
By: **Delegate Marriott (By Request - Baltimore City Administration) and Delegates Anderson, C. Davis, Doory, Hammen, Haynes, Kirk, Krysiak, McIntosh, and Paige Paige, Benson, Boteler, Boutin, Bromwell, Costa, Donoghue, Elliott, Frank, Hurson, Kach, Kullen, Mandel, Morhaim, Murray, Nathan-Pulliam, Oaks, Pendergrass, V. Turner, and Weldon**

Introduced and read first time: January 28, 2005
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 15, 2005

CHAPTER _____

1 AN ACT concerning

2 **Hospitals - HIV Testing - Public Safety Worker**

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 public safety worker to give certain notice to a
8 certain medical director under a certain circumstance; requiring a certain public
9 safety worker to give informed consent and submit a certain sample to be tested
10 for HIV; requiring a certain medical director to act as a certain intermediary
11 between a certain public safety worker and a certain officer; requiring certain
12 individuals to disclose the results of HIV tests conducted under this Act in a
13 certain manner to certain individuals and provide counseling to certain
14 individuals under certain circumstances; specifying the confidentiality of
15 certain medical records and other information; providing for a certain limitation
16 of liability for certain individuals under this Act; defining a public safety worker;
17 and generally relating to conducting tests on blood samples or other body fluids
18 of individuals in a hospital for the presence of antibodies to HIV.

19 BY repealing and reenacting, with amendments,
20 Article - Health - General
21 Section 18-338.3
22 Annotated Code of Maryland

1 (2000 Replacement Volume and 2004 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 18-338.3.

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

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

8 1. Any fluid containing visible blood, semen, or vaginal
9 secretions; or

10 2. Cerebrospinal fluid, synovial fluid, or amniotic fluid.

11 (ii) "Body fluids" does not include saliva, stool, nasal secretions,
12 sputum, tears, urine, or vomitus.

13 (3) "Exposure" means as between a patient and a health care provider:

14 (i) Percutaneous contact with blood or body fluids;

15 (ii) Mucocutaneous contact with blood or body fluids;

16 (iii) Open wound, including dermatitis, exudative lesions, or
17 chapped skin, contact with blood or body fluids for a prolonged period; or

18 (iv) Intact skin contact with large amounts of blood or body fluids
19 for a prolonged period.

20 (4) "First responder" means an individual who:

21 (i) Is licensed or certified under § 13-516 of the Education Article;
22 and

23 (ii) Provides services to an individual before the individual is
24 admitted to a hospital.

25 (5) (i) "Health care provider" means an individual who is licensed,
26 certified, or otherwise authorized under the Health Occupations Article or this article
27 to provide health or medical care in:

28 1. The ordinary course of business or practice of a profession;
29 or

30 2. An approved education or training program.

1 (ii) "Health care provider" includes any agent or employee of a
2 hospital.

3 (iii) "Health care provider" does not include an individual who is
4 eligible to receive notification under the provisions of § 18-213 of this title, including
5 any law enforcement officer or any member of any fire department, ambulance
6 company, or rescue squad.

7 (6) "HIV" means the human immunodeficiency virus that causes
8 acquired immune deficiency syndrome.

9 (7) "Hospital" has the meaning stated in § 19-301 of this article.

10 (8) "PUBLIC SAFETY WORKER" MEANS:

11 (I) ANY CAREER OR VOLUNTEER MEMBER OF A FIRE, RESCUE OR
12 EMERGENCY MEDICAL SERVICES DEPARTMENT, COMPANY, SQUAD, OR AUXILIARY;

13 (II) ANY LAW ENFORCEMENT OFFICER; OR

14 (III) THE STATE FIRE MARSHAL OR A SWORN MEMBER OF THE
15 STATE FIRE MARSHAL'S OFFICE.

16 (b) Notwithstanding the provisions of § 18-338.1 of this subtitle, the
17 designated infectious disease/communicable disease officer of a hospital shall order a
18 test for the presence of antibodies to the human immunodeficiency virus (HIV) under
19 subsection (d) of this section when:

20 (1) There has been an exposure in a hospital between a patient and a
21 health care provider, [or] an exposure between the patient and a first responder, OR
22 AN EXPOSURE BETWEEN A PATIENT AND A PUBLIC SAFETY WORKER before
23 admission of the patient to a hospital, that, in accordance with the Centers for
24 Disease Control and Prevention recommendations, would warrant recommending or
25 offering chemoprophylaxis treatment for the health care provider, [or] first
26 responder, OR PUBLIC SAFETY WORKER;

27 (2) Informed consent, or substitute consent as required under §
28 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the
29 presence of HIV was sought and the patient was unavailable or unable to consent;

30 (3) (i) In accordance with hospital procedures, the health care
31 provider involved in the exposure has given prompt notice of the exposure to the
32 designated hospital infectious disease/communicable disease officer where the
33 exposure occurred; or

34 (ii) 1. The first responder involved in the exposure has given
35 prompt notice to the medical director with jurisdiction over the first responder; [and]

1 the HIV test and, to the extent possible, in a manner that will protect the
2 confidentiality of the health care provider, [or] the first responder, OR THE PUBLIC
3 SAFETY WORKER and the patient.

4 (f) If the results of an HIV test conducted in accordance with the provisions of
5 subsection (d) of this section are positive, the designated hospital infectious
6 disease/communicable disease officer shall provide or arrange for the provision of
7 appropriate counseling and treatment recommendations to the health care provider,
8 [or] first responder, OR PUBLIC SAFETY WORKER and the patient.

9 (g) (1) Notwithstanding the provisions of Title 4, Subtitle 3 of this article,
10 the medical records, including any physician order for an HIV test or the results of an
11 HIV test conducted under this section, may not be documented in the medical record
12 of the patient, health care provider, [or] first responder, OR PUBLIC SAFETY
13 WORKER.

14 (2) The hospital where the exposure occurred shall maintain a separate
15 confidential record or incident report for all HIV tests conducted under this section.

16 (3) Each hospital shall adopt procedures for the confidential HIV testing
17 of blood samples or other body fluids used or collected for purposes of this section.

18 (4) Except as provided in paragraph (5) of this subsection, the medical
19 records, including any physician order for an HIV test or the results of any HIV test
20 conducted under this section, are:

21 (i) Confidential; and

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

24 (5) If the identity of the patient or any other information that could be
25 readily associated with the identity of the patient is not disclosed, the results of an
26 HIV test conducted on a patient for purposes of this section may be introduced into
27 evidence in any criminal, civil, or administrative action including the adjudication of
28 a workers' compensation claim.

29 (h) The costs incurred in performing an HIV test on a patient in accordance
30 with the provisions of this section shall be paid by the hospital.

31 (i) Each hospital shall develop written procedures to implement the
32 provisions of this section.

33 (j) A health care provider, first responder, PUBLIC SAFETY WORKER, or
34 hospital or designee of a hospital acting in good faith to provide notification or
35 maintain the confidentiality of the results of a test conducted under this section may
36 not be held liable in any cause of action related to a breach of patient, health care
37 provider, [or] first responder, OR PUBLIC SAFETY WORKER confidentiality.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2005.