
By: **Delegates Morhaim, Bozman, Cardin, Conway, Costa, Goldwater, Moe, Parrott, Stull, and Zirkin** **Zirkin, Benson, Boteler, Bromwell, Donoghue, Frank, Hammen, Hubbard, Hurson, Kach, Kullen, Mandel, Murray, Nathan-Pulliam, Oaks, Pendergrass, Rudolph, V. Turner, and Weldon**

Introduced and read first time: February 9, 2005
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: April 3, 2005

CHAPTER _____

1 AN ACT concerning

2 **Hospitals - HIV Testing - Consent –~~Court Order~~ and Public Safety Workers**

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 requiring certain individuals in a hospital to order tests to be conducted on blood
7 samples of certain public safety workers for the presence of antibodies to the
8 human immunodeficiency virus (HIV) under certain circumstances; requiring
9 that, for a certain test to be conducted, a public safety worker must give certain
10 notice to a certain medical director, give certain informed consent, and submit a
11 certain sample to be tested; requiring a certain medical director to act as a
12 certain intermediary between a certain public safety worker and a certain
13 officer; providing for a certain limitation of liability for certain individuals;
14 authorizing certain individuals to petition a certain court for an order requiring
15 a certain patient to provide a blood sample for HIV testing and disclosure of the
16 test results under certain circumstances; providing that certain individuals in a
17 hospital are not required to notify a certain patient of the results of an HIV test
18 under certain circumstances; requiring that certain patients be informed of
19 certain laws under certain circumstances; requiring certain individuals to
20 attempt to notify certain patients of the results of certain tests in a certain
21 manner and provide counseling to certain individuals under certain
22 circumstances; requiring the Department of Health and Mental Hygiene and the
23 Maryland Institute for Emergency Medical Services Systems to jointly develop
24 certain regulations on the collection of certain information; defining a certain
25 term; requiring the Department and the Maryland Institute for Emergency

1 Medical Services Systems to report certain information to the Governor and the
2 General Assembly on or before certain dates; and generally relating to HIV
3 testing on blood samples from individuals in a hospital.

4 BY repealing and reenacting, with amendments,
5 Article - Health - General
6 Section 18-338.3
7 Annotated Code of Maryland
8 (2000 Replacement Volume and 2004 Supplement)

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

11 **Article - Health - General**

12 18-338.3.

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

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

15 1. Any fluid containing visible blood, semen, or vaginal
16 secretions; or

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

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

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

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

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

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

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

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

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

30 (ii) Provides services to an individual before the individual is
31 admitted to a hospital.

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

4 1. The ordinary course of business or practice of a profession;
 5 or

6 2. An approved education or training program.

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

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

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

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

16 (8) "PUBLIC SAFETY WORKER" MEANS:

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

19 (II) A LAW ENFORCEMENT OFFICER; OR

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

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

26 (1) There has been an exposure in a hospital between a patient and a
 27 health care provider, ~~or~~ an exposure between the patient and a first responder, OR AN
 28 EXPOSURE BETWEEN A PATIENT AND A PUBLIC SAFETY WORKER before admission of
 29 the patient to a hospital, that, in accordance with the Centers for Disease Control and
 30 Prevention recommendations, would warrant recommending or offering
 31 chemoprophylaxis treatment for the health care provider, ~~or~~ first responder, OR
 32 PUBLIC SAFETY WORKER;

33 (2) (I) Informed consent, or substitute consent as required under §
 34 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the
 35 presence of HIV was sought and the patient was unavailable or unable to consent; OR

1 (II) INFORMED CONSENT, OR SUBSTITUTE CONSENT AS REQUIRED
2 UNDER § 18-338.1(C) OF THIS TITLE, OF THE PATIENT TO TEST A BLOOD SAMPLE
3 ALREADY OBTAINED FROM THE PATIENT FOR THE PRESENCE OF HIV WAS SOUGHT,
4 ~~AND THE PATIENT REFUSED,~~ AND THE PATIENT WAS INFORMED OF THE PROVISIONS
5 OF THIS SUBSECTION;

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

10 (ii) 1. A. The first responder involved in the exposure has
11 given prompt notice to the medical director with jurisdiction over the first responder;
12 ~~and~~ OR

13 B. THE PUBLIC SAFETY WORKER INVOLVED IN THE
14 EXPOSURE HAS GIVEN PROMPT NOTICE TO THE MEDICAL DIRECTOR WITH
15 JURISDICTION OVER THE PUBLIC SAFETY WORKER; AND

16 2. The medical director has given prompt notice to the
17 designated hospital infectious disease/communicable disease officer where the patient
18 is admitted;

19 (4) The health care provider, ~~or~~ first responder, OR PUBLIC SAFETY
20 WORKER involved in the exposure has given informed consent and has submitted a
21 blood sample to be tested for the presence of HIV; and

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

28 (c) If there has been an exposure between a first responder and an individual
29 OR A PUBLIC SAFETY WORKER AND AN INDIVIDUAL before the admission of the
30 individual to a hospital:

31 (1) The first responder OR PUBLIC SAFETY WORKER shall give notice to
32 the first responder's OR PUBLIC SAFETY WORKER'S medical director in accordance
33 with subsection (b)(3)(ii)1 of this section;

34 (2) The medical director shall act as an intermediary at all times
35 between the first responder OR PUBLIC SAFETY WORKER and the designated hospital
36 infectious disease/communicable disease officer; and

37 (3) The medical director and the designated hospital infectious
38 disease/communicable disease officer shall ensure that all communications and
39 information related to the exposure of the first responder OR PUBLIC SAFETY
40 WORKER are confidential.

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

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

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

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

15 ~~(1) PROVIDE A BLOOD SAMPLE; AND~~

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

17 ~~{(e)}~~ ~~(F)~~ When the designated hospital infectious disease/communicable
 18 disease officer obtains the results of an HIV test conducted in accordance with the
 19 provisions of subsection (d) ~~OR (E)~~ of this section~~;~~:

20 ~~(1)~~ ~~{the}~~ ~~THE~~ designated hospital infectious disease/communicable
 21 disease officer shall ATTEMPT TO directly notify the patient of the results of the HIV
 22 test and, to the extent possible, in a manner that will protect the confidentiality of the
 23 health care provider, ~~or~~ the first responder, OR THE PUBLIC SAFETY WORKER and the
 24 patient; ~~OR~~

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

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

34 ~~{(g)}~~ ~~(H)~~ (1) Notwithstanding the provisions of Title 4, Subtitle 3 of this
 35 article, the medical records, including any physician order for an HIV test or the
 36 results of an HIV test conducted under this section, may not be documented in the
 37 medical record of the patient, health care provider, ~~or~~ first responder, OR PUBLIC
 38 SAFETY WORKER.

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

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

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

8 (i) Confidential; and

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

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

16 ~~{h}~~ ~~(h)~~ 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}~~ ~~(i)~~ Each hospital shall develop written procedures to implement the
19 provisions of this section.

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That:

26 (a) The Department of Health and Mental Hygiene and the Maryland
27 Institute for Emergency Medical Services Systems jointly shall develop regulations
28 establishing procedures to collect information by county on exposures, as defined by §
29 18-338.3(a) of the Health - General Article and refusals to consent by a patient, as
30 described in § 18-338.3(b)(2)(ii) of the Health - General Article, as enacted by Section
31 1 of this Act.

32 (b) The Department of Health and Mental Hygiene and the Maryland
33 Institute for Emergency Medical Services Systems shall report the information
34 described in subsection (a) of this section to the Governor and, in accordance with §
35 2-1246 of the State Government Article, to the General Assembly on or before the
36 following dates:

37 (1) December 1, 2005;

1 (2) December 1, 2006;

2 (3) December 1, 2007; and

3 (4) December 1, 2008.

4 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect October 1, 2005.