
By: **Senator McFadden (By Request - Baltimore City Administration)**

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Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 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~~; requiring certain first responders or
14 public safety officers to be tested for a certain disease within a certain number of
15 hours; providing for the disclosure or nondisclosure of certain information under
16 certain circumstances; requiring a certain medical director to arrange or provide
17 counseling to certain individuals under certain circumstances; specifying the
18 confidentiality of certain medical records and other information; providing for a
19 certain limitation of liability for certain individuals under this Act; requiring
20 individuals in a hospital to make a certain report to the Department of Health
21 and Mental Hygiene concerning the conducting of certain tests by the hospital;
22 providing a certain criminal and civil penalty for violations of certain provisions
23 of this Act; requiring the Department to submit a certain report to the Governor
24 and the General Assembly on or before a certain date each year; defining a
25 public safety worker; and generally relating to conducting tests on blood
26 samples or other body fluids of individuals in a hospital for the presence of
27 antibodies to HIV.

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

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

8 **Article - Health - General**

9 18-338.3.

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

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

12 1. Any fluid containing visible blood, semen, or vaginal
13 secretions; or

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

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

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

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

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

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

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

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

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

27 (ii) Provides services to an individual before the individual is
28 admitted to a hospital.

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

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

3 2. THE PUBLIC SAFETY WORKER INVOLVED IN THE
4 EXPOSURE HAS GIVEN PROMPT NOTICE TO THE MEDICAL DIRECTOR WITH
5 JURISDICTION OVER THE PUBLIC SAFETY WORKER; AND

6 [2.] 3. The medical director has given prompt notice to the
7 designated hospital infectious disease/communicable disease officer where the patient
8 is admitted;

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

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

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

21 (1) The first responder OR PUBLIC SAFETY WORKER shall give notice to
22 the first responder's OR PUBLIC SAFETY WORKER'S medical director in accordance
23 with subsection (b)(3)(ii)1 AND 2 of this section;

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

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

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

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

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

1 (e) When the designated hospital infectious disease/communicable disease
2 officer obtains the results of an HIV test conducted in accordance with the provisions
3 of subsection (d) of this section, the designated hospital infectious
4 disease/communicable disease officer shall directly notify the patient of the results of
5 the HIV test and, to the extent possible, in a manner that will protect the
6 confidentiality of the health care provider, [or] the first responder, OR THE PUBLIC
7 SAFETY WORKER and the patient.

8 (F) (1) A FIRST RESPONDER OR PUBLIC SAFETY WORKER SHALL BE TESTED,
9 TO THE EXTENT PRACTICABLE, WITHIN 24 HOURS OF A REPORTED OCCUPATIONAL
10 EXPOSURE.

11 (2) IF THE RESULT OF THE HIV TEST CONDUCTED UNDER PARAGRAPH
12 (1) OF THIS SUBSECTION IS:

13 (I) HIV-NEGATIVE, THE HIV TEST RESULTS FROM THE PATIENT
14 MAY BE DISCLOSED TO THE EXPOSED FIRST RESPONDER OR PUBLIC SAFETY
15 WORKER; OR

16 (II) HIV-POSITIVE, THE HIV TEST RESULTS FROM THE PATIENT
17 MAY NOT BE DISCLOSED TO THE EXPOSED FIRST RESPONDER OR PUBLIC SAFETY
18 WORKER.

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

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

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

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

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

36 (i) Confidential; and

37 (ii) Not discoverable or admissible in evidence in any criminal, civil,
38 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 conducted on a patient for purposes of this section may be introduced into
4 evidence in any criminal, civil, or administrative action including the adjudication of
5 a workers' compensation claim.

6 ~~(H)~~ (I) The costs incurred in performing an HIV test on a patient in
7 accordance with the provisions of this section shall be paid by the hospital.

8 ~~(I)~~ (J) Each hospital shall develop written procedures to implement the
9 provisions of this section.

10 ~~(J)~~ (K) A health care provider, first responder, PUBLIC SAFETY WORKER, or
11 hospital or designee of a hospital acting in good faith to provide notification or
12 maintain the confidentiality of the results of a test conducted under this section may
13 not be held liable in any cause of action related to a breach of patient, health care
14 provider, [or] first responder, OR PUBLIC SAFETY WORKER confidentiality.

15 (L) A DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE
16 OFFICER SHALL REPORT TO THE DEPARTMENT, ON A FORM APPROVED BY THE
17 DEPARTMENT, EACH TIME THE HOSPITAL CONDUCTS AN HIV TEST ON:

18 (1) A PATIENT WHO WAS UNABLE TO GIVE INFORMED CONSENT TO
19 CONDUCT THE HIV TEST IN ACCORDANCE WITH THIS SECTION;

20 (2) A PATIENT WHOSE SURROGATE DECISION MAKER WAS UNABLE TO
21 GIVE INFORMED CONSENT TO CONDUCT THE HIV TEST ON THE PATIENT IN
22 ACCORDANCE WITH THIS SECTION; AND

23 (3) A PATIENT WHO GAVE THE PATIENT'S INFORMED CONSENT TO
24 CONDUCT THE HIV TEST ON THE PATIENT IN ACCORDANCE WITH THIS SECTION.

25 (M) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON THAT
26 RECEIVES NOTIFICATION OF THE RESULTS OF AN HIV TEST CONDUCTED UNDER
27 THIS SECTION MAY NOT KNOWINGLY DISCLOSE THE RESULTS OF THE TEST.

28 (2) A PERSON THAT VIOLATES THE PROVISIONS OF THIS SUBSECTION IS
29 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT
30 NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.

31 (N) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE DEPARTMENT SHALL
32 SUBMIT A REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE
33 STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY SUMMARIZING BY
34 COUNTY THE NUMBER OF PATIENTS:

35 (1) WHO WERE UNABLE TO GIVE INFORMED CONSENT TO A HOSPITAL
36 TO CONDUCT AN HIV TEST; AND

37 (2) WHOSE SURROGATE DECISION MAKERS WERE UNABLE TO GIVE
38 INFORMED CONSENT TO A HOSPITAL TO CONDUCT AN HIV TEST ON THE PATIENTS.

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