes that are the subject of a police report but have not been charged. This provision applies only if the accused has been charged with some separate sex crime, there is probable cause to believe that the accused committed the uncharged offense, and there is probable cause to believe that blood, semen, or certain other bodily fluids could have been transferred from the accused to the victim.

The prosecutor must advise the victim of the right to request testing and must refer the victim to the local health officer for help in determining whether to make such a request. The local health officer is also responsible for disclosing the test results to the victim and the accused and must offer appropriate counseling to each. The prosecutor may not use the test result to determine whether to file a criminal charge.

#### Individuals in Custody

Penal Code Section 7502(c) includes prosecutors, public defenders, and their respective staff as law enforcement personnel. Penal Code Sections 7500-7519 establishes procedures through which custodial and law enforcement personnel are required to report situations in which they have reason to believe they have come into contact with bodily fluids of an inmate, a person arrested or taken into custody, or a person on probation or parole, in a manner that could result in HIV infection. These reports must be filed with the chief medical officer of the applicable custodial facility.

The employee may also request HIV testing of the person who is the subject of the report. The chief medical officer shall order a test only if there is a significant risk that HIV was transmitted. CCR, Title 22, Sections 41100-41150 interprets the procedural aspects of Penal Code Sections 7510-7519.

These sections also permit inmates to file similar requests stemming from contacts with other inmates. In addition, the chief medical officer may order an HIV test in the absence of any incident report or request from an inmate or employee if the medical officer concludes an inmate exhibits clinical symptoms of HIV infection or AIDS. Further, custodial officers or correctional staff may file a report of any observed or reported behavior known to cause the transmission of HIV. The chief medical officer may investigate these reports and require HIV testing of any inmate as deemed necessary as a result of the investigation. Penal Code Section 7540 makes it a misdemeanor to file a false report or request for testing or to use or disclose test results or confidential information in violation of any of the provisions of Sections 7500-7554.

Penal Code Section 7553 permits CDPH to conduct periodic anonymous unlinked serologic surveys of all or portions of the inmate population or persons under custody within a city or county.

H&S Code Section 121070 establishes a separate procedure for testing persons in custody. It requires that any medical personnel working in any state, county, or city prison, jail, or other detention facility who receives information that an inmate has been exposed to or is infected with HIV or has an AIDS-related condition must report that information to the officer in charge of the detention facility. The officer in charge must notify all employees, medical personnel, contract personnel, and volunteers at the facility who have direct contact with the inmate or the inmate's bodily fluids. Those receiving this information must maintain the confidentiality of any personally identifying data. Any willful unauthorized disclosure is punishable as a misdemeanor.

Wards of the Department of the Youth Authority  
Welfare and Institutions Code Section 1768.9 requires a person under the jurisdiction of the California Department of the Youth Authority to submit to an HIV test if the chief medical officer of the facility determines the person exhibits clinical symptoms of AIDS. A court order may be sought if the person refuses testing. The test subject must receive appropriate counseling and the test results. The chief medical officer may disclose the test results to the facility superintendent or administrators and, if the test results are indicative of HIV infection, to the test subject's known sexual or needle-sharing partners within the facility. H&S Code Section 120995 exempts the California Department of the Youth Authority from obtaining the test subject's written consent.

### Parolees and Probationers

Penal Code Section 7520 requires correctional officials to notify parole and probation officers when an individual with HIV infection or AIDS is released. The parole or probation officer must then ensure that the parolee or probationer contacts the county health department or a physician and surgeon for information on counseling and treatment options available in the county of release.

Penal Code Section 7521 requires that if the HIV-infected individual has not informed his or her spouse of his or her condition, the parole or probation officer may ensure that the spouse is notified by the chief medical officer of the correctional institution or the physician and surgeon treating the spouse or the parolee or probationer. If a parole or probation officer enlists the assistance of local law enforcement officers in taking a parolee/probationer into custody who is HIV infected or has AIDS and also has a record of assault on a peace officer, the parole or probation officer must inform the law enforcement officers of the parolee/probationer's condition.

Penal Code Section 7540 makes it a misdemeanor to use or disclose test results or confidential information obtained in violation of Penal Code Section 7520 or 7521. Penal Code Section 7505 provides that Sections 7500-7550 shall be operative only in those cities and/or counties that adopt a resolution affirming that it shall be operative.

## **Reporting of HIV and AIDS Cases**

### **HIV**

H&S Code Section 121022(a) requires health care providers and clinical laboratories to report HIV infection by patient name to the

local health officer, and mandates local health officers to report unduplicated HIV cases by patient name to CDPH. CCR, Title 17, Sections 2641.5-2643.20 provide specificity for reporting cases of HIV.

## AIDS

H&S Code 120130 requires CDPH to establish a list of reportable diseases and conditions (e.g. AIDS). CCR, Title 17, Section 2500 requires health care providers to report AIDS cases by patient name to the local health officer and Section 2502 requires local health officers to report AIDS cases by patient name to CDPH.

## CD4+ T-Cell Test Results

H&S Code Section 121023 requires each clinical laboratory to report all CD4+ T-cell test results to the local health officer for the local health jurisdiction where the health care provider facility is located within seven days of the completion of the test, except those laboratories that can demonstrate that the CD4+ T-cell test result is not related to a diagnosed case of HIV infection. If the CD4+ T-cell test result is related to a case of HIV infection, the local health officer shall report the case of HIV infection or AIDS to CDPH within 45 days of receipt of the laboratory report. If the CD4+ T-cell report is not related to a case of HIV infection, the local health officer shall destroy the report. CD4+ T-cell reports shall be considered confidential public health records.

## Disclosure of HIV Test Results and Confidential Records

This section provides information regarding the laws that protect the confidentiality of HIV test results, confidential records, and conditions in

which disclosure is authorized by law, and the penalties for unauthorized disclosure.

## Laboratory Test Results

Section 123148 of the H&S Code permits certain laboratory test results to be posted on the Internet or other electronic method if requested by the patient and deemed appropriate by the health care provider who ordered the test. This section prohibits the electronic delivery of clinical laboratory test results or any other related results for HIV antibody tests, regardless of authorization.

## HIV/AIDS Confidential Public Health Records

H&S Code Section 121025 (a) states public health records relating to HIV or AIDS, containing personally identifying information, that were developed or acquired by state or local public health agencies or an agent of such an agency, shall be confidential and shall not be disclosed, except as provided by law for public health purposes or in accordance with a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

H&S Code Section 121025(b) allows state or local public health agencies, or an agent of such an agency, to disclose personally identifying information in public health records to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.

H&S Code Section 121022 (e) requires state and local health department employees and

contractors to sign a confidentiality agreement, which includes penalties for a breach of confidentiality and reporting procedures, prior to accessing confidential HIV-related public health records. Any individuals to whom the information is disclosed are also required to keep the information confidential. No confidential public health record may be required to be disclosed in the context of any civil, criminal, or administrative proceeding.

Per H&S Code Section 121025(e) any person who negligently discloses the content of any confidential public health record to any third party, except in accordance to a written authorization or as authorized by law, shall be subject to a civil penalty not to exceed \$2,500, plus court costs, as determined by the court, and which penalty and costs shall be paid to the person whose record was disclosed. Any person who willfully or maliciously discloses the content of any confidential public health record to any third party, except in accordance to a written authorization or as authorized by law, shall be subject to a civil penalty not less than \$5,000 and not more than \$10,000, plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed. Any person who willfully, maliciously, or negligently discloses the content of any confidential public health record to any third party, except in accordance with a written authorization or as authorized by law, that results in economic, bodily, or psychological harm to the person whose confidential public health record was disclosed, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed \$25,000, or both, plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

Any person who commits any act described above shall be liable to the person whose confidential public health record was disclosed for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act. Each violation of this section is a separate and actionable offense.

### **HIV/AIDS Confidential Research Records**

H&S Code Section 121075 protects the confidentiality of HIV and AIDS-related confidential research records. Research records, in a personally identifying form, developed or acquired by any person in the course of conducting research or a research study relating to HIV or AIDS shall be confidential and these confidential research records shall not be disclosed by any person in possession of the research records, nor shall these records be discoverable, nor shall any person be compelled to produce any confidential research record, except as authorized by law.

H&S Code Section 121085(a) requires confidential research records to be protected in the course of financial audits or program evaluations, and audit personnel shall not directly or indirectly identify any individual research subject in any financial audit or program evaluation report. To the extent it is necessary for audit personnel to know the identity of individual research subjects, authorized disclosure of confidential research records will be made on a case-by-case basis, and every prudent effort shall be exercised to safeguard the confidentiality of these research records. Information disclosed for audit or evaluation purposes should be used only for audit and evaluation purposes and may not be redisclosed or used in any other way.

H&S Code Section 121085 (b) declares nothing in this section imposes liability or criminal sanction for disclosure of confidential research records in accordance with any reporting requirement for a case of HIV, including AIDS, by the department or the CDC.

H&S Code Section 121110 expands civil penalties for the unauthorized disclosure of confidential HIV/AIDS-related research records. Any person who negligently discloses the content of any confidential research record to any third party, except as authorized by law, shall be assessed a civil penalty not to exceed \$2,500, plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

Any person who willfully or maliciously discloses the content of any confidential research record to any third party, except as authorized by law, shall be assessed a civil penalty not less than \$5,000 and not more than \$10,000, plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test. Further, any person who willfully, maliciously, or negligently discloses the content of any confidential research record to any third party, except as authorized by law, that results in economic, bodily, or psychological harm to the research subject, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed \$25,000, or both.

Any person who commits any act described above shall be liable to the subject for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act. Each violation of this section is a separate and actionable offense.

### **Written Authorization Requirements and Disclosure of HIV Test Results**

Written authorization applies only to disclosure of HIV test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and must include to whom the disclosure would be made.

H&S Code Section 120980 states, any person who negligently discloses results of an HIV test to any third party, except in accordance to a written authorization or as authorized by law, shall be assessed a civil penalty not to exceed \$2,500 plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test. Any person who willfully or maliciously discloses the results of an HIV test to any third party, except in accordance to a written authorization or as authorized by law, shall be assessed a civil penalty not less than \$5,000 and not more than \$10,000, plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test. Any person who willfully, maliciously, or negligently discloses the results of an HIV test to any third party, except in accordance to a written authorization or as authorized by law, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed \$25,000, or both.

Any person who commits any act described above shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act. Each violation of this section is a separate and actionable offense.

H&S Code Section 120980 (i) clarifies that this section does not impose liability or criminal sanction for disclosure of an HIV test, in accordance with any reporting requirements for a case of HIV infection, including AIDS by the department or CDC under the U.S. Public Health Service (see “Reporting of HIV and AIDS Cases”).

#### Physician Exceptions to Written Authorization Requirements

Inclusion of a person’s HIV test result in his or her medical record is not considered a disclosure under H&S Code Section 120980. H&S Code Section 120985 permits a physician who orders an HIV test to record the results in the patient’s medical record, or otherwise disclose it without written authorization to the patient’s health care providers for the purpose of diagnosis, care, or treatment of that patient. Recording or disclosing test results in accordance with Section 120985 does not authorize further disclosure unless otherwise permitted by law. Providers of health care are to be defined as in Civil Code Section 56.05(j), with the exclusion of group practice prepaid health care service plans.

#### Partner Notification Exception to Written Authorization Requirements

Health and Safety Code Section 121015 clarifies that no treating physician and surgeon who has the results of a confirmed positive HIV test of a patient in his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, sexual partner, or a person with whom the patient has shared the use of hypodermic needles, or to the local health officer, that the patient has tested positive on a HIV test. No treating physician and surgeon shall disclose any identifying information about the individual believed to be HIV infected, except as required in H&S Code Section 121022.

No physician and surgeon shall disclose this information unless she or he has first discussed the test results with the patient and offered appropriate educational and psychological counseling that includes information on the risks of transmitting HIV and methods of avoiding those risks. The physician and surgeon must notify the patient of his or her intent to notify the patient’s contacts prior to any notification and attempt to obtain the patient’s voluntary consent for notification of his or her contacts. Upon notifying a spouse, sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician and surgeon must refer that person for appropriate care, counseling, and follow-up.

Section 121015 is permissive on the part of the attending physician. No physician has a duty to notify any person of the fact that a patient is reasonably believed to be HIV infected, except as required by H&S Code Section 121022.

Local health officers may alert any persons reasonably believed to be a spouse, sexual partner, or a person who has shared the use of hypodermic needles with an individual who has tested positive on a HIV test about their exposure, without disclosing any identifying information about the individual believed to be HIV infected or the reporting physician. Local health officers must refer the notified person for appropriate care and follow up. Upon completion of notification efforts, all records regarding the contacted person maintained by the local health officer, including but not limited to, any identifying information, shall be expunged. For as long as records of contact are maintained, the local health officer must keep confidential the identity and HIV status of the individual tested as well as the identity of the persons contacted.

### Other Exceptions to Written Authorization Requirements

H&S Code Section 121010 allows disclosure of an individual's HIV test results without prior authorization to the following:

- The subject of the test or the subject's legal representative, conservator, or other person authorized to consent to the test;
- The test subject's provider of health care (Civil Code Section 56.05) but not a health care service plan;
- An agent or employee of the subject's provider of health care who provides direct care and treatment;
- A provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act; and
- A designated officer of an emergency response employee and from that designated officer to the employee regarding possible exposure to HIV/AIDS.

### HIV Exposure With Intent

H&S Code Section 120291 states that any person who exposes another to HIV by engaging in unprotected sexual activity is guilty of a felony, when the infected person:

- Knows he or she is infected;
- Has not disclosed his or her HIV-positive status; and
- Acts with the intent to infect the other person with HIV.

Evidence that the person had knowledge of his or her HIV-positive status, without additional evidence, shall not be sufficient to prove specific intent. The felony charge is punishable in the state prison for three, five, or eight years. Unless the victim requests otherwise, the name and any other identifying characteristics of the victim shall remain confidential.

H&S Code Section 120292 denotes the parameters for disclosing identifying information and other records of the diagnosis, prognosis, testing, or treatment relating to HIV in a criminal investigation of a violation of H&S Code Section 120291. Orders of the court shall not be based on the sexual orientation of the defendant, used to determine the HIV status of a crime victim, or intended to restrict or eliminate anonymous HIV testing.

### Occupational Exposure

State law requires or allows certain individuals who may have been occupationally exposed to HIV to learn the HIV status of the individual who was the source of the exposure. This section outlines the circumstances in which exposure notification requirements apply.

### Prehospital Emergency Medical Personnel

H&S Code Sections 1797.188 and 1797.189 require local health officers to notify prehospital emergency medical care personnel, volunteer or paid, when they have been exposed to a reportable disease, such as AIDS, in the course of providing emergency services or rescues. The exposure must be one capable of transmitting the disease. The notification requirement applies only under specified circumstances in which the exposed personnel's names and phone numbers have been provided to the health facility or the

chief medical examiner-coroner at the time a patient is transferred, and that information is subsequently relayed to the local health officer. Further disclosures are prohibited except as otherwise authorized by law. Personnel to whom this statute applies include authorized registered nurses or mobile intensive care nurses, emergency medical technicians, paramedics, lifeguards, firefighters, peace officers, and physicians and surgeons who provide prehospital emergency medical care or rescue services.

### **Health Care Providers and First Responders**

State law allows a person who in the course of rendering health care-related services or occupational services and who may have been exposed to the blood or other potentially infectious materials of a patient to be informed if a patient has tested positive or negative for a communicable disease, if the exposed person and the health care facility, if any, have complied with guidelines of the California Division of Occupational Safety and Health and CDPH and H&S Code provisions.

Per H&S Code Section 120262 an individual health care provider, first responder or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any health care provider who becomes an exposed individual may request an evaluation of the exposure written by a physician to determine if it is a significant exposure.

If written certification of a significant exposure is obtained, this section of California law contains provisions for notifying the patient, obtaining patient written consent to test for communicable diseases, testing a patient's blood or sample if the patient refuses to provide informed consent, and protecting the confidentiality of the patient's identity.

### **Funeral Directors**

When an individual with AIDS dies in a health facility or the decedent's body has been in the possession of the chief medical examiner-coroner, H&S Code Sections 1797.188 and 1797.189 require the health facility, the chief medical examiner-coroner, or the local health officer to notify the funeral director removing the body that the decedent had AIDS.

### **Forensic Scientists and Others**

H&S Code Section 121056 allows a criminalist, toxicologist, forensic pathologist or any employee who conducts DNA or other forensic testing to file an ex parte petition to have a specimen tested for HIV if, within the scope of his or her duties, the person performing the forensic test has skin or membrane contact with blood or other bodily fluids. Before filing the petition to the court, the requesting party must make a reasonable effort to obtain the consent of the person whose specimen is to be tested. Copies of the test results will be sent to the requesting employee, the employing agency, officer or entity, to the person whose specimen was tested, and to the officer in charge and the chief medical officer of the facility where the individual is incarcerated or detained. Under these provisions, the confidentiality of test results shall be maintained, and the use of test results in criminal or juvenile proceedings is prohibited.

### **Post-Exposure Prophylaxis (PEP)**

H&S Code Sections 121348 and 121348.2 mandate OA to convene a task force to develop recommendations for the use of PEP in the general population for the prevention of HIV infection. The task force must not exceed ten individuals, will serve without

compensation, and shall review and consider PEP guidelines already established in other jurisdictions, the United States, and abroad. OA and a physician shall serve as chair and co-chair, respectively. Recommendations produced by the task force will be approved by CDPH in consultation with the co-chair and be posted on the CDPH Web site.

## Hypodermic Needles and Syringes

### Pharmacy Sale of Syringes

H&S Code Section 121285 establishes the Disease Prevention Demonstration Project, a collaborative between pharmacies and local and state health officials to evaluate the long-term effects of allowing licensed pharmacists to furnish or sell hypodermic needles or syringes, pursuant to Business and Professions Code Sections 4145 and 4147, to prevent the spread of blood-borne pathogens, including HIV. CDPH shall convene an uncompensated evaluation panel, conduct an evaluation of the project, and report the findings to the Governor and Legislature on or before, January 15, 2010. CDPH is encouraged to seek private and federal resources to cover costs of the evaluation.

Pharmacies must register with their local health department in order to participate in the Disease Prevention Demonstration Project by providing a contact name and related information. They must also certify that they will provide written or verbal counseling at the time of furnishing or selling needles or syringes. Additionally, pharmacies must properly store needles and syringes so that they are only available to authorized personnel, provide on-site safe disposal of needles and syringes, or furnish or sell mail-back or state and federal standard personal sharps disposal containers.

H&S Code Section 121285 also stipulates that local health departments maintain a list of all pharmacies registered under the Disease Prevention Demonstration Project and make available to pharmacies written information that can be provided at the time of furnishing or selling nonprescription needles and syringes.

### Clean Needle and Syringe Exchange Programs

H&S Code Section 121349.3 authorizes a public entity that receives State General Fund money from CDPH for the purpose of HIV education and prevention and, as part of an authorized clean needle and syringe exchange program, to use those funds for the purchase of sterile hypodermic needles and syringes. Sections 121349.1 through 121349.3 enable a city and county, or a county, or a city to authorize a clean needle and syringe exchange project as part of a comprehensive network of services. In addition, local government, local public health officials, and law enforcement personnel and the public shall be given the opportunity to provide comments on the clean needle and syringe exchange programs annually. The local health officer's annually report to the board of supervisors or city council shall include a detailed report on the status of the clean needle and syringe exchange programs including, but not limited to, relevant statistics on blood-borne infections associated with needle-sharing activities and the use of public funds for these programs.

H&S Code Section 11364.7 stipulates that no public entity, its agents, or employees will be subject to criminal prosecution for the distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by H&S Code 121349.

## Insurance and Medical Plans

### Insurance Coverage for HIV Testing

H&S Code Section 1367.46 and Insurance Code Section 10123.91 requires health care service plans and health insurance policies that are issued, amended, or renewed on or after January 1, 2009, and that cover hospital, medical, or surgery expenses shall provide coverage for HIV testing, regardless of whether the testing is related to a primary diagnosis.

### Insurance Eligibility

H&S Code Section 121025 protects the confidentiality of public health records related to persons with HIV and AIDS. This section also prohibits the use of such records to determine the insurability of any person. In addition, H&S Code Section 120980 prohibits the use of the results of an HIV test for determination of insurability, except for life and disability insurance under certain conditions. Similarly, Insurance Code Section 799.09 prohibits a life or disability income insurer from requiring an HIV test if results of the test would be used for determining eligibility for hospital, medical, or surgical insurance coverage, or eligibility for coverage under a nonprofit hospital service plan or health care service plan. However, Insurance Code Sections 799-799.10 allow insurers to refuse to grant a life or disability income policy on the basis of a positive HIV test. An insurer that requires an HIV test for life or disability insurance must secure written informed consent, pay for the test, and provide a list of available counseling resources. The insurer may not use the marital status or the known or suspected homosexuality or bisexuality of an applicant as a condition for determining whether to require an HIV test. If an insurer does require an HIV

test, the insurer must disclose the test results to the applicant's designated physician or to the applicant.

### Use of an HIV Test

Insurance Code Section 10291.5 requires that disability insurance policies that cover hospital, medical, or surgical expenses must include a prominent notice that California law prohibits requiring or using an HIV test as a condition of obtaining health insurance.

### Insurance Coverage of Transplantation Services

H&S Code Section 1374.17 and Section 10123.21 of the Insurance Code prevents health care service plans and health insurers from denying coverage of a solid organ or other tissue transplantation services based upon the HIV/AIDS status of an enrollee or subscriber. These statutes also allow health care service plans and health insurers to utilize case managers, network providers, utilization review techniques, prior authorization, co-payments, or other cost sharing processes and guidelines in the provision of benefits.

### AIDS Vaccine

The Board of Administration of the Public Employees' Retirement System is authorized to contract with carriers for health benefits plans and to approve health benefits offered by employee organizations in order to provide health benefits coverage to specified public employees. Section 22793.2 of the Government Code Section, 1367.45 of the H&S Code, and Section 10145.2 of the Insurance Code address coverage for an AIDS vaccine that is approved for marketing by the federal Food and Drug Administration and recommended by the U.S. Public Health

Service. All three statutes state that plans or policies shall not be required to provide coverage for AIDS vaccine clinical trials or for investigational new drug application. Section 1367.45 of the Health and Safety Code further specifies that every individual or group health care service plan contract that is issued, amended, or renewed on or after January 1, 2002, that covers hospital, medical, or surgery expenses shall provide coverage for an approved vaccine. Insurance Code Section 10145.2 contains similar language for specified policies that are issued, amended, or renewed on or after July 1, 2002.

## Workers' Compensation

### Release of Medical Information

Labor Code Section 3762 and Civil Code Section 56.31 relate to HIV and workers' compensation. With identified exceptions, these statutes prohibit the disclosure or use of medical information regarding the HIV status of an employee who has filed a workers' compensation claim without written authorization from the claimant. Exceptions include:

- If the patient is an injured worker claiming to be infected with or exposed to HIV through an incident arising out of and in the course of employment;
- If the diagnosis of the workers' compensation injury would affect the employer's premium; and
- Medical information that a treating medical provider deems is necessary for the employer to have in order to modify the employee's work duties.

## Death Benefits

Sections 5406-5406.6 of the Labor Code relate to the statute of limitations for collecting workers' compensation benefits for the death of a health care worker, public safety employee, or certain correctional peace officers from an HIV-related disease. These statutes state that a proceeding to collect benefits must commence within one year from the date of death, provided that certain events have occurred.

## Medi-Cal (Medicaid)

Numerous statutes mention HIV/AIDS and Medi-Cal (California's Medicaid program). The following specifically addresses drug treatment services.

### Drug Treatment Services

Existing law provides for Medi-Cal to establish a program to provide drug treatments to qualified persons infected with HIV. Government Code Section 16531.1 created a continuously appropriated Medical Providers Interim Payment Fund to ensure uninterrupted delivery of health care services to Medi-Cal beneficiaries, and critical drug treatments to persons infected with HIV. Section 16531.1 permits Medi-Cal claims to be paid to Medi-Cal providers for services rendered prior to or on July 1, of the fiscal year in which the state budget has not been signed.

### HIV/AIDS Pharmacy Pilot Program

Welfare and Institutions (W&I) Code Section 14199–14199.3 requires the California Department of Health Care Services (CDHCS) to continue the HIV/AIDS Pharmacy Pilot Program established on September 1, 2004

for the purpose of evaluating the provision of medication therapy management services for people with HIV/AIDS. The continuation of this program shall be effective July 1, 2008, for services rendered on or after that date. The pilot program shall conclude on July 1, 2009 and, as of January 1, 2010 this article of W&I is repealed.

The pilot program shall be available in no more than ten pharmacies and shall be based on the pharmacies abilities to: 1) have more than 90 percent of their total patients served from May through July 2005, be HIV/AIDS patients; 2) immediately provide specialized services; and 3) render specialized services by a qualified pharmacist or other health care provider.

Participating pharmacies must be able to provide patient specific and individualized services that are distinct from generalized patient education and information already required by law. When face-to-face interaction with the patient or caregiver is not feasible, other equitable access to appropriate alternative delivery methods shall be offered. Pharmacies that provide these services on or after July 1, 2008, shall be paid an additional \$9.50 dispensing fee per prescription.

CDHCS shall, in consultation with the pilot pharmacies, establish outcome measures and timeframes for participating pharmacies to report, which shall not be less than annually. In addition, CDHS may require additional outcome measures during the course of the project.

## Tissue Donation

Health and Safety Code Section 1644.5 states that no tissues shall be transferred into the body of another person by means of

transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with HIV, hepatitis B (HBV), hepatitis C (HCV), HTLV-1, and syphilis.

## Sperm Donation

For the purposes of sperm donation, H&S Code Section 1644.5 makes an exception to the prohibition of donor tissue that is reactive to HIV. Conditions for sperm donation include: 1) the sperm donor is known to the recipient and the recipient is informed of the requirements for testing donors and signs a written waiver for repeat testing; 2) the sperm donor is the spouse, partner, or designated donor for that recipient and; each must sign a document affirming that each comprehends the medical repercussions of using sperm from a reactive donor; 3) sperm whose donor has tested reactive for HIV may be transferred to an HIV-negative recipient only after the donor's sperm has been effectively processed to minimize the infectiousness of the sperm and where there is informed and mutual consent; and 4) the recipient has been previously documented to be HIV positive and where there is informed and mutual consent. This section of H&S Code includes provisions for reducing the risk of HIV transmission from the sperm donor to the recipient and, in the case the recipient becomes HIV positive during pregnancy, from mother to infant.

Section 1644.5 requires CDPH to adopt regulations by January 1, 2010 to regulate facilities that perform sperm processing which would prescribe standards for handling and storage of sperm samples of carriers of HIV, HTLV-1 or any other virus deemed appropriate by the Department. Until the Department adopts regulations, facilities that perform sperm processing shall follow facility and

sperm processing guidelines developed by the American Society of Reproductive Medicine.

## Blood Supply

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### HIV Testing of Blood Donors

H&S Code Section 1603.1 requires that all blood and blood components to be used in humans be tested for HIV. Exceptions to the testing requirement are made for blood and blood components used for research or vaccination programs pursuant to an informed consent; blood products released for transfusion in emergency circumstances; and blood used for autologous purposes.

H&S Code Section 1603.1 requires a physician, hospital, or other health care provider to report AIDS cases, HIV infections, and viral hepatitis, including transfusion-associated cases or infections, to the local health officer, within the timeframes established pursuant to CCR, Title 17.

H&S Code Section 1603.3 requires that the donors of blood or blood components receive written notice, and sign a written statement confirming the notification, that their blood or blood components will be tested for HIV.

H&S Code Section 1621.5 makes it a felony, punishable in prison for two, four, or six years, for any person who knows that he or she is infected with HIV to donate blood, breast milk, semen, body organs, or other tissues. Exemptions include those who are mentally incompetent, who donate blood for an autologous donation, and who self-defer their blood at a blood bank. In a criminal investigation for a violation of this section, the results of an HIV blood test may only be released pursuant to a search warrant, a

judicial subpoena, or a court order.

### Transfusion-Related AIDS Cases

H&S Code Section 1603.1 requires physicians and hospitals to report immediately to the local health officer all transfusion-associated HIV infections or AIDS cases. The local health officer is required to identify which blood bank or plasma center is the source of the infectious blood and report this information to the blood bank or plasma center that issued the blood. The blood bank or plasma center shall investigate the donor source of infected blood. The local health officer shall contact all persons who have confirmed cases of AIDS to suggest appropriate treatment alternatives and for the purposes of epidemiological studies and follow up.

### Statewide African American Initiative

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H&S Code Section 121290 established the Statewide African American Initiative to address the disproportionate impact of HIV/AIDS on African Americans by coordinating capacity building and creating the infrastructure to implement recommendations set forth by expert clinicians, researchers, direct service providers, and other public and private sector stakeholders.

### HIV/AIDS Education Prevention in Schools

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Education Code Section 51930 established the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.

Education Code Section 51934 addresses HIV/AIDS prevention education. It mandates school districts to ensure that all pupils

in grades 7 through 12 receive HIV/AIDS prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school. HIV/AIDS prevention education shall include information and discussion on the nature of HIV/AIDS and its effects on the human body, manner in which HIV is transmitted and not transmitted, methods to reduce the risk of HIV infection, public health issues associated with HIV/AIDS, local resources for HIV testing and medical care, assistance in overcoming peer pressure, risk reduction, and societal views on HIV/AIDS. This information and discussion shall accurately reflect the latest information and recommendations from the U.S. Surgeon General, CDC, and the National Academy of Sciences.

Education Code Sections 51935 and 51936 clarify in-service training requirements. School districts are required to plan and conduct in-service training for school personnel that provide HIV/AIDS prevention education and cooperate and collaborate with the teachers who provide HIV/AIDS prevention education. In-service trainings may be conducted periodically to enable personnel to learn new scientific understanding of HIV/AIDS and shall be voluntary for personnel who have demonstrated expertise or received in-service training from the California Department of Education or CDC. School districts may contract with outside consultants that have expertise in comprehensive sexual health education or HIV/AIDS prevention education, or both.

Education Code Section 51937 establishes Article 5, Notice and Parental Excuse, whereas to encourage pupils to communicate with their parents or guardians about human sexuality

and HIV/AIDS. The intent of this section is to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV/AIDS prevention education, and if they wish to excuse their children from participation in all or part of the instruction or evaluation.

Education Code Section 51938 enables a parent or guardian of a pupil to excuse a child from all or part of the comprehensive sexual health education, HIV/AIDS prevention education, and assessments related to that education. A school district is required to notify the parent or guardian of a pupil within 14 days in advance of the instruction, that a guest speaker or an outside consultant will teach comprehensive sexual health education and HIV/AIDS prevention.

Education Code Section 51939 stipulates that a pupil may not attend any class in comprehensive sexual education or HIV/AIDS prevention education, or participate in any anonymous or voluntary, confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.

H&S Code 151000-151003, requires any program that provides education to prevent adolescent or unintended pregnancy or to prevent sexually transmitted infections and that is conducted, operated, or administered by the state or any state agency, or funded directly or indirectly by the state, or receives any financial assistance from state funds or funds administered by the state must meet specified requirements.

This statute does not limit the requirements of the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.

## Facilitating the Adoption of HIV-Positive Children

Welfare and Institutions Code Section 16135 facilitates the adoption of court-dependent children who are HIV positive by establishing a program for special training and services to adoptive families. Participating counties shall provide training to adoptive parents that includes a curriculum of infant and early childhood development issues specific to: 1) caring for a child who tests HIV positive; 2) special medical needs and disabilities; and 3) HIV/AIDS in children.

## HIV/AIDS and Discrimination

Federal and state statutes prohibit discrimination in employment, housing, and public accommodations against individuals with a disability, including persons with HIV infection.

### Federal Law

Discrimination against a person with a disability, including HIV infection, is prohibited in a variety of ways by federal law. The most comprehensive federal legislation is the Americans with Disabilities Act of 1990 (ADA [42 U.S.C. Section 2101-12213]) which prohibits discrimination against disabled individuals in employment, public services, and public accommodations. Under the ADA, an individual is considered to be disabled if that person has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Individuals with clinical HIV disease or AIDS meet the definition of disabled. A split in opinion among courts in the United States

has occurred regarding whether persons with asymptomatic HIV infection meet this definition.

All employers with 15 or more employees must meet the requirements of the ADA. The ADA regulates when employers may inquire into an applicant's disability status and requires employers to keep employees' medical records separate from their personnel files. Employers must reasonably accommodate the needs of an otherwise qualified disabled employee in the performance of the essential functions of his or her job. Similarly, the ADA requires all businesses and public services to reasonably accommodate the needs of otherwise qualified disabled persons in the provision of services.

### State Law

California law incorporates the requirements of the federal ADA and also establishes independent state grounds for prohibiting discrimination against disabled persons, including those with HIV infection. Civil Code Sections 51 and 54 provide that a violation of applicable provisions of the federal ADA shall also constitute a violation of the Civil Code.

Civil Code Section 51 et seq., (Unruh Civil Rights Act) prohibits business establishments from discriminating against disabled persons. Civil Code Section 54 et seq., protects disabled individuals from discrimination in the use of public accommodations including but not limited to medical and hospital facilities, public transportation, adoption agencies, private schools, and hotels. They further guarantee equal access to housing accommodations offered for rent, lease, or compensation.

Government Code Section 12900 et seq., (California Fair Employment and Housing Act) prohibits discrimination in employment or housing accommodations based on disability.

Fair Employment and Housing Commission regulations (CCR, Title 2, Section 7293.6 et seq.) establish that disabled persons include individuals with HIV infection or AIDS, or who are perceived as having AIDS. In addition, as noted previously, H&S Code Section 120980 prohibits using HIV test results for determining an individual's suitability for employment. Similarly, H&S Code Section 121025 prohibits use of public health records pertaining to HIV and AIDS to determine employability. In addition, Civil Code Section 1710.2 provides that when transferring real property, owners or their agents need not disclose that a former occupant was HIV infected.

Sections 1522.41-1529.2, and 1563 of H&S Code, and Sections 16001.9 and 16003 of the Welfare and Institutions Code established training for administrators, licensing personnel, licensed foster parents, and relative care

takers that includes the rights of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Section 16013 of the Welfare and Institutions Code mandates that all persons engaged in providing care and services to foster children shall have fair and equal access to all available services without harassment or discrimination based on their clients race, ethnic group, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

## Appendix A

### California Code and California Code of Regulation Sections Specifically Mentioning HIV/AIDS

#### Business and Professions Code

<u>Section</u>	<u>Description</u>
32	AIDS education for health care professionals.
1680	Dental professionals required to follow California Health and Safety Act of 1973 (CalOSHA) infection control standards, guidelines, and regulations.
2221.1	Physicians, surgeons, and podiatrists required to follow CalOSHA infection control standards, guidelines, and regulations.
2660	Physical therapists required to follow CalOSHA infection control standards, guidelines, and regulations.
2761	Nurses required to follow CalOSHA infection control standards, guidelines, and regulations.
2878	Vocational nurses required to follow CalOSHA infection control standards, guidelines, and regulations.
3527	Physicians' assistants required to follow CalOSHA infection control standards, guidelines, and regulations.
3750	Respiratory therapists required to follow CalOSHA infection control standards, guidelines, and regulations.
4521	Psychiatric technicians required to follow CalOSHA infection control standards, guidelines, and regulations.
4955	Acupuncturists required to follow CalOSHA infection control standards, guidelines, and regulations.
18712	HIV testing for licensing of professional boxers and martial arts fighters.

**Civil Code**

<u>Section</u>	<u>Description</u>
56.31	Prohibition on disclosure or use of information regarding a patient's HIV status in a workers' compensation claim.
1710.2	Real property owners not obligated to disclose that previous occupant was HIV infected.

**Education Code**

<u>Section</u>	<u>Description</u>
51265	AIDS instruction for educators.
51930	California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.
51933	Comprehensive sexual health education in any kindergarten to grade 12.
51934	Required HIV/AIDS Prevention Education for pupils in grades 7 to 12.
51935-51936	HIV/AIDS in-service training for school district personnel.
51937-51939	Notice and Parental Excuse: Comprehensive sexual health education and HIV/AIDS prevention education.

**Family Code**

<u>Section</u>	<u>Description</u>
358	AIDS information for marriage license applicants.

**Government Code**

<u>Section</u>	<u>Description</u>
12900 et seq.	HIV/AIDS employment and housing discrimination.
16531.1	Fund to allow payment to Medi-Cal providers for HIV drug-treatment services when the state budget has not been signed.
22793.2	Health care coverage: AIDS vaccine.

**Health and Safety Code**

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<u>Section</u>	<u>Description</u>
135-138	Office of Women’s Health as a clearinghouse for information on women and AIDS.
439.905	Research on effectiveness of RU-486 in treating AIDS.
1250.4	HIV/AIDS testing and treatment for correctional inmates and wards of the Department of the Youth Authority.
1250.11	Guidelines for preventing transmission of HIV in health care settings.
1337.1	AIDS education programs in skilled nursing and intermediate care facilities.
1367.45	Health care coverage: AIDS vaccine.
1367.46	Health care coverage and HIV Testing
1374.17	Transplantation Services: Health plan coverage for people with HIV.
1389.1	Health insurance applications must state that an HIV test may not be required or used as a condition for obtaining health insurance.
1522.41	Administrator training on fair and equal access to available services for HIV-positive foster children.
1529.2	Foster parent training on fair and equal access to available services for HIV-positive foster children.
1562.5	HIV training for administrators of adult residential facilities and program directors of social rehabilitation facilities.
1563	Social services licensing personnel training on fair and equal access to available services for HIV-positive foster children.
1568.01-1568.02	Residential care facilities for persons with chronic, life threatening illness.
1603.1-1603.4	HIV testing of donated blood and blood components; reporting of transfusion-related AIDS cases.
1621.5	Donation of blood, breast milk, semen, body organs, or other tissues by persons knowingly infected with HIV/AIDS is a felony.

1644.5	HIV screening of tissue donors: sperm donation.
1760-1761.8	Pediatric day health and respite care facilities for children with HIV.
1797.175	AIDS training for prehospital (emergency medical) personnel.
7155.5	HIV screening of anatomical gift donors.
11362.5-11362.9	Use of marijuana by people with AIDS and the Marijuana Research Act of 1999.
11757.59	AIDS testing and counseling services for alcohol and drug abusing pregnant and parenting women and their infants.
11773	Department of Alcohol and Drug Program: Methamphetamine Deterrence Program.
11998-11998.3	State drug and alcohol abuse master plan to include AIDS information.
11999-11999.3	State-funded HIV/AIDS education and prevention outreach programs to intravenous drug users exempt from prohibitions on discussion of responsible but unlawful use of drugs or alcohol.
38070-38081.1	Administrative provisions applicable to the California AIDS Program (Section 120800 et seq.).
100236	Advance payments to local health departments for specified services, including funding for HIV education and prevention.
100237	Inclusion of HIV/AIDS in studies with women and minorities as subjects.
101300-101310	Local public health service contract options for AIDS programs.
106005-106025	Eliminating health disparities, including HIV/AIDS in the Los Angeles County Service Planning Area.
110403	Advertising of AIDS drugs.
111605	Approvals for AIDS-related drugs.
120260-120263	Exposure to Communicable Diseases: First Responders.

- 120290 Willful exposure of another person to any contagious, infectious, or communicable disease is a misdemeanor.
- 120291 Acting with specific intent to infect another person with HIV is a felony; victim identity protection.
- 120292 Disclosure of identifying information, diagnosis, testing, and treatment information relating to HIV in a criminal investigation for violation of Section 120291.
- 120775 HIV and AIDS definitions.
- 120780 HIV Prevention and Education Funds for clean needle and syringe exchange programs.
- 120800-120871 California AIDS Program.
- 120800 Legislative intent.
- 120805 Duties of CDHS.
- 120815 Funding of residential AIDS shelters.
- 120820 Confidentiality of personal data.
- 120825 Duties of CDHS Director.
- 120830 Pilot projects of care initiated through block grant program.
- 120835 Private health insurance premiums of participants in pilot care projects.
- 120840 AIDS mental health project.
- 120845 Pilot programs in AIDS-related substance abuser programs.
- 120846 HIV testing site provisions to streamline testing services.
- 120850 AIDS research funding allocation for University of California.
- 120855 Home and community-based services.
- 120860 Prevention, education, testing, and counseling programs for women and children.

120865	Review of programs; target populations; unmet and projected needs; report.
120870	Alkyl nitrites sales.
120871	HIV tests, counselors, and training.
120875-120895	AIDS Information.
120875	AIDS information for school districts.
120880	AIDS information to employees of school districts.
120885	Legislative declarations on testing for HIV antibodies separate from blood donation.
120890	Designation of counties for ATS.
120895	Provisions governing operation of alternative test sites; anonymity of testing.
120900-120915	Early intervention projects.
120917	Authorization for CDHS/OA to conduct rapid HIV test research with CDC.
120920	Inclusion of the benefits of early intervention within information and education grants.
120925-120935	Provision of Azidothymidine (AZT).
120950-120968	HIV treatment (AIDS Drug Assistance Program).
120975-121020	Mandated Blood Testing and Confidentiality to Protect Public Health.
120975	Prohibition against identification of individuals testing for HIV antibodies.
120980	Unauthorized disclosures, penalties, damages, prohibited use of results.
120985	Disclosure of test results to health care providers.
120990	Required consent of test subjects.
120995	Certain actions and testing exempted from confidentiality provisions.
121000	Disclosure and consent in medical testing of prisoners.

121005	Liability of state department, blood bank, or plasma center.
121010	Disclosure to certain persons without written consent.
121015	Disclosure to spouse, sexual partners, needle sharers, local health officer.
121020	Consent for incompetent persons.
121022	HIV reporting by name; Confidentiality agreements.
121023	Laboratory reporting of CD4+ T-cell tests.
121025-121035	AIDS Public Health Records Confidentiality Act.
121050-121070	AIDS Public Safety and Testing Disclosure.
121055	Disclosure in connection with certain sexual crimes.
121056	Disclosure of test results to individuals who conduct forensic testing.
121060	HIV exposure from an arrestee.
121065	Guidelines for testing in connection with provisions of this chapter.
121070	Disclosures in connection with custodial facilities.
121075-121125	AIDS Research Confidentiality Act.
121150-121180	AIDS research and workshop grants.
121200-121225	AIDS Vaccine Research and Development Grant Program.
121250-121280	AIDS vaccine development.
121285	Disease Prevention Demonstration Project.
121290	Statewide African American Initiative.
121300-121335	AIDS clinical trial grant award for the prevention of maternal transmission of HIV.
121340	HIV reporting requirements.
121345	HIV Therapeutic Monitoring Program.

121348-121348.2	Post-exposure prophylaxis.
121349	Clean Needle and Syringe Exchange Program.
121362	Confidentiality of HIV test results in connection with reports on tuberculosis patients.
122420	Inclusion of information on HIV/hepatitis C co-infection in CDHS outreach, education, training, and care programs.
123148	Electronic posting of laboratory results for HIV antibody tests is prohibited.
125085-125090	HIV testing during prenatal care.
125092	Culturally sensitive HIV informational materials.
125107	Offering of HIV counseling and testing to pregnant women; documentation of consent.
129755	Seismic safety standards for federally owned facilities providing services to persons with HIV infection.
131019	Identifies the California Department of Public Health, Office of AIDS as the lead agency within the state, responsible for coordinating state programs, services, and activities relating to HIV and AIDS.
151000-151003	Sexual Health Education Accountability Act.

### **Insurance Code**

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<u>Section</u>	<u>Description</u>
790-790.10	Payment of AIDS-related insurance claims.
799-799.10	Life and disability income insurance and AIDS risks.
10123.21	Transplantation Services: Health plan coverage for people with HIV.
10123.91	Health care coverage and HIV Testing.
10145.2	Health care coverage: AIDS vaccine.
10291.5	Disability insurance applications to include notice of prohibition of HIV testing for health insurance.

**Labor Code**

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<u>Section</u>	<u>Description</u>
5406 - 5406.6	Statute of limitations for collecting HIV-related workers' compensation death benefits for certain workers.

**Penal Code**

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<u>Section</u>	<u>Description</u>
647f	Prostitution is a felony for persons previously convicted of prostitution or other sex offenses and found to be HIV-infected.
1001.10-1001.11	AIDS education program in drug abuse and prostitution cases.
1202.1-1202.6	AIDS testing for persons convicted of sex offenses and prostitution.
1463.23	County use of fines for certain offenses to provide AIDS education program for drug abuse and prostitution cases.
1524.1	HIV testing of criminal defendants when there is probable cause to believe transmission of HIV from the defendant to the victim could have occurred.
2692	Contracting for housing, care, and treatment of Department of Corrections inmates with HIV/AIDS.
4018.1	HIV/AIDS information for county jail inmates sentenced for drug-related offenses.
5008.1	HIV/AIDS information for inmates of state correctional facilities.
7500-7554	HIV testing of inmates.
7552	Education and prevention program for correctional, custodial, and law enforcement agencies.
7553	Periodic anonymous serologic HIV surveys of county/city inmates.
7554	Reporting of occupational exposure to HIV among peace officers.
11225-11235	Injunction, abatement, and prevention of bathhouses permitting conduct capable of transmitting AIDS.

12022.85 Sentence enhancement for persons convicted of committing sex offenses while knowingly infected with HIV.

### **Revenue and Taxation Code**

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<u>Section</u>	<u>Description</u>
6363.3	Organizations that provide hospice services to persons with HIV disease are included in the definition of nonprofit organization.

### **Welfare and Institutions Code**

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<u>Section</u>	<u>Description</u>
903.8	AIDS information for foster parents.
1123	HIV/AIDS information for wards of the Department of the Youth Authority.
1768.9	HIV testing of wards of the Division of Juvenile Justice.
5328	Disclosure to emergency response employees regarding exposure to HIV from recipients of mental health services.
14083.5	Hospital contracting and bidding procedures for treating Medi-Cal beneficiaries with AIDS.
14088.85	Primary case management for Medi-Cal beneficiaries with HIV.
14105.43-14105.436	Inclusion of HIV/AIDS-related drugs on Medi-Cal list of contract drugs.
14132-14132aa	Home and community-based services and congregate living facilities for Medi-Cal beneficiaries with AIDS.
14137.6	Treatment of Medi-Cal beneficiaries associated with investigational HIV/AIDS drugs.
14148.9-14148.91	Reporting the number of HIV-infected infants born in certain high-risk populations.
14199-14199.3	HIV/AIDS Pharmacy Pilot Program.
14503.5	HIV/AIDS information for recipients of state-funded family planning services.
15800-15804	San Mateo County: Home care assessment pilot project.

16001.9	Fair and equal access to available services for HIV-positive foster children.
16003	Orientation and training to the relative or nonrelative extended family member caregiver on fair and equal access to available services for HIV-positive foster children.
16013	Fair and equal access for foster care providers to available programs and services, without discrimination based on their clients' or their own actual or perceived HIV status.
16135	Training and services to facilitate the adoption of HIV positive and other specified children.
16525-16525.4	Services for HIV-positive children in foster care.
16800.5-16818	Audits of state-funded, county-operated AIDS programs.
16915	County indigent health care for persons with AIDS.

### **California Code of Regulations Applicable to HIV/AIDS**

<u>Title and Section</u>	<u>Description</u>
8:5193	Occupational exposure to blood or other potentially infectious material.
9:7141-7143	Disclosure of HIV test results of Department of Rehabilitation applicants and clients.
16:1633	HIV infection control requirements for osteopaths.
17:1004	HIV reporting requirements for blood banks and plasma centers.
17:1230	Approval of laboratories for use of HIV antibody test.
17:2500-2511	Reporting requirements for certain communicable and non-communicable diseases, including AIDS.
17:2641.5 & 2643.20	Reporting requirements for HIV.

## Appendix B

### Glossary of Selected Terms

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#### **Acquired Immunodeficiency Syndrome (AIDS)**

AIDS is a syndrome, or collection of signs and symptoms, that is attributed to the natural course of HIV infection. The Centers for Disease Control and Prevention has classified a total of 27 different diagnoses and conditions as AIDS-defining illnesses. Once diagnosed with AIDS, many people can subsequently begin, resume, or modify HIV treatment regimens and maintain or return to productive, relatively healthy lifestyles. Without adequate treatment, AIDS is a fatal condition.

#### **Autologous**

In blood donation, referring to a situation where the donor and the recipient are the same individual.

#### **CD4+ T-Cell**

CD4+ T-cells, also known as helper T-cells or CD4 lymphocytes, are a type of infection-fighting white blood cell that carries the CD4 receptor on its surface. CD4 cells coordinate the immune response, signaling other cells in the immune system to perform their special functions. The number of CD4 cells in a sample of blood is an indicator of the health of the immune system. HIV infection resulting in reduced numbers of CD4 cells, which leads to a weakened immune system.

#### **California Codes**

California legislative statutes that are numbered and grouped into similar categories are called codes. For example, health issues are grouped together in the Health and Safety Codes, and Penal Codes are the body of statutes dealing with crimes and their punishment. The terms code and statute are often used interchangeably.

#### **Chaptered Bill**

A bill is chaptered by the Secretary of State after it has passed through both houses of the Legislature and signed by the Governor.

#### **Communicable Disease**

A disease that can be communicated from one person to another.

#### **Et Seq.**

Abbreviation for et sequens (Latin) meaning, “and the following.”

#### **Ex parte**

On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

## **Felony**

A serious crime, generally punishable by a penalty of imprisonment for more than one year.

## **Human Immunodeficiency Virus (HIV)**

HIV is the virus that causes AIDS. HIV is an infectious agent that invades and disables a person's immune system, the body's natural defense against disease. The only way a person can become infected with HIV is through exposure to HIV-infected blood or other infectious body fluids including semen and vaginal fluid. HIV is primarily transmitted through unprotected sex (sex without a condom or other barrier use) and/or injection drug use (sharing of contaminated syringes and other injection equipment). Children born to HIV-infected mothers and rarely, health care workers caring for HIV-infected patients, and recipients of blood transfusions or organ donations can also be at risk. There is no cure for HIV infection. HIV-infected persons who do not receive appropriate medical care may become ill and be diagnosed with an AIDS defining condition.

## **Immunocompromised**

The inability to mount a normal immune response because of an impaired immune system.

## **Immunodeficiency**

The inability to produce normal amounts of antibodies, immune cells, or both.

## **Misdemeanor**

A charge less serious than a felony, usually punishable by a fine or imprisonment for less than one year.

## **Opportunistic Infection**

An infection caused by a microorganism that under normal conditions would not bring about disease. Opportunistic infections occur when the body's immune system is weakened by disease or malnutrition.

## **Regulations**

Regulations are enacted through an administrative process overseen by the Office of Administrative Law, an independent agency within the Executive Branch. Regulations may be needed to implement, interpret, or make specific a statute or code section. Regulations must be authorized by statute and they have the force of law. Collectively, California regulations form the California Codes and Regulations (CCR).

## **Statute**

A statute is a law that has been enacted by the Legislature. Statutes that deal with related issues are numbered and grouped together into codes. California statutes are chaptered bills.

## Appendix C

### Legislation 2007-2009 Relating to HIV/AIDS

2009 Legislation	
<b><u>Assembly Bill (AB) 169 (Portantino):</u></b> Communicable Disease: involuntary testing	<b>Health and Safety Code:</b> Amends: 121060
<b><u>AB 221 (Portantino):</u></b> HIV Testing: skin puncture	<b>Health and Safety Code:</b> Amends: 120917
<b><u>AB 1045 (Perez):</u></b> HIV and AIDS reporting	<b>Health and Safety Code:</b> Amends: 121023
<b><u>Assembly Joint Resolution (AJR) 9 (Perez):</u></b> Ryan White HIV/AIDS Treatment Modernization Act of 2006	N/A
<b><u>AJR 17 (Swanson):</u></b> HIV/AIDS health disparities	N/A
2008 Legislation	
<b><u>AB 1894 (Krekorian):</u></b> Health Care Coverage and HIV Testing	<b>Health and Safety Code:</b> Adds: Section 1367.46 <b>Insurance Code:</b> Adds: Section 10123.91
<b><u>AB 2737 (Feuer):</u></b> Communicable Disease: Involuntary Testing	<b>Health and Safety Code:</b> Amends: Section 121060, 121065 Adds: Section 121060.1
<b><u>AB 2899 (Portantino):</u></b> Sexually Transmitted Diseases: HIV/AIDS Counseling	<b>Health and Safety Code:</b> Adds: Section 120846
<b><u>Senate Bill (SB) 1184 (Kuehl):</u></b> Laboratory Reporting of CD4+ T-Cell Tests	<b>Health and Safety Code:</b> Amends: Section 1644.5 Adds: Section 121023

<b>2007 Legislation</b>	
<b>AB 110 (Laird):</b> Drug Paraphernalia: Clean Needle and Syringe Exchange Projects	<b>Health and Safety Code:</b> Amends: Section 121349.3 Adds: Section 120780 et seq.
<b>AB 629 (Brownley):</b> Sexual Health Education Accountability Act	<b>Health and Safety Code:</b> Adds: Section 151000 et seq.
<b>AB 682 (Berg):</b> HIV/AIDS Testing	<b>Health and Safety Code:</b> Amends: Section 125090, 125107 Repeals and Adds: Section 120990
<b>SB 443 (Migden):</b> Tissue Donors: Sperm Donors	<b>Health and Safety Code:</b> Amends: Section 1644.5
<b>House Resolution (HR) 4 (Dymally):</b> National Black HIV/AIDS Awareness Day in the State of California	N/A
<b>HR (16) (Garcia):</b> National HIV/AIDS Testing Day	N/A
<b>Senate Concurrent Resolution No. 3 (Cedillo):</b> The Wall Las Memorias Project AIDS Monument: Highway Signs	N/A