
By: Delegates Morhaim and Nathan-Pulliam

Introduced and read first time: January 17, 1997

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Hospitals - HIV Testing - Health Care Providers**

3 FOR the purpose of requiring certain individuals in a hospital to order tests to be
4 conducted in a certain manner on blood samples or other body fluids of certain
5 individuals for the presence of antibodies to the human immunodeficiency virus
6 (HIV) under certain circumstances; establishing a certain exception for HIV tests
7 conducted under this Act to the requirement that informed consent be obtained
8 before conducting an HIV test; requiring certain individuals to disclose the results
9 of HIV tests conducted under this Act in a certain manner to certain individuals
10 and provide counseling to certain individuals under certain circumstances;
11 specifying the confidentiality of certain medical records and other information;
12 requiring hospitals to adopt certain procedures; specifying the payment of costs for
13 HIV tests conducted under this Act; providing for a certain limitation of liability for
14 certain individuals under this Act; defining certain terms; and generally relating to
15 conducting tests on blood samples or other body fluids of individuals in a hospital
16 for the presence of antibodies to the human immunodeficiency virus (HIV) under
17 certain circumstances.

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 18-336(b) and 18-338.1(b)
21 Annotated Code of Maryland
22 (1994 Replacement Volume and 1996 Supplement)

23 BY adding to
24 Article - Health - General
25 Section 18-338.2
26 Annotated Code of Maryland
27 (1994 Replacement Volume and 1996 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Health - General**

2 18-336.

3 (b) Except as provided in Article 27, § 855 of the Code OR § 18-338.2 OF THIS
4 SUBTITLE, before obtaining a fluid or tissue sample from the body of an individual for the
5 purpose of testing the fluid or tissue for the presence of HIV infection, a health care
6 provider shall:

7 (1) Obtain written informed consent from the individual on a uniform HIV
8 informed consent form that the Department shall develop consistent with the
9 requirements of the Department as established by regulations adopted by the
10 Department; and

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

12 (i) Education about HIV infection and methods for preventing
13 transmission;

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

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

17 18-338.1.

18 (b) [A] EXCEPT AS PROVIDED IN § 18-338.2 OF THIS SUBTITLE, A physician,
19 nurse, or designee of a health care facility shall, at the request of an exposed health care
20 provider, seek the informed consent of a patient to test a blood sample of the patient for
21 the presence of HIV when:

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

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

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

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

33 18-338.2.

34 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
35 INDICATED.

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

37 1. ANY FLUID CONTAINING VISIBLE BLOOD, SEMEN, OR
38 VAGINAL SECRETIONS; OR

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1 EXPOSURE TO THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
2 DISEASE OFFICER WHERE THE EXPOSURE OCCURRED; AND

3 (3) THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
4 DISEASE OFFICER HAS MADE A DETERMINATION THAT THE TESTING OF BLOOD
5 SAMPLES OR OTHER BODY FLUIDS OF THE PATIENT FOR THE PRESENCE OF
6 ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) WOULD BE HELPFUL
7 IN MANAGING THE RISK OF DISEASE AND HEALTH OUTCOME OF THE HEALTH CARE
8 PROVIDER.

9 (C) IF THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ARE
10 SATISFIED, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
11 DISEASE OFFICER SHALL ORDER TESTS TO BE CONDUCTED FOR THE PRESENCE OF
12 ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) USING A TEST
13 PROCEDURE APPROVED BY THE DEPARTMENT ON:

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

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

17 (D) WHEN THE DESIGNATED HOSPITAL INFECTIOUS
18 DISEASE/COMMUNICABLE DISEASE OFFICER OBTAINS THE RESULTS OF AN HIV TEST
19 CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF THIS
20 SECTION, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
21 DISEASE OFFICER SHALL DIRECTLY NOTIFY THE PATIENT OF THE RESULTS OF THE
22 HIV TEST AND, TO THE EXTENT POSSIBLE, IN A MANNER THAT WILL PROTECT THE
23 CONFIDENTIALITY OF THE HEALTH CARE PROVIDER AND THE PATIENT.

24 (E) IF THE RESULTS OF AN HIV TEST CONDUCTED IN ACCORDANCE WITH THE
25 PROVISIONS OF SUBSECTION (C) OF THIS SECTION ARE POSITIVE, THE DESIGNATED
26 HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL PROVIDE
27 OR ARRANGE FOR THE PROVISION OF APPROPRIATE COUNSELING AND
28 TREATMENT RECOMMENDATIONS TO THE HEALTH CARE PROVIDER AND THE
29 PATIENT.

30 (F) (1) NOTWITHSTANDING THE PROVISIONS OF TITLE 4, SUBTITLE 3 OF
31 THIS ARTICLE, THE MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR AN
32 HIV TEST OR THE RESULTS OF AN HIV TEST CONDUCTED UNDER THIS SECTION, MAY
33 NOT BE DOCUMENTED IN THE MEDICAL RECORD OF THE PATIENT OR HEALTH
34 CARE PROVIDER.

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

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

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

4 (I) CONFIDENTIAL; AND

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

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

13 (G) THE COSTS INCURRED IN PERFORMING AN HIV TEST ON A PATIENT IN
14 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE PAID BY THE
15 HOSPITAL.

16 (H) EACH HOSPITAL SHALL DEVELOP WRITTEN PROCEDURES TO IMPLEMENT
17 THE PROVISIONS OF THIS SECTION.

18 (I) A HEALTH CARE PROVIDER OR HOSPITAL OR DESIGNEE OF A HOSPITAL
19 ACTING IN GOOD FAITH TO PROVIDE NOTIFICATION OR MAINTAIN THE
20 CONFIDENTIALITY OF THE RESULTS OF A TEST CONDUCTED UNDER THIS SECTION
21 MAY NOT BE HELD LIABLE IN ANY CAUSE OF ACTION RELATED TO A BREACH OF
22 PATIENT OR HEALTH CARE PROVIDER CONFIDENTIALITY.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 1997.