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# Chapter 550: Relaxing Consent Requirements for HIV Testing

Colleen Snyder

## Code Sections Affected

Health and Safety Code § 120990 (repealed and new), §§ 125090, 125107 (amended).  
AB 682 (Berg, Garcia, & Huffman); 2007 STAT. Ch. 550.

## I. INTRODUCTION

“According to the World Health Organization . . . , AIDS has killed more than 25 million people worldwide since [the early 1980s], making it one of the most destructive pandemics in history.”<sup>1</sup> As of late 2003, an estimated 1.0 to 1.2 million people were living with HIV in the United States;<sup>2</sup> of that number, approximately one quarter did not know that they were infected.<sup>3</sup> Part of the reason for this lack of knowledge is that many of these people do not fit the stereotype of the AIDS patient—an increasing number are women and heterosexual men; many are minorities.<sup>4</sup> The majority of these individuals probably do not realize that they are at risk for HIV.<sup>5</sup> Because they do not appear to be at high risk for HIV, their doctors may not think a test is necessary.<sup>6</sup>

Under prior law in California, healthcare providers had to obtain each patient’s written informed consent before testing for HIV.<sup>7</sup> In a busy practice, these requirements made testing every patient unrealistic.<sup>8</sup> But an early diagnosis of HIV can add years to a person’s life, and no diagnosis can be made without testing.<sup>9</sup> Sadly, an estimated forty percent of HIV cases are still not being

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1. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 682, at 3 (May 1, 2007).

2. Bernard M. Branson et al., *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings*, MORBIDITY & MORTALITY WKLY. REP., Sept. 22, 2006, at 1, 2, available at <http://www.ucsf.edu/sfaetc/RTLD/RTLDManual/PDFs/CDCRevisedTestingGuidelines.pdf> [hereinafter *Revised Recommendations*] (on file with the *McGeorge Law Review*).

3. *Id.*

4. *See id.* at 4 (describing the demographic shifts in persons affected by HIV and the diminished effectiveness of risk-based testing).

5. *Id.*

6. *See* AIDS Healthcare Found., AB 682-Routine Testing (Berg, Garcia, Huffman), [http://www.aidshealth.org/index.php?option=com\\_content&task=view&id=143&Itemid=175#ab682](http://www.aidshealth.org/index.php?option=com_content&task=view&id=143&Itemid=175#ab682) (last visited Dec. 18, 2007) [hereinafter *Routine Testing*] (on file with the *McGeorge Law Review*) (suggesting that healthcare providers may not have sufficient information about their patients to know whether a particular patient should be tested and that there is often inadequate time to assess each patient’s risk).

7. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 682, at 1 (May 1, 2007).

8. *See Revised Recommendations, supra* note 2, at 4 (“[P]roviders in busy health-care settings often lack the time necessary to conduct risk assessments and might perceive counseling requirements as a barrier to testing . . .”).

9. *See id.* at 4 (explaining how “the introduction of highly active antiretroviral therapy (HAART)” in 1995 has improved survival rates and lengthened lives).

diagnosed until much too late—within one year of developing into full-blown AIDS.<sup>10</sup> At such a late stage, patients cannot fully benefit from anti-retroviral therapy.<sup>11</sup> By streamlining consent requirements for HIV testing, Chapter 550 aims to save Californians from these statistics.<sup>12</sup>

## II. LEGAL BACKGROUND

### A. Prior California Law

Before the enactment of Chapter 550, California Health and Safety Code section 120990 required that healthcare providers obtain a patient's written, informed consent before testing for HIV.<sup>13</sup> The informed consent standard requires that a healthcare provider ensure that a patient has full knowledge of the risks involved with a medical procedure, such as HIV testing, before electing to be tested.<sup>14</sup> The HIV test, however, was "recognized as different from other blood tests because of the potentially serious psychological risks" involved with a positive diagnosis.<sup>15</sup>

Following this idea, informed consent for HIV testing took the form of pre-test counseling, where the provider informed the patient about the risks of HIV itself and possible treatments for the virus.<sup>16</sup> The purpose of this counseling was to give patients both an idea of the serious repercussions of the test results should he or she test positive for HIV and an understanding about how to prevent transmission.<sup>17</sup> The requirement that a patient's consent be in writing ensured that no one would be diagnosed as HIV positive without an awareness of the difficulties that would follow.<sup>18</sup>

Similarly, Health and Safety Code section 125107 required prenatal care providers to offer information regarding HIV and the risk of mother-to-child

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10. Routine Testing, *supra* note 6.

11. *Id.*

12. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 682, at 2 (May 1, 2007) (explaining that the new consent model aims to increase the number of Californians tested for HIV, thereby reducing transmission rates and providing treatment for those infected).

13. CAL. HEALTH & SAFETY CODE § 120990(a) (West 2006).

14. BLACK'S LAW DICTIONARY 779 (6th ed. 1990).

15. Routine Testing, *supra* note 6.

16. AM. CIVIL LIBERTIES UNION & LAMBDA LEGAL, INCREASING ACCESS TO VOLUNTARY HIV TESTING: A SUMMARY OF EVIDENCE OF THE IMPORTANCE OF SPECIFIC WRITTEN CONSENT AND PRE-TEST COUNSELING IN HIV TESTING I (2007), [http://www.aclu.org/images/asset\\_upload\\_file754\\_30249.pdf](http://www.aclu.org/images/asset_upload_file754_30249.pdf) [hereinafter PRE-TEST COUNSELING] (on file with the *McGeorge Law Review*).

17. See *id.* at 2-4 (explaining the importance of pre-test counseling considering the significant consequences of an HIV diagnosis, prevalence of discrimination against people with HIV, and ways to prevent transmission).

18. See *id.* (emphasizing the importance of addressing the significant hardships that accompany an HIV diagnosis with patients before testing).

transmission to every pregnant patient.<sup>19</sup> Prior to testing, the law required prenatal providers to specifically inform patients about

the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to decline this testing.<sup>20</sup>

Health and Safety Code section 125090 also required the patient's consent to be in writing.<sup>21</sup>

AIDS activist groups and many healthcare providers have come to view these strict pre-test requirements of written, informed consent as an unnecessary barrier to testing, diagnosing, and treating people with HIV.<sup>22</sup> The Centers for Disease Control and Prevention (CDC) estimate that roughly 40,000 Californians are unaware that they are HIV positive.<sup>23</sup> Not only are these people losing crucial treatment time, but they are "likely to have transmitted HIV unknowingly."<sup>24</sup>

#### *B. The Centers for Disease Control and Prevention Take Action*

In response to the alarming number of Americans who are unaware of their HIV status, the CDC recently revised its recommendations for routine HIV testing.<sup>25</sup> The CDC agreed with supporters of Chapter 550 that "time constraints or discomfort with discussing their patients' risk behaviors caused some providers to perceive requirements for prevention counseling and written informed consent as a barrier."<sup>26</sup> The new recommendations urge routine screening for "all patients aged [thirteen to sixty-four] years" using an "opt-out" model of testing.<sup>27</sup> An "opt-out" model is where healthcare providers will inform patients that they will be tested unless they decline, and consent for the test will be incorporated into patients' general consent to medical care.<sup>28</sup> The CDC

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19. CAL. HEALTH & SAFETY CODE § 125107(b) (West 2006).

20. *Id.* § 125090(d) (West 2006).

21. *Id.*

22. See Routine Testing, *supra* note 6 ("To the extent that informed consent is comparable to pre-test counseling this bill recognizes it is the requirement for informed consent that is the greatest statutory barrier to routine screening.").

23. Email from Joseph Terrill, Pub. Policy Coordinator, AIDS Healthcare Found., to Colleen Snyder, Author (May 22, 2007, 10:07 PST) [hereinafter Terrill E-mail] (on file with the *McGeorge Law Review*).

24. *Revised Recommendations*, *supra* note 2, at 2.

25. *Id.* (estimating that, at the end of 2003, out of roughly one million Americans living with HIV, one quarter were unaware of their HIV positive status).

26. *Id.* at 3.

27. *Id.* at 7.

28. *Id.* at 7-8.

recommends that healthcare providers offer information about HIV and the significance of test results, and give patients the opportunity to decline testing.<sup>29</sup>

For pregnant women, the CDC also recommends an “opt-out” approach to testing in which prenatal care providers would routinely test pregnant patients as part of their prenatal care.<sup>30</sup> However, prior to testing, prenatal care providers should offer patients “an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meanings of positive and negative test results.”<sup>31</sup> If a pregnant woman is aware of her HIV status, timely medical interventions, such as anti-retroviral drugs, cesarean delivery, and avoidance of breastfeeding, can reduce the risk of mother-to-child transmission to less than two percent.<sup>32</sup>

### III. CHAPTER 550

#### A. Routine HIV Testing in Most Healthcare Settings

Less than a year after the publication of the CDC’s revised recommendations, the California Legislature enacted Chapter 550 to reform consent requirements for HIV testing.<sup>33</sup> The new law eliminates the requirement that the patient’s consent be in writing.<sup>34</sup> Under Chapter 550, a patient’s general consent to medical care fulfills the consent requirement for HIV testing.<sup>35</sup> However, the patient maintains the crucial right to decline testing if he or she chooses.<sup>36</sup>

Although Chapter 550 eliminates the requirement that a healthcare provider obtain informed consent before testing, providers must still give patients some information about HIV before performing the test.<sup>37</sup> Specifically, Chapter 550 requires the provider to

inform the patient that the test is planned, provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who

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29. *Id.*

30. *Id.* at 8-9.

31. *Id.* at 9.

32. *Id.* at 4.

33. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 682, at 2 (May 1, 2007).

34. CAL. HEALTH & SAFETY CODE § 120990(a) (enacted by Chapter 550). Written consent is still required for “incompetent” persons, such as minors. *Id.* § 120990(c) (enacted by Chapter 550).

35. *See Id.* § 120990(a) (enacted by Chapter 550) (detailing the information to be disclosed before performing a routine HIV test, and omitting any requirement of specific written consent); Routine Testing, *supra* note 6 (discussing the CDC’s recommendation that Chapter 550 implemented of “[s]implifying testing procedures by not requiring pre-test counseling and a separate written consent for HIV testing incorporating consent into general consent for medical care”).

36. CAL. HEALTH & SAFETY CODE § 120990(a) (enacted by Chapter 550).

37. *Id.* (enacted by Chapter 550)

tests negative for HIV should continue to be routinely tested, and advise the patient that he or she has the right to decline the test.<sup>38</sup>

The Legislature designed Chapter 550 based on this simple consent model to maximize the number of people who are tested for HIV.<sup>39</sup>

### B. HIV Testing for Pregnant Women

Chapter 550 also changes the consent model to an “opt-out” model for routine HIV testing of pregnant women.<sup>40</sup> This means that prenatal care providers will test every pregnant women unless she declines testing, thereby eliminating the written consent requirement.<sup>41</sup>

Because of the added concerns for the baby’s health and the risk of mother-to-child transmission of HIV, Chapter 550 maintains a different version of informed consent for testing pregnant women.<sup>42</sup> In addition to the required pre-test information regarding “the routine nature of the test [and] the purpose of the testing,” prenatal care providers are also required to inform women of the risks and benefits of testing, the possibility of transmitting HIV during delivery, and existing treatments that could decrease that risk.<sup>43</sup>

Like prior law, Chapter 550 requires healthcare providers to inform women of HIV test results and, if the tests reveal HIV, refer those women to a specialist in prenatal and post-partum care of HIV-positive women and babies.<sup>44</sup> Chapter 550 also requires that all prenatal care providers<sup>45</sup> offer HIV information and counseling about HIV transmission, risk reduction, and referral information when appropriate.<sup>46</sup>

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38. *Id.* § 120990(a) (enacted by Chapter 550).

39. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 682, at 2-3 (May 1, 2007).

40. *See* CAL. HEALTH & SAFETY CODE § 125090(c) (amended by Chapter 550) (“[T]he physician . . . attending the woman . . . shall ensure that the woman is informed of the intent to perform a test for HIV infection . . . and that the woman has a right to decline this testing.”).

41. *Id.* (amended by Chapter 550)

42. *See id.* (explaining what information is required to be disclosed to pregnant women prior to an HIV test).

43. *See id.* (amended by Chapter 550)

[T]he physician and surgeon or other person engaged in the prenatal care of a pregnant woman, or attending the woman at the time of labor or delivery, shall ensure that the woman is informed of the intent to perform a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to decline this testing.

*Id.* (amended by Chapter 550)

44. *Id.* § 125090(e) (amended by Chapter 550).

45. *Id.* § 125107(a) (amended by Chapter 550) (“For purposes of this section, ‘prenatal care provider’ means a licensed health care professional providing prenatal care within his or her lawful scope of practice.”).

46. *Id.* § 125107(b) (amended by Chapter 550).

## IV. ANALYSIS

## A. Science Supports Chapter 550

Research has established a link between relaxing consent requirements and increased HIV testing and diagnoses.<sup>47</sup> In a March 2007 research letter published in the *Journal of the American Medical Association*, the San Francisco Department of Public Health detailed a study in which clinicians switched from obtaining patients' written consent to verbal consent, using an "opt-out" model for HIV testing.<sup>48</sup> As required by prior law, clinicians documented that they had obtained their patients' informed consent before testing.<sup>49</sup> The shift to documented verbal consent resulted in both an increase in HIV testing and a subsequent increase in positive test results, with positive diagnoses increasing by fifty percent.<sup>50</sup>

The results of the San Francisco study confirm the theory that using an opt-in model requiring informed, written consent had become an impediment to HIV testing.<sup>51</sup> A CDC study showed that making the change to an opt-out testing model has also led to an increase in the testing of pregnant women.<sup>52</sup> In a 1998 to 1999 study of HIV testing in Tennessee, a state that uses the opt-out model, eighty-five percent of pregnant women agreed to testing.<sup>53</sup> In contrast, eight states that used the opt-in approach for testing pregnant women had much lower testing rates—ranging from twenty-five to sixty-nine percent.<sup>54</sup>

These numbers represent people who, if diagnosed with HIV, could begin treatment to sustain their immune systems, stave off the onset of AIDS, and prolong their lives.<sup>55</sup> These numbers also reflect people who, upon learning of their HIV status, could change their sexual behaviors to prevent infecting sexual partners,<sup>56</sup> something research suggests they will do.<sup>57</sup> A study published recently

47. See *JAMA Study Released Today Supports Call for Routine HIV Testing in CA*, Says AIDS Healthcare Foundation, MED. NEWS TODAY, Mar. 15, 2007, <http://www.medicalnewstoday.com/medicalnews.hp?newsid=65256> (on file with the *McGeorge Law Review*) (detailing an increase in HIV testing rates following the removal of the requirement that a patient's consent be in writing).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. See CTNS. FOR DISEASE CONTROL & PREVENTION, REDUCING HIV TRANSMISSION FROM MOTHER-TO-CHILD: AN OPT-OUT APPROACH TO HIV SCREENING (2004), <http://www.cdc.gov/HIV/topics/perinatal/esources/factsheets/opt-out.htm> (on file with the *McGeorge Law Review*) (recommending the opt-out approach because it can increase testing, thereby reducing the risk of mother-to-infant transmission of the virus).

53. *Id.*

54. *Id.*

55. *Revised Recommendations*, *supra* note 2, at 5 (“[W]hen HIV is diagnosed early, appropriately timed interventions . . . can lead to improved health outcomes, including slower clinical progression and reduced mortality.”).

56. *Id.* at 4.

57. See Gary Marks, Nicole Crepaz & Robert S. Janssen, *Estimating Sexual Transmission of HIV from Persons Aware and Unaware that They are Infected with the Virus in the USA*, 20 AIDS 1447, 1449 (2006)

in the journal *AIDS* reported that high-risk sexual behaviors dropped by fifty-seven percent among individuals who were aware that they were HIV positive.<sup>58</sup>

*B. How Much Information Do Patients Need?*

As recommended by the CDC, Chapter 550 only requires healthcare providers to give the general population limited information about HIV and allows patients the opportunity to opt-out before testing for the disease.<sup>59</sup> This is a departure from the strict requirement of written, informed consent in the statute prior to Chapter 550.<sup>60</sup> However, Chapter 550 still requires healthcare providers to give more information to pregnant women than the general population.<sup>61</sup> Studies have shown that more pregnant women agree to be tested when they are educated about the high risk of mother-to-child transmission of HIV and the methods available to reduce that risk.<sup>62</sup>

Because general consent to medical care replaces informed, written consent in most healthcare settings, providers will no longer have to inform patients about the “legal and social risks and benefits” of the HIV test.<sup>63</sup> Supporters of Chapter 550, such as the AIDS Healthcare Foundation, believed this change “[makes] for good public health policy.”<sup>64</sup> As Joseph Terrill, Public Policy Coordinator with the AIDS Healthcare Foundation, explained, “[i]nformed consent for an HIV test has been misapplied . . . . Except in very rare circumstances, [informed consent] is not used as a standard for tests, because there is no inherent [risk] to a test and the benefit is the knowledge that a test result brings.”<sup>65</sup> Terrill argued that it “is not prudent to expect [healthcare providers] to be sufficiently knowledgeable about” the extensive “legal and social risks and benefits” of an HIV test.<sup>66</sup>

Opponents of Chapter 550 disagreed: the “significant emotional and legal dimensions to an HIV diagnosis . . . make HIV infection different from many other diseases.”<sup>67</sup> Requiring providers to obtain patients’ informed, written consent, opponents believed, ensures that patients are aware of these issues

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(“Although sexual behavior may fluctuate in the years following an HIV-positive diagnosis, evidence shows that the prevalence of [unprotected anal and vaginal intercourse] remains at a considerably lower level than that observed during the unaware period.”).

58. *Id.* at 1448.

59. CAL. HEALTH & SAFETY CODE § 120990(a) (enacted by Chapter 550).

60. *Id.* § 120990 (West 2006).

61. *Id.* § 125090(c) (amended by Chapter 550).

62. Letter from Bebe J. Anderson, HIV Project Dir., & Brian Chase, Staff Attorney, Lambda Legal, to Assembly Member Patty Berg, Cal. State Assembly (Apr. 4, 2007) [hereinafter Anderson Letter] (on file with the *McGeorge Law Review*).

63. Terrill Email, *supra* note 23.

64. *Id.*

65. *Id.*

66. *Id.*

67. Anderson Letter, *supra* note 62.

before deciding to be tested for HIV.<sup>68</sup> Further, opponents argued that information about HIV, particularly information about prevention, is relevant for all patients, even those who test negative for the virus.<sup>69</sup>

While the importance of this information is undisputed, the AIDS Healthcare Foundation argued that mandatory pre-test counseling lost its “desirability” after becoming the “greatest statutory barrier to routine [HIV testing].”<sup>70</sup> Chapter 550 does not change post-test counseling requirements for those patients that do test positive for HIV, a group that arguably needs information about the virus the most.<sup>71</sup>

### C. More Testing, More Discrimination?

Opponents of Chapter 550 believed that the relaxed consent requirements keep patients ignorant of the discrimination that inevitably haunts people once they are diagnosed with HIV.<sup>72</sup> The ACLU and Lambda Legal cite a 2005 study in which “[twenty-six percent] of adults with HIV believed they had experienced discrimination from a health care provider since being diagnosed with HIV.”<sup>73</sup>

Moreover, this may be an underestimate.<sup>74</sup> The Williams Institute, a “think tank” on sexual orientation and public policy at UCLA School of Law, found relatively high rates of discrimination against people with HIV in healthcare settings.<sup>75</sup> Between 2003 and 2005, researchers noted that “[fifty-five percent] of obstetricians, [forty-six percent] of skilled nursing facilities, and [twenty-six percent] of plastic surgeons [in Los Angeles County] had a blanket policy of refusing services to all persons living with HIV . . . in violation of California’s anti-discrimination laws.”<sup>76</sup> Further, according to U.S. Equal Employment Opportunity data, “[f]rom 2002 to 2006, HIV-related employment discrimination claims were filed at an average rate of about one per day.”<sup>77</sup>

Opponents of Chapter 550 argued that healthcare providers should inform patients about the likelihood of encountering such discrimination before asking for consent.<sup>78</sup> Opponents believed that each patient has the right to choose

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68. *Id.*

69. PRE-TEST COUNSELING, *supra* note 16, at 3.

70. Routine Testing, *supra* note 6.

71. *Id.*

72. See Anderson Letter, *supra* note 62, at 2 (arguing that pre-test counseling informing patients about the social, emotional and legal consequences of an HIV diagnosis is necessary to ensure that patients understand the implications of HIV test results).

73. PRE-TEST COUNSELING, *supra* note 16, at 2.

74. Cf. Letter from Brad Sears, Executive Dir., Williams Inst., to Assembly Health Committee, Cal. State Assembly (Apr. 2, 2007) (on file with the *McGeorge Law Review*) (noting a study finding relatively high rates of discrimination against people with HIV).

75. *Id.*

76. *Id.*

77. PRE-TEST COUNSELING, *supra* note 16, at 3.

78. Anderson Letter, *supra* note 62.

whether to face these issues, should he or she be diagnosed with HIV.<sup>79</sup> In its letter of opposition to Chapter 550, the ACLU emphasized that healthcare providers must respect “individuals’ right to privacy and autonomy” in the HIV testing process.<sup>80</sup> The ACLU argued that eliminating the requirement of written, informed consent jeopardizes these rights.<sup>81</sup> In support, the ACLU cited the results of one study in which sixteen percent of pregnant women in Arkansas, who had been tested for HIV under an opt-out model “did not [even] know that they had been tested.”<sup>82</sup>

Supporters of Chapter 550 responded to these statistics by reiterating that under the new law HIV testing is still strictly voluntary and patient consent is still required.<sup>83</sup> They also emphasized the protection that state and federal anti-discrimination laws afford people living with HIV.<sup>84</sup> In an apparent effort to reach a compromise, Chapter 550 contains language to clarify the existing force of these protections, as a reminder that discrimination against HIV-positive individuals will not be tolerated.<sup>85</sup>

## V. CONCLUSION

One thing that both proponents and opponents of the new law seem to agree on is the important role that education plays in the fight against HIV.<sup>86</sup> Although the prior requirement of written, informed consent ensured that everyone tested for HIV was educated about the virus,<sup>87</sup> supporters argued that this requirement was an obstacle to testing, diagnosis, and treatment of those who tested positive.<sup>88</sup> Although the new law may increase HIV testing, opponents maintained that this should not be accomplished by sacrificing pre-test education.<sup>89</sup> In an effort to balance these competing, but perhaps equally important interests, the Legislature

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79. See Letter from Francisco Lobaco, Legislative Dir., & Valerie Small Navarro, Senior Legislative Advocate, Am. Civil Liberties Union, to Assembly Member Patty Berg, Cal. State Assembly (Apr. 4, 2007) [hereinafter Lobaco Letter] (on file with the *McGeorge Law Review*) (arguing that patients should have sufficient information about HIV before consenting to testing).

80. *Id.*

81. *Id.*

82. *Id.*

83. Routine Testing, *supra* note 6.

84. *Id.*

85. CAL. HEALTH & SAFETY CODE § 120990(c) (enacted by Chapter 550) (requiring informed consent); *id.* § 120990(f) (enacted by Chapter 550) (prohibiting discrimination); *id.* § 125090(d) (amended by Chapter 550) (requiring informed consent); *id.* § 125107(d) (amended by Chapter 550) (prohibiting discrimination).

86. See Routine Testing, *supra* note 6 (“While prevention education is a desirable objective of pre-test counseling, it loses its desirability if it is actually a barrier to screening for HIV.”); see also PRE-TEST COUNSELING, *supra* note 16, at 4-5 (explaining the important opportunity afforded by pre-test counseling to educate patients about HIV).

87. CAL. HEALTH & SAFETY CODE § 120990 (West 2006).

88. Routine Testing, *supra* note 6.

89. See Lobaco Letter, *supra* note 79 (“[E]xpanded testing should be done with specific, informed consent and after patients are provided with information about HIV disease and HIV testing.”).

enacted Chapter 550.<sup>90</sup> It was the Legislature's hope that the new law would result in earlier diagnoses of HIV—increasing treatment options and decreasing transmission rates—while still delivering a brief education to the public about the perils of this deadly virus.<sup>91</sup>

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90. See CAL. HEALTH & SAFETY CODE § 120990(f) (enacted by Chapter 550); *id.* §§ 125090(g), 125107(d) (amended by Chapter 550) (clarifying that discrimination against HIV infected individuals will not be tolerated).

91. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 682, at 2-3 (May 1, 2007) (linking the simple consent model to increased testing, with the goal of reducing the mortality rate and changing individual behavior that leads to transmission of the virus).