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By: **Delegates Morhaim, Bozman, Cardin, Conway, Costa, Goldwater, Moe, Parrott, Stull, and Zirkin**

Introduced and read first time: February 9, 2005

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Hospitals - HIV Testing - Consent - Court Order**

3 FOR the purpose of requiring certain individuals in a hospital to order tests on a  
4 blood sample already obtained from a patient for the presence of antibodies to  
5 the human immunodeficiency virus (HIV) under certain circumstances;  
6 authorizing certain individuals to petition a certain court for an order requiring  
7 a certain patient to provide a blood sample for HIV testing and disclosure of the  
8 test results under certain circumstances; providing that certain individuals in a  
9 hospital are not required to notify a certain patient of the results of an HIV test  
10 under certain circumstances; and generally relating to HIV testing on blood  
11 samples from individuals in a hospital.

12 BY repealing and reenacting, with amendments,  
13 Article - Health - General  
14 Section 18-338.3  
15 Annotated Code of Maryland  
16 (2000 Replacement Volume and 2004 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 18-338.3.

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

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

23 1. Any fluid containing visible blood, semen, or vaginal  
24 secretions; or

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

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

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

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

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

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

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

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

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

13 (ii) Provides services to an individual before the individual is  
14 admitted to a hospital.

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

20                   2.       An approved education or training program.

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

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

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

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

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

6 (2) (I) Informed consent, or substitute consent as required under §  
7 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the  
8 presence of HIV was sought and the patient was unavailable or unable to consent; OR

9 (II) INFORMED CONSENT, OR SUBSTITUTE CONSENT AS REQUIRED  
10 UNDER § 18-338.1(C) OF THIS TITLE, OF THE PATIENT TO TEST A BLOOD SAMPLE  
11 ALREADY OBTAINED FROM THE PATIENT FOR THE PRESENCE OF HIV WAS SOUGHT  
12 AND THE PATIENT REFUSED;

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

22 (4) The health care provider or first responder involved in the exposure  
23 has given informed consent and has submitted a blood sample to be tested for the  
24 presence of HIV; and

25 (5) The designated hospital infectious disease/communicable disease  
26 officer has made a determination, in accordance with the Centers for Disease Control  
27 and Prevention recommendations, that the testing of blood samples or other body  
28 fluids of the patient for the presence of antibodies to the human immunodeficiency  
29 virus (HIV) would be helpful in managing the risk of disease and health outcome of  
30 the health care provider or first responder.

31 (c) If there has been an exposure between a first responder and an individual  
32 before the admission of the individual to a hospital:

33 (1) The first responder shall give notice to the first responder's medical  
34 director in accordance with subsection (b)(3)(ii)1 of this section;

4 (d) If the requirements of subsections (b) and (c) of this section are satisfied,  
5 the designated hospital infectious disease/communicable disease officer shall order  
6 tests to be conducted for the presence of antibodies to the human immunodeficiency  
7 virus (HIV) using a test procedure approved by the Department on:

8 (1) Blood samples already obtained from the patient; or

9 (2) Blood samples or other body fluids collected for the purpose of HIV  
10 testing under this section.

11 (E) IF A BLOOD SAMPLE ALREADY OBTAINED FROM THE PATIENT IS  
12 UNAVAILABLE AND THE PATIENT HAS REFUSED TO CONSENT TO BLOOD TESTING  
13 FOR THE PRESENCE OF HIV, THE INDIVIDUAL INVOLVED IN THE EXPOSURE OR THE  
14 EMPLOYER OF THE INDIVIDUAL INVOLVED IN THE EXPOSURE MAY PETITION THE  
15 CIRCUIT COURT IN THE COUNTY OR CITY IN WHICH THE PATIENT RESIDES OR THE  
16 HOSPITAL IN WHICH THE PATIENT IS BEING TREATED FOR AN ORDER REQUIRING  
17 THE PATIENT TO:

18 (1) PROVIDE A BLOOD SAMPLE; AND

19 (2) DISCLOSE THE TEST RESULTS IN ACCORDANCE WITH THIS SECTION.

20 (e) (F) When the designated hospital infectious disease/communicable  
21 disease officer obtains the results of an HIV test conducted in accordance with the  
22 provisions of subsection (d) OR (E) of this section[,]:

23 (1) [the] THE designated hospital infectious disease/communicable  
24 disease officer shall directly notify the patient of the results of the HIV test and, to  
25 the extent possible, in a manner that will protect the confidentiality of the health care  
26 provider or the first responder and the patient; OR

27 (2) THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE  
28 DISEASE OFFICER IS NOT REQUIRED TO NOTIFY THE PATIENT OF THE RESULTS OF  
29 THE HIV TEST IF THE PATIENT HAS DECLINED NOTIFICATION.

30        [(f)]        (G)        [If] EXCEPT AS PROVIDED IN SUBSECTION (F)(2) OF THIS SECTION, IF  
31 the results of an HIV test conducted in accordance with the provisions of subsection  
32 (d) OR (E) of this section are positive, the designated hospital infectious  
33 disease/communicable disease officer shall provide or arrange for the provision of  
34 appropriate counseling and treatment recommendations to the health care provider  
35 or first responder and the patient.

36     [(g)]     (H)     (1)     Notwithstanding the provisions of Title 4, Subtitle 3 of this  
37 article, the medical records, including any physician order for an HIV test or the  
38 results of an HIV test conducted under this section, may not be documented in the  
39 medical record of the patient, health care provider, or first responder.

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

8 (i) Confidential; and

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

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

18       [(i)]       (J)        Each hospital shall develop written procedures to implement the  
19 provisions of this section.

20       [(j)]       (K)       A health care provider, first responder, or hospital or designee of a  
21 hospital acting in good faith to provide notification or maintain the confidentiality of  
22 the results of a test conducted under this section may not be held liable in any cause  
23 of action related to a breach of patient, health care provider, or first responder  
24 confidentiality.

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