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CHAPTER 143

1 AN ACT concerning

2 **Hospitals - HIV Testing - Health Care Providers and First Responders**

3 FOR the purpose of requiring certain individuals in a hospital to order tests to be
4 conducted in a certain manner and in accordance with certain recommendations
5 on blood samples or other body fluids of certain individuals for the presence of
6 antibodies to the human immunodeficiency virus (HIV) under certain
7 circumstances; requiring a first responder to give certain notice to a certain
8 medical director under a certain circumstance; requiring the medical director to
9 act as a certain intermediary between the first responder and a certain officer;
10 requiring the medical director and a certain officer to ensure that certain
11 information is confidential; establishing a certain exception for HIV tests
12 conducted under this Act to the requirement that informed consent be obtained
13 before conducting an HIV test; requiring certain individuals to disclose the
14 results of HIV tests conducted under this Act in a certain manner to certain
15 individuals and provide counseling to certain individuals under certain
16 circumstances; specifying the confidentiality of certain medical records and
17 other information; requiring hospitals to adopt certain procedures; specifying
18 the payment of costs for HIV tests conducted under this Act; providing for a
19 certain limitation of liability for certain individuals under this Act; requiring the
20 AIDS Administration in the Department of Health and Mental Hygiene, in
21 consultation with certain groups, to conduct a certain study and make certain
22 recommendations to certain committees of the General Assembly on or before a
23 certain date; defining certain terms; and generally relating to conducting tests
24 on blood samples or other body fluids of individuals in a hospital for the
25 presence of antibodies to the human immunodeficiency virus (HIV) under

1 certain circumstances.

2 BY repealing and reenacting, with amendments,

3 Article - Health - General

4 Section 18-336(b) and 18-338.1(b)

5 Annotated Code of Maryland

6 (2000 Replacement Volume and 2002 Supplement)

7 BY repealing and reenacting, without amendments,

8 Article - Health - General

9 Section 18-338.1(c)

10 Annotated Code of Maryland

11 (2000 Replacement Volume and 2002 Supplement)

12 BY adding to

13 Article - Health - General

14 Section 18-338.3

15 Annotated Code of Maryland

16 (2000 Replacement Volume and 2002 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Health - General**

20 18-336.

21 (b) Except as provided in Title 11, Subtitle 1, Part II of the Criminal Procedure
22 Article OR § 18-338.3 OF THIS SUBTITLE, before obtaining a fluid or tissue sample from
23 the body of an individual for the purpose of testing the fluid or tissue for the presence
24 of HIV infection, a health care provider shall:

25 (1) Obtain written informed consent from the individual on a uniform
26 HIV informed consent form that the Department shall develop consistent with the
27 requirements of the Department as established by regulations adopted by the
28 Department; and

29 (2) Provide the individual with pretest counseling, including:

30 (i) Education about HIV infection and methods for preventing
31 transmission;

32 (ii) Information about a physician's duty to warn; and

33 (iii) Assistance in accessing health care available to an individual
34 who tests positive for the HIV infection.

1 18-338.1.

2 (b) [A] EXCEPT AS PROVIDED IN § 18-338.3 OF THIS SUBTITLE, A physician,
3 nurse, or designee of a health care facility shall, at the request of an exposed health
4 care provider, seek the informed consent of a patient to test a blood sample of the
5 patient for the presence of HIV when:

6 (1) There has been an exposure between the patient and the health care
7 provider;

8 (2) The health care provider involved in the exposure has given prompt
9 written notice of the exposure, in accordance with the standards of the health care
10 facility, to the chief executive officer or the chief executive officer's designee of the
11 health care facility where the exposure occurred;

12 (3) The exposure occurred based on the judgment of a physician who is
13 not the health care provider involved in the exposure; and

14 (4) The health care provider involved in the exposure has given informed
15 consent and has submitted a blood sample to be tested for the presence of HIV in
16 accordance with the provisions of subsection (d) of this section.

17 (c) If, by virtue of the physical or mental condition of a patient, a physician,
18 nurse, or designee of a health care facility is unable to obtain the informed consent of
19 the patient to test a blood sample of the patient for the presence of HIV in accordance
20 with subsection (b) of this section, the physician, nurse, or designee of the health care
21 facility shall seek the consent of any person who has authority to consent to medical
22 care for the patient as provided under § 5-605 of this article or as otherwise
23 authorized by law.

24 18-338.3.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

27 (2) (I) "BODY FLUIDS" MEANS:

28 1. ANY FLUID CONTAINING VISIBLE BLOOD, SEMEN, OR
29 VAGINAL SECRETIONS; OR

30 2. CEREBROSPINAL FLUID, SYNOVIAL FLUID, OR AMNIOTIC
31 FLUID.

32 (II) "BODY FLUIDS" DOES NOT INCLUDE SALIVA, STOOL, NASAL
33 SECRETIONS, SPUTUM, TEARS, URINE, OR VOMITUS.

34 (3) "EXPOSURE" MEANS AS BETWEEN A PATIENT AND A HEALTH CARE
35 PROVIDER:

36 (I) PERCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

1 (II) MUCOCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

2 (III) OPEN WOUND, INCLUDING DERMATITIS, EXUDATIVE LESIONS,
3 OR CHAPPED SKIN, CONTACT WITH BLOOD OR BODY FLUIDS FOR A PROLONGED
4 PERIOD; OR

5 (IV) INTACT SKIN CONTACT WITH LARGE AMOUNTS OF BLOOD OR
6 BODY FLUIDS FOR A PROLONGED PERIOD.

7 (4) "FIRST RESPONDER" MEANS AN INDIVIDUAL WHO:

8 (I) IS LICENSED OR CERTIFIED UNDER § 13-516 OF THE
9 EDUCATION ARTICLE; AND

10 (II) PROVIDES SERVICES TO AN INDIVIDUAL BEFORE THE
11 INDIVIDUAL IS ADMITTED TO A HOSPITAL.

12 ~~(4)~~ (5) (I) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO
13 IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH
14 OCCUPATIONS ARTICLE OR THIS ARTICLE TO PROVIDE HEALTH OR MEDICAL CARE
15 IN:

16 1. THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A
17 PROFESSION; OR

18 2. AN APPROVED EDUCATION OR TRAINING PROGRAM.

19 (II) "HEALTH CARE PROVIDER" INCLUDES ANY AGENT OR
20 EMPLOYEE OF A HOSPITAL.

21 (III) "HEALTH CARE PROVIDER" DOES NOT INCLUDE AN INDIVIDUAL
22 WHO IS ELIGIBLE TO RECEIVE NOTIFICATION UNDER THE PROVISIONS OF § 18-213
23 OF THIS TITLE, INCLUDING ANY LAW ENFORCEMENT OFFICER OR ANY MEMBER OF
24 ANY FIRE DEPARTMENT, AMBULANCE COMPANY, OR RESCUE SQUAD.

25 ~~(5)~~ (6) "HIV" MEANS THE HUMAN IMMUNODEFICIENCY VIRUS THAT
26 CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME.

27 ~~(6)~~ (7) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THIS
28 ARTICLE.

29 (B) NOTWITHSTANDING THE PROVISIONS OF § 18-338.1 OF THIS SUBTITLE,
30 THE DESIGNATED INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER OF A
31 HOSPITAL SHALL ORDER A TEST FOR THE PRESENCE OF ANTIBODIES TO THE HUMAN
32 IMMUNODEFICIENCY VIRUS (HIV) UNDER SUBSECTION ~~(C)~~ (D) OF THIS SECTION
33 WHEN:

34 (1) THERE HAS BEEN AN EXPOSURE IN A HOSPITAL BETWEEN A
35 PATIENT AND A HEALTH CARE PROVIDER, OR AN EXPOSURE BETWEEN THE PATIENT
36 AND A FIRST RESPONDER BEFORE ADMISSION OF THE PATIENT TO A HOSPITAL.

1 THAT, IN ACCORDANCE WITH THE CENTERS FOR DISEASE CONTROL AND
2 PREVENTION RECOMMENDATIONS, WOULD WARRANT RECOMMENDING OR
3 OFFERING CHEMOPROPHYLAXIS TREATMENT FOR THE HEALTH CARE PROVIDER OR
4 FIRST RESPONDER;

5 (2) INFORMED CONSENT, OR SUBSTITUTE CONSENT AS REQUIRED
6 UNDER § 18-338.1(C) OF THIS TITLE, OF THE PATIENT TO TEST A BLOOD SAMPLE OF
7 THE PATIENT FOR THE PRESENCE OF HIV WAS SOUGHT AND THE PATIENT ~~REFUSED~~
8 ~~TO CONSENT~~ WAS UNAVAILABLE OR UNABLE TO CONSENT;

9 (3) (I) IN ACCORDANCE WITH HOSPITAL PROCEDURES, THE HEALTH
10 CARE PROVIDER INVOLVED IN THE EXPOSURE HAS GIVEN PROMPT NOTICE OF THE
11 EXPOSURE TO THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
12 DISEASE OFFICER WHERE THE EXPOSURE OCCURRED; OR

13 (II) 1. THE FIRST RESPONDER INVOLVED IN THE EXPOSURE HAS
14 GIVEN PROMPT NOTICE TO THE MEDICAL DIRECTOR WITH JURISDICTION OVER THE
15 FIRST RESPONDER; AND

16 2. THE MEDICAL DIRECTOR HAS GIVEN PROMPT NOTICE TO
17 THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE
18 OFFICER WHERE THE PATIENT IS ADMITTED;

19 (4) THE HEALTH CARE PROVIDER OR FIRST RESPONDER INVOLVED IN
20 THE EXPOSURE HAS GIVEN INFORMED CONSENT AND HAS SUBMITTED A BLOOD
21 SAMPLE TO BE TESTED FOR THE PRESENCE OF HIV; AND

22 (5) THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
23 DISEASE OFFICER HAS MADE A DETERMINATION, IN ACCORDANCE WITH THE
24 CENTERS FOR DISEASE CONTROL AND PREVENTION RECOMMENDATIONS, THAT THE
25 TESTING OF BLOOD SAMPLES OR OTHER BODY FLUIDS OF THE PATIENT FOR THE
26 PRESENCE OF ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)
27 WOULD BE HELPFUL IN MANAGING THE RISK OF DISEASE AND HEALTH OUTCOME OF
28 THE HEALTH CARE PROVIDER OR FIRST RESPONDER.

29 (C) IF THERE HAS BEEN AN EXPOSURE BETWEEN A FIRST RESPONDER AND
30 AN INDIVIDUAL BEFORE THE ADMISSION OF THE INDIVIDUAL TO A HOSPITAL;

31 (1) THE FIRST RESPONDER SHALL GIVE NOTICE TO THE FIRST
32 RESPONDER'S MEDICAL DIRECTOR IN ACCORDANCE WITH SUBSECTION (B)(3)(II)1 OF
33 THIS SECTION;

34 (2) THE MEDICAL DIRECTOR SHALL ACT AS AN INTERMEDIARY AT ALL
35 TIMES BETWEEN THE FIRST RESPONDER AND THE DESIGNATED HOSPITAL
36 INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER; AND

37 (3) THE MEDICAL DIRECTOR AND THE DESIGNATED HOSPITAL
38 INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL ENSURE THAT ALL
39 COMMUNICATIONS AND INFORMATION RELATED TO THE EXPOSURE OF THE FIRST
40 RESPONDER ARE CONFIDENTIAL.

1 ~~(C)~~ (D) IF THE REQUIREMENTS OF ~~SUBSECTION (B)~~ SUBSECTIONS (B) AND (C)
2 OF THIS SECTION ARE SATISFIED, THE DESIGNATED HOSPITAL INFECTIOUS
3 DISEASE/COMMUNICABLE DISEASE OFFICER SHALL ORDER TESTS TO BE
4 CONDUCTED FOR THE PRESENCE OF ANTIBODIES TO THE HUMAN
5 IMMUNODEFICIENCY VIRUS (HIV) USING A TEST PROCEDURE APPROVED BY THE
6 DEPARTMENT ON:

7 (1) BLOOD SAMPLES ALREADY OBTAINED FROM THE PATIENT; OR

8 (2) BLOOD SAMPLES OR OTHER BODY FLUIDS COLLECTED FOR THE
9 PURPOSE OF HIV TESTING UNDER THIS SECTION.

10 ~~(D)~~ (E) WHEN THE DESIGNATED HOSPITAL INFECTIOUS
11 DISEASE/COMMUNICABLE DISEASE OFFICER OBTAINS THE RESULTS OF AN HIV TEST
12 CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION ~~(C)~~ (D) OF THIS
13 SECTION, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
14 DISEASE OFFICER SHALL DIRECTLY NOTIFY THE PATIENT OF THE RESULTS OF THE
15 HIV TEST AND, TO THE EXTENT POSSIBLE, IN A MANNER THAT WILL PROTECT THE
16 CONFIDENTIALITY OF THE HEALTH CARE PROVIDER OR THE FIRST RESPONDER AND
17 THE PATIENT.

18 ~~(E)~~ (F) IF THE RESULTS OF AN HIV TEST CONDUCTED IN ACCORDANCE
19 WITH THE PROVISIONS OF SUBSECTION ~~(C)~~ (D) OF THIS SECTION ARE POSITIVE, THE
20 DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER
21 SHALL PROVIDE OR ARRANGE FOR THE PROVISION OF APPROPRIATE COUNSELING
22 AND TREATMENT RECOMMENDATIONS TO THE HEALTH CARE PROVIDER OR FIRST
23 RESPONDER AND THE PATIENT.

24 ~~(F)~~ (G) (1) NOTWITHSTANDING THE PROVISIONS OF TITLE 4, SUBTITLE 3
25 OF THIS ARTICLE, THE MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR
26 AN HIV TEST OR THE RESULTS OF AN HIV TEST CONDUCTED UNDER THIS SECTION,
27 MAY NOT BE DOCUMENTED IN THE MEDICAL RECORD OF THE PATIENT ~~OR~~, HEALTH
28 CARE PROVIDER, OR FIRST RESPONDER.

29 (2) THE HOSPITAL WHERE THE EXPOSURE OCCURRED SHALL MAINTAIN
30 A SEPARATE CONFIDENTIAL RECORD OR INCIDENT REPORT FOR ALL HIV TESTS
31 CONDUCTED UNDER THIS SECTION.

32 (3) EACH HOSPITAL SHALL ADOPT PROCEDURES FOR THE
33 CONFIDENTIAL HIV TESTING OF BLOOD SAMPLES OR OTHER BODY FLUIDS USED OR
34 COLLECTED FOR PURPOSES OF THIS SECTION.

35 (4) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, THE
36 MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR AN HIV TEST OR THE
37 RESULTS OF ANY HIV TEST CONDUCTED UNDER THIS SECTION, ARE:

38 (I) CONFIDENTIAL; AND

39 (II) NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY
40 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

1 (5) IF THE IDENTITY OF THE PATIENT OR ANY OTHER INFORMATION
2 THAT COULD BE READILY ASSOCIATED WITH THE IDENTITY OF THE PATIENT IS NOT
3 DISCLOSED, THE RESULTS OF AN HIV TEST CONDUCTED ON A PATIENT FOR
4 PURPOSES OF THIS SECTION MAY BE INTRODUCED INTO EVIDENCE IN ANY
5 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION INCLUDING THE ADJUDICATION OF A
6 WORKERS' COMPENSATION CLAIM.

7 ~~(G)~~ (H) THE COSTS INCURRED IN PERFORMING AN HIV TEST ON A PATIENT
8 IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE PAID BY THE
9 HOSPITAL.

10 ~~(H)~~ (I) EACH HOSPITAL SHALL DEVELOP WRITTEN PROCEDURES TO
11 IMPLEMENT THE PROVISIONS OF THIS SECTION.

12 ~~(I)~~ (J) A HEALTH CARE PROVIDER, FIRST RESPONDER, OR HOSPITAL OR
13 DESIGNEE OF A HOSPITAL ACTING IN GOOD FAITH TO PROVIDE NOTIFICATION OR
14 MAINTAIN THE CONFIDENTIALITY OF THE RESULTS OF A TEST CONDUCTED UNDER
15 THIS SECTION MAY NOT BE HELD LIABLE IN ANY CAUSE OF ACTION RELATED TO A
16 BREACH OF PATIENT ~~OR~~ HEALTH CARE PROVIDER, OR FIRST RESPONDER
17 CONFIDENTIALITY.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the AIDS Administration
19 in the Department of Health and Mental Hygiene, in consultation with the Maryland
20 Hospital Association and AIDS advocacy organizations, shall study the issue of HIV
21 testing of individuals who refuse to consent to HIV testing when there has been an
22 exposure involving a health care provider or a first responder, as defined in §
23 18-338.3 of the Health - General Article, as enacted by Section 1 of this Act. The
24 AIDS Administration shall report its finding and recommendations, in accordance
25 with § 2-1462 of the State Government Article, to the Senate Education, Health, and
26 Environmental Affairs Committee and the House Health and Government Operations
27 Committee on or before December 1, 2003.

28 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
29 take effect October 1, 2003.

30 SECTION 2. 4. AND BE IT FURTHER ENACTED, That, except as provided in
31 Section 3 of this Act, this Act shall take effect ~~October~~ July 1, 2003.