
By: **Senators Middleton, Britt, Colburn, Dyson, and Harris**
Introduced and read first time: February 4, 2005
Assigned to: Education, Health, and Environmental Affairs

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.

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

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

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

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

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

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

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

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

11 (ii) Provides services to an individual before the individual is
12 admitted to a hospital.

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

16 1. The ordinary course of business or practice of a profession;
17 or

18 2. An approved education or training program.

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

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

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

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

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

32 (1) There has been an exposure in a hospital between a patient and a
33 health care provider, or an exposure between the patient and a first responder before
34 admission of the patient to a hospital, that, in accordance with the Centers for

1 Disease Control and Prevention recommendations, would warrant recommending or
2 offering chemoprophylaxis treatment for the health care provider or first responder;

3 (2) (I) Informed consent, or substitute consent as required under §
4 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the
5 presence of HIV was sought and the patient was unavailable or unable to consent; OR

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

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

14 (ii) 1. The first responder involved in the exposure has given
15 prompt notice to the medical director with jurisdiction over the first responder; 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 involved in the exposure
20 has given informed consent and has submitted a blood sample to be tested for the
21 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.

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

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

32 (2) The medical director shall act as an intermediary at all times
33 between the first responder and the designated hospital infectious
34 disease/communicable disease officer; and

35 (3) The medical director and the designated hospital infectious
36 disease/communicable disease officer shall ensure that all communications and
37 information related to the exposure of the first responder 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 directly notify the patient of the results of the HIV test and, to
22 the extent possible, in a manner that will protect the confidentiality of the health care
23 provider or the first responder and the patient; OR

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

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

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

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

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

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

6 (i) Confidential; and

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

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

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

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

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

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