
By: **Delegate Rzepkowski**
Introduced and read first time: February 19, 1999
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Providers - HIV Exposure - Patient Consent**

3 FOR the purpose of repealing a certain requirement that a certain patient give
4 informed consent to a certain blood test if a certain exposure involving the
5 patient and a health care provider occurs; requiring a physician, on request by a
6 certain health care provider, to order that a blood sample of a certain patient be
7 tested for the presence of HIV under certain circumstances; deeming a patient to
8 have consented to a test of the blood sample of the patient for the presence of
9 HIV under certain circumstances; requiring a physician, nurse, or designee of a
10 health care facility to inform a patient or a certain other person of a certain
11 presumption at a certain time; authorizing a certain health care provider or a
12 certain health care facility to seek a court order to require a certain patient to
13 submit to a certain test under certain circumstances; authorizing a physician or
14 a designee of the physician to collect and test a certain blood sample under
15 certain circumstances; and generally relating to the HIV exposure of certain
16 health care providers and patient consent.

17 BY repealing and reenacting, with amendments,
18 Article - Health - General
19 Section 18-338.1
20 Annotated Code of Maryland
21 (1994 Replacement Volume and 1998 Supplement)

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

24 **Article - Health - General**

25 18-338.1.

26 (a) (1) In this section the following words have the meanings indicated.

27 (2) (i) "Body fluids" means:

- 1
2 secretions; or
- 3
- 4 1. Any fluid containing visible blood, semen, or vaginal
5 sputum, tears, urine, or vomitus.
- 6 (ii) "Body fluid" does not include saliva, stool, nasal secretions,
7 sputum, tears, urine, or vomitus.
- 8 (3) "Exposure" means as between a patient and a health care 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, or
12 chapped skin, contact with blood or body fluids for a prolonged period; or
- 13 (iv) Intact skin contact with large amounts of blood or body fluids
14 for a prolonged period.
- 15 (4) "Health care facility" means a facility or office where health or
16 medical care is provided to patients by a health care provider, including:
- 17 (i) A health care facility as defined in § 19-101(f)(1) of this article;
- 18 (ii) A facility operated by the Department or a health officer;
- 19 (iii) The office of a health care provider; or
- 20 (iv) A medical laboratory.
- 21 (5) (i) "Health care provider" means a person who is licensed,
22 certified, or otherwise authorized under the Health Occupations Article to provide
23 health or medical care in:
- 24 1. The ordinary course of business or practice of a profession;
25 or
- 26 2. In an approved education or training program.
- 27 (ii) "Health care provider" includes any agent or employee of a
28 health care facility.
- 29 (iii) "Health care provider" does not include any individual who is
30 eligible to receive notification under the provisions of § 18-213 of this title, including
31 any law enforcement officer or any member of any fire department, ambulance
32 company, or rescue squad.
- 33 (6) "HIV" means the human immunodeficiency virus that causes
34 acquired immune deficiency syndrome.

1 (b) (1) [A physician,] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A
2 PHYSICIAN [nurse, or designee of a health care facility] shall, at the request of an
3 exposed health care provider, [seek the informed consent of a patient to test] ORDER
4 THAT a blood sample of the patient BE TESTED for the presence of HIV when:

5 [(1)] (I) There has been an exposure between the patient and the
6 health care provider;

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

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

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

16 (2) (I) A PATIENT IS DEEMED TO HAVE CONSENTED TO A TEST OF A
17 BLOOD SAMPLE OF THE PATIENT FOR THE PRESENCE OF HIV UNDER THE
18 CIRCUMSTANCES SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

19 (II) BEFORE PROVIDING A PATIENT WITH A HEALTH CARE SERVICE,
20 A PHYSICIAN, NURSE, OR DESIGNEE OF A HEALTH CARE FACILITY SHALL INFORM A
21 PATIENT OF THE PRESUMPTION SPECIFIED IN SUBPARAGRAPH (I) OF THIS
22 PARAGRAPH.

23 (c) If, by virtue of the physical or mental condition of a patient, a physician,
24 nurse, or designee of a health care facility is unable to [obtain the informed consent
25 of the patient to test a blood sample of the patient for the presence of HIV in
26 accordance with subsection (b) of this section,] INFORM THE PATIENT OF THE
27 PRESUMPTION SPECIFIED IN SUBSECTION (B)(2) OF THIS SECTION, the physician,
28 nurse, or designee of the health care facility shall [seek the consent of] INFORM any
29 person who has authority to consent to medical care for the patient as provided under
30 § 5-605 of this article or as otherwise authorized by law.

31 (C-1) IF A PATIENT REFUSES TO BE TESTED AS SPECIFIED IN SUBSECTION (B)
32 OF THIS SECTION, A HEALTH CARE PROVIDER, OR A HEALTH CARE FACILITY ON
33 BEHALF OF THE HEALTH CARE PROVIDER, MAY SEEK AN ORDER FROM A CIRCUIT
34 COURT TO REQUIRE THE PATIENT TO SUBMIT TO A TEST OF A BLOOD SAMPLE OF THE
35 PATIENT AND TO DISCLOSE THE RESULTS OF THE TEST IN ACCORDANCE WITH THIS
36 SECTION.

37 (d) If [the patient's informed consent has been obtained in accordance with
38 subsection (b) of this section or substitute consent has been obtained in accordance
39 with subsection (c) of this section and] the [other] requirements of subsection (b) OR
40 (C) of this section have been satisfied, a physician or the physician's designee shall:

1 (1) Collect the blood sample from the patient and health care provider
2 involved in the exposure; and

3 (2) Have the blood samples tested for the presence of HIV using a test
4 procedure approved by the Department.

5 (e) When a physician obtains the results of a test for the presence of HIV that
6 was conducted in accordance with the provisions of subsection (d) of this section, the
7 physician or a designee of the health care facility shall directly notify the health care
8 provider and the patient of the results of the patient's HIV test.

9 (f) The notification required under subsection (e) of this section shall:

10 (1) Be made within 48 hours of confirmation of the results of the
11 patient's HIV test;

12 (2) Include subsequent written confirmation of the possible exposure to
13 HIV; and

14 (3) To the extent possible, be made in a manner that will protect the
15 confidentiality of the health care provider and the patient.

16 (g) If the results of a test for the presence of HIV that was conducted in
17 accordance with the provisions of subsection (d) of this section are positive, a
18 physician or the physician's designee shall provide or arrange for the provision of
19 appropriate counseling to the health care provider and the patient.

20 (h) (1) Notwithstanding the provisions of Subtitle 3 of Title 4 of this article,
21 the records, including any physician order for an HIV test or the results of an HIV
22 test performed on a blood sample of a patient or a health care provider in accordance
23 with the provisions of this section may not be documented in the medical record of the
24 patient or health care provider.

25 (2) The health care facility shall maintain a separate confidential record
26 or incident report for all HIV tests performed on a blood sample of a patient or health
27 care provider in accordance with the provisions of this section.

28 (3) The health care facility shall adopt procedures for the confidential
29 testing of blood samples obtained in accordance with the provisions of this section.

30 (4) Except as provided in paragraph (5) of this subsection, the records,
31 including any physician order for an HIV test or the results, of any HIV test
32 performed on a blood sample of a patient or health care provider in accordance with
33 the provisions of this section are:

34 (i) Confidential; and

35 (ii) Not discoverable or admissible in evidence in any criminal, civil,
36 or administrative action.

1 (5) If the identity of the patient or any other information that could be
2 readily associated with the identity of the patient is not disclosed, the results of an
3 HIV test performed on a patient or health care provider in accordance with the
4 provisions of this section may be introduced into evidence in any criminal, civil, or
5 administrative action including the adjudication of a workers' compensation claim.

6 (i) The costs incurred in performing an HIV test on a patient or health care
7 provider in accordance with the provisions of this section shall be paid by the health
8 care facility.

9 (j) All health care facilities shall develop written procedures to implement the
10 provisions of this section.

11 (k) A health care provider or health care facility acting in good faith to provide
12 notification or maintain the confidentiality of the results of a test for the presence of
13 HIV in accordance with the provisions of this section may not be held liable in any
14 cause of action related to a breach of patient or health care provider confidentiality.

15 (l) The Medical and Chirurgical Faculty of the State of Maryland in
16 consultation with the Centers for Disease Control, the Maryland Hospital
17 Association, and the Department of Health and Mental Hygiene shall develop a
18 practice protocol for physicians who are infected with HIV.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1999.