
By: Delegates Morhaim and Nathan-Pulliam

Introduced and read first time: January 17, 1997

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 1997

CHAPTER ____

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

2

1 (1994 Replacement Volume and 1996 Supplement)

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

4 **Article - Health - General**

5 18-336.

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

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

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

15 (i) Education about HIV infection and methods for preventing
16 transmission;

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

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

20 18-338.1.

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

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

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

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

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

36 18-338.2.

37 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
38 INDICATED.

3

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

2 1. ANY FLUID CONTAINING VISIBLE BLOOD, SEMEN, OR
3 VAGINAL SECRETIONS; OR

4 2. CEREBROSPINAL FLUID, SYNOVIAL, OR AMNIOTIC FLUID.

5 (II) "BODY FLUID" DOES NOT INCLUDE SALIVA, STOOL, NASAL
6 SECRETIONS, SPUTUM, TEARS, URINE, OR VOMITUS.

7 (3) "EXPOSURE" MEANS AS BETWEEN A PATIENT AND A HEALTH CARE
8 PROVIDER:

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

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

11 (III) OPEN WOUND, INCLUDING DERMATITIS, EXUDATIVE LESIONS,
12 OR CHAPPED SKIN, CONTACT WITH BLOOD OR BODY FLUIDS FOR A PROLONGED
13 PERIOD; OR

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

16 (4) (I) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO IS
17 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH
18 OCCUPATIONS ARTICLE OR THIS ARTICLE TO PROVIDE HEALTH OR MEDICAL CARE
19 IN:

20 1. THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A
21 PROFESSION; OR

22 2. AN APPROVED EDUCATION OR TRAINING PROGRAM.

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

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

29 (5) "HIV" MEANS THE HUMAN IMMUNODEFICIENCY VIRUS THAT
30 CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME.

31 (6) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THIS ARTICLE.

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

4

1 (1) THERE HAS BEEN AN EXPOSURE IN A HOSPITAL BETWEEN A
 2 PATIENT AND A HEALTH CARE PROVIDER THAT, IN ACCORDANCE WITH THE
 3 CENTERS FOR DISEASE CONTROL RECOMMENDATIONS, WOULD WARRANT
 4 RECOMMENDING OR OFFERING CHEMOPROPHYLAXIS TREATMENT FOR THE
 5 HEALTH CARE PROVIDER;

6 (2) INFORMED CONSENT 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;

9 ~~(2)~~ (3) 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; ~~AND~~

13 (4) THE HEALTH CARE PROVIDER INVOLVED IN THE EXPOSURE HAS
 14 GIVEN INFORMED CONSENT AND HAS SUBMITTED A BLOOD SAMPLE TO BE TESTED
 15 FOR THE PRESENCE OF HIV; AND

16 ~~(3)~~ (5) THE DESIGNATED HOSPITAL INFECTIOUS
 17 DISEASE/COMMUNICABLE DISEASE OFFICER HAS MADE A DETERMINATION THAT
 18 THE TESTING OF BLOOD SAMPLES OR OTHER BODY FLUIDS OF THE PATIENT FOR
 19 THE PRESENCE OF ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)
 20 WOULD BE HELPFUL IN MANAGING THE RISK OF DISEASE AND HEALTH OUTCOME
 21 OF THE HEALTH CARE PROVIDER.

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

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

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

30 (D) WHEN THE DESIGNATED HOSPITAL INFECTIOUS
 31 DISEASE/COMMUNICABLE DISEASE OFFICER OBTAINS THE RESULTS OF AN HIV TEST
 32 CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF THIS
 33 SECTION, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
 34 DISEASE OFFICER SHALL DIRECTLY NOTIFY THE PATIENT OF THE RESULTS OF THE
 35 HIV TEST AND, TO THE EXTENT POSSIBLE, IN A MANNER THAT WILL PROTECT THE
 36 CONFIDENTIALITY OF THE HEALTH CARE PROVIDER AND THE PATIENT.

37 (E) IF THE RESULTS OF AN HIV TEST CONDUCTED IN ACCORDANCE WITH THE
 38 PROVISIONS OF SUBSECTION (C) OF THIS SECTION ARE POSITIVE, THE DESIGNATED
 39 HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL PROVIDE
 40 OR ARRANGE FOR THE PROVISION OF APPROPRIATE COUNSELING AND
 41 TREATMENT ~~RECOMMENDATIONS~~ RECOMMENDATIONS TO THE HEALTH CARE
 42 PROVIDER AND THE PATIENT.

5

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

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

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

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

15 (I) CONFIDENTIAL; AND

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

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

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

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

29 (I) A HEALTH CARE PROVIDER OR HOSPITAL OR DESIGNEE OF A HOSPITAL
30 ACTING IN GOOD FAITH TO PROVIDE NOTIFICATION OR MAINTAIN THE
31 CONFIDENTIALITY OF THE RESULTS OF A TEST CONDUCTED UNDER THIS SECTION
32 MAY NOT BE HELD LIABLE IN ANY CAUSE OF ACTION RELATED TO A BREACH OF
33 PATIENT OR HEALTH CARE PROVIDER CONFIDENTIALITY.

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

