

/* Hawaii's AIDS-related laws are primarily concerned with infectious and communicable disease control, and insurance practices. */

CHAPTER 325

INFECTIOUS AND COMMUNICABLE DISEASES

PART I. GENERAL PROVISIONS

SECTION

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325-1 Diseases or conditions declared communicable or dangerous to public health. The director of health by rules adopted pursuant to chapter 91, may declare diseases or conditions to be communicable or dangerous to the public health.

325-1.5 Purpose. The purpose of this chapter is to address prevention, control, and treatment of, and advancement of knowledge about, communicable diseases in the State.

325-2 Physicians, laboratory directors, and health care professionals to report. Every physician or health care professional having a client affected by or suspected of being affected by a disease or condition declared to be communicable or dangerous to the public health by the director of health shall report the incidence or suspected incidence of such disease or condition to the department of health in writing or in the manner specified by the department of health. Every laboratory director having laboratory data regarding an individual affected by or suspected of being affected by a disease or condition declared to be communicable or dangerous to the public health shall report such diseases or conditions to the department of health in writing or in a manner specified by the health department. Every physician, laboratory director, or health care professional who refuses or neglects to give such notice, or make such report, may

be fined in an amount not to exceed \$1,000 per violation, to be assessed by the director of health, The director of health is authorized to impose the penalty pursuant to this section.

325-3 Others to report. The director of health shall have the authority to determine which other persons shall report to the department of health communicable diseases or conditions dangerous to the public health. The director of health may assess an administrative fine not to exceed \$1,000 per violation against persons who refuse or neglect to report immediately such diseases or conditions to the department of health. Persons assessed an administrative fine under this section shall not be subject to other sanctions provided by this chapter.

325-4 Identity of patients safeguarded. Reports to the department of health provided for by this chapter shall not be made public so as to disclose the identity of the persons to whom they relate except as necessary to safeguard the public health against those who disobey the rules relating to these diseases or to secure conformity to the laws of the State. Reports to the department of health of persons who had or have diseases or conditions transmittable by blood or blood products may be disclosed by the department to any blood bank to enable it to reject as donors those individuals, any law to the contrary notwithstanding. In addition, the department may disclose to any blood bank information on persons suspected by physical symptoms, clinical examination, or laboratory evidence of having diseases or conditions transmittable by blood or blood products, any law to the contrary notwithstanding.

325-16 Informed consent for testing or disclosure. (a) No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual may subject a person's body fluids or tissue to a test for the presence of human immunodeficiency virus (HIV) infection unless the subject of the test first provides informed written consent to the testing. Any person in this State whose body fluids or tissue are subject to a test for the presence of HIV infection shall be afforded the opportunity to receive HIV counseling by the party ordering or requesting that the test be performed and shall be afforded the opportunity to obtain the test results. The counseling provided shall be consistent with guidelines established by the department. The opportunity to receive counseling shall be afforded both prior to obtaining a sample for HIV testing and upon disclosure of the test results, regardless of the serostatus of the individual tested, except that testing

conducted pursuant to subsection (b) (1) and (2) shall be exempted from the counseling requirements of this subsection.

(b) Consent to testing is not required for any of the following:

(1) Anatomical gifts. A health care provider or organ donor center which procures, processes, distributes, or uses human body parts donated for scientific purposes may, without obtaining consent to the testing, test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended.

(2) Research. The department, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for HIV infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(3) Anonymous testing carried out at HIV test sites established by the department provided that informed verbal consent is obtained.

(4) Testing of body fluids or tissue which is ordered by a third party, so long as that third party, including but not limited to an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health provider prior to any release of the requested test results to the third party.

(5) Patient diagnosis or treatment. Informed consent is not required where the patient is unable to give consent and it is determined by the patient's treating physician that the patient's HIV status is necessary (A) to make a diagnosis, or (B) to determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph and the patient shall be provided the opportunity to obtain the test results and appropriate counseling.

(6) Protection of health care workers. A treating physician may order an HIV test without the patient's informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient's health care insurer. The patient and the health care

worker shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph, and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling.

(c) Confidentiality. The confidentiality of all records held pursuant to this section is governed by section 325-101.

(d) Civil penalty. Any person or institution who wilfully violates any provision of this section shall be fined not less than \$1,000 nor more than \$10,000 for each violation plus reasonable court costs and attorney's fees as determined by the court, which penalty and costs shall be paid to the person whose records were released. This subsection shall not be construed as limiting the right of any person or persons to recover actual damages.

(e) Good faith exception. No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual, which, in good faith, provides results of any test for the presence of HIV infection to a specified third party as the result and in response to an informed written consent by the person to be tested, shall be in violation of confidentiality requirements pursuant to this section and governed by section 325-101 if the test results later prove to be false or otherwise defective.

(f) The department shall adopt rules, pursuant to chapter 91, to establish procedures and standards to implement this section.

325-17 Quality assurance standards for HIV antibody testing.

(a) All laboratories performing screening and diagnostic tests for the presence of the antibody to HIV (Human Immunodeficiency Virus) shall follow the recommended protocols as set forth below. Any initially reactive ELISA (Enzyme-linked Immunosorbant Assay) test must be confirmed by a second ELISA. Any sera yielding reactive results to both ELISA tests must have a supplemental test performed such as a Western Blot, an IFA (Immunofluorescence Assay), or an antigen detection assay; provided that these standards may be superseded by rules adopted by the department pursuant to chapter 91.

(b) Any laboratory performing tests for the presence of HIV may be required by the department of health to refer a sample from any specimen yielding a reactive result to the department for the purpose of supplemental testing of some or all samples for quality assurance purposes. The department may specify the information which shall accompany the specimen for epidemiological purposes; provided that the information shall not include any personal identifiers.

(c) The penalty for any violation of this section shall be as

specified in section 325-14.

325-4 Identity of patients safeguarded. Reports to the department of health provided for by this chapter shall not be made public so as to disclose the identity of the persons to whom they relate except insofar as may be necessary to safeguard the public health against those who disobey the rules and regulations relating to these diseases or to secure conformity to the laws of the State.

Reports to the department of health of persons who have had viral hepatitis may be disclosed by the department to any blood bank to enable it to reject as donors any individual with such a history.

325-5 Antitoxins, antiserums, vaccines, biologics, and drugs. The department of health shall purchase from time to time out of moneys which may be available to it therefor, and keep on hand and available for administration under this section in the several counties to persons unable to pay for them, antitoxins, antiserums, vaccines, and other biologics and drugs of types and in a supply sufficient for the public health, welfare, and safety.

The antitoxins, antiserums, vaccines, biologics, and drugs shall by any physician of the department or of any such county be administered free of charge to any person who is in need of them and is unable to pay for them or shall be furnished free of charge to the attending physician of the person for use in the treatment of the person; provided that the person so benefited, or the person's estate, or personal representatives, if subsequently able to do so, may be required by the department to pay for any such antitoxin, antiserum, vaccine, biologic, or drug furnished free of charge to or for the person under this chapter.

325.6 Epidemic control fund. Such appropriations as may be provided for the purpose of controlling, suppressing, or preventing the spread of any communicable or preventable disease in the State or in any county thereof shall be immediately deposited in the treasury in a special fund to be known as the "epidemic control fund."

Whenever the department of health certifies that any communicable or preventable disease is present to such an extent that the usual facilities and personnel of the department are not adequate to properly control, suppress, or prevent the spread of the disease, withdrawals may be made from the epidemic control fund by the department, with the approval of the governor, for use, in whatever manner the department may deem necessary, in controlling, suppressing, or preventing the spread of any such disease. All the withdrawals shall be upon warrants of the

comptroller of the State on vouchers properly approved by the director of health.

325.7 Potentially infectious laundry from hospitals and sanatoria. Because of the potentially infectious nature of laundry used by patients with infectious and communicable diseases in hospitals and tuberculosis sanatoria, the managing authority of each hospital and tuberculosis sanatorium in the State providing care for persons ill with infectious and contagious disease, shall arrange for the laundering and sterilization of the laundry on the premises under the control and supervision of the medical supervisor of the hospital or tuberculosis sanatorium; provided that in the event the finances and physical facilities of any hospital or tuberculosis sanatorium are not adequate for such purpose, and it becomes necessary for the hospital or tuberculosis sanatorium to send its potentially infectious laundry to commercial establishments for laundering and sterilization, the following procedure is hereby prescribed and required:

(1) Noninfectious laundry shall be separated from potentially infectious laundry by hospital or sanatorium authorities.

(2) Potentially infectious laundry shall be bagged and the bags tied securely by hospital or sanatorium personnel responsible directly to the institution's medical authorities for the techniques and protective procedures used. The bags used shall be of solid or tightly woven material or of water soluble plastic approved by the department of health, and shall be securely tied.

(3) If the bags are of solid or tightly woven material, when they are loaded on or unloaded from the commercial laundry's trucks the loader shall wear a protective face mask and gown of a type approved by the hospital's or tuberculosis sanatorium's medical authorities. The mask and gown shall be laundered after each usage. The use of a mask and gown may be omitted if water soluble plastic bags are used.

(4) No other laundry shall be carried in the trucks with the potentially infectious laundry unless the potentially infectious laundry is in water soluble plastic bags. The trucks used shall be of the closed panel type. They shall be periodically washed and disinfected as directed by duly authorized agents of the department.

(5) Commercial laundry workers who handle the potentially infectious laundry in solid or tightly woven bags shall wear protective masks and gowns of a type approved by the hospital's or sanatorium's medical authorities. The laundry shall be placed directly in the washers from the bags. There shall be no shake out or sorting procedure carried on at the laundry prior to washing. All protective clothing and all laundry bags shall be

laundered after each usage. If the potentially infectious laundry is in water soluble plastic bags, no protective clothing need be worn and the laundry shall be placed directly? in the washers without opening the bags.

(6) The laundering procedure to be followed by the commercial laundry for potentially infectious laundry and for protective clothing and laundry bags, which protective clothing and laundry bags shall be laundered separately from the potentially infectious laundry, shall consist of the following:

Operation	Purpose & Action	Holding	Time
		Temperature Degrees F.	Minutes
(1) Flush	Wets clothes	100	5
(2) First "breakrun"	Alkali	160	10
(3) Second "breakrun"	Alkali	160	10
(4) First suds	Detergent	180	10
(5) Second suds	Detergent	180	10
(6) Third suds	Soap and bleach	180-210	10
(7) First rinse	Removes detergents	180	5
(8) Second rinse	Removes detergents	180	5
(9) Third rinse	Removes detergents	160	5
(10) Fourth rinse	Sour added (removes residual detergents- starch added, if necessary)	110 or over	5

325-8 Infected persons, removal and quarantine. When any person is infected or suspected of being infected with any infectious, communicable, or other disease dangerous to the public health, the department of health or its agent, may, for the safety of the public, remove the sick or infected person to a separate house or hospital, and provide the person with medical care and other necessaries, which shall be at the expense of the person's self, the person's parents or guardian, if able to meet the expense, otherwise at the expense of the county in which the person is ill or infected. The county council shall pay the expenses upon certification by the department or its agents that a person has been so removed and that expense has been incurred under this section.

325-9 Quarantine without removal; duty of police officers to assist in removals. If the department of health or its agent determines that the removal of the person infected or suspected of being infected would directly and seriously aggravate the disease so as to endanger the person's life, the department, or its agent may make provision for the person, as directed in section 325-8, in the house in which the person may be; and, in such case, the department or its agent may cause the persons in

the neighborhood to be removed, and may take such other measures as it judges necessary for the public health and safety. The department or its agent, in effecting any removal under this or section 325-8, may require any sheriff, deputy sheriff, chief of police, or police officer to aid and assist it, and such force as is reasonably necessary to effect any such removal may be used. Every sheriff, deputy sheriff, chief of police, or police officer who is so required to aid and assist the department or its agent shall immediately aid and assist it.

325-10 Master of vessel liable for expense. In case any moneys are expended by the department of health, for any sick person brought into the State in any vessel from abroad, the department, or its agent, shall demand the same from the master of the vessel in which the sick person was brought. The master of the vessel shall be liable for the amount of the moneys thus expended.

325-11 Spitting prohibited No person shall spit or expectorate upon any railway passenger coach or other public conveyance, sidewalk, or any building wherein business with the public is conducted, except in a spittoon or cuspidor provided for such purpose.

325-12 Common drinking cup prohibited. The use of a common drinking cup is prohibited in all public places within the State.

325-13 Regulations. For the purpose of carrying out this chapter, the director of health, with the approval of the governor, may make such regulations as the director deems necessary which, when adopted in accordance with section 321-10, shall have the force of law.

325-14. Penalty. Any person violating this chapter, or any rule or regulation of the department of health relating thereto, shall be deemed guilty of a misdemeanor. Except as herein otherwise provided the punishment therefor shall be the same as provided by section 321-18.

325-15. Infectious and communicable diseases, examination and treatment. United States citizens or nationals, upon returning to this State after five or more years residence in any territory or possession of the United States, or any foreign country, with a high occurrence of infectious and communicable diseases, shall submit a medical examination report that shall include a tuberculin skin test or a chest x-ray examination, and in the case of a positive skin test a chest x-ray report shall be submitted, to the department of health within sixty days of

return to this State. The department of health shall cooperate with public and private authorities, where feasible, in implementing this section. [L 1978, c 130, 1]

ARTICLE 13

UNFAIR METHODS OF COMPETITION AND UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN THE BUSINESS OF INSURANCE

PART I. GENERAL PROVISIONS

431:13-103 Unfair methods of competition and unfair or deceptive acts or practices defined.

(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(i) Unfair discrimination.

(A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;

(B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;

(C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(i) The refusal, cancellation or limitation is for a business purpose which is not a mere pretext for unfair discrimination,

(ii) The refusal, cancellation or limitation is required by law or regulatory mandate; or

(D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing in renew, canceling or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

(i) The refusal, cancellation or limitation is for a business purpose which is not a mere pretext for unfair discrimination, or

(ii) The refusal, cancellation or limitation is required by law or regulatory mandate;

(E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits; or

(F) To terminate, or to modify, . coverage or to refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired: provided that this subsection shall not apply to disability insurance sold by a casualty insurer; provided further that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance

(G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or

(H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101.
