
By: **Senators Middleton, Britt, Colburn, Dyson, and Harris**
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Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
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CHAPTER _____

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~~ requiring that certain patients be informed of
11 certain laws under certain circumstances; and generally relating to HIV testing
12 on blood samples from individuals in a hospital.

13 BY repealing and reenacting, with amendments,
14 Article - Health - General
15 Section 18-338.3
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2004 Supplement)

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

20 **Article - Health - General**

21 18-338.3.

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

- 1 (2) (i) "Body fluids" means:
- 2 1. Any fluid containing visible blood, semen, or vaginal
3 secretions; or
- 4 2. Cerebrospinal fluid, synovial fluid, or amniotic fluid.
- 5 (ii) "Body fluids" does not include saliva, stool, nasal secretions,
6 sputum, tears, urine, or vomitus.
- 7 (3) "Exposure" means as between a patient and a health care provider:
- 8 (i) Percutaneous contact with blood or body fluids;
- 9 (ii) Mucocutaneous contact with blood or body fluids;
- 10 (iii) Open wound, including dermatitis, exudative lesions, or
11 chapped skin, contact with blood or body fluids for a prolonged period; or
- 12 (iv) Intact skin contact with large amounts of blood or body fluids
13 for a prolonged period.
- 14 (4) "First responder" means an individual who:
- 15 (i) Is licensed or certified under § 13-516 of the Education Article;
16 and
- 17 (ii) Provides services to an individual before the individual is
18 admitted to a hospital.
- 19 (5) (i) "Health care provider" means an individual who is licensed,
20 certified, or otherwise authorized under the Health Occupations Article or this article
21 to provide health or medical care in:
- 22 1. The ordinary course of business or practice of a profession;
23 or
- 24 2. An approved education or training program.
- 25 (ii) "Health care provider" includes any agent or employee of a
26 hospital.
- 27 (iii) "Health care provider" does not include an individual who is
28 eligible to receive notification under the provisions of § 18-213 of this title, including
29 any law enforcement officer or any member of any fire department, ambulance
30 company, or rescue squad.
- 31 (6) "HIV" means the human immunodeficiency virus that causes
32 acquired immune deficiency syndrome.
- 33 (7) "Hospital" has the meaning stated in § 19-301 of this article.

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

5 (1) There has been an exposure in a hospital between a patient and a
6 health care provider, or an exposure between the patient and a first responder before
7 admission of the patient to a hospital, that, in accordance with the Centers for
8 Disease Control and Prevention recommendations, would warrant recommending or
9 offering chemoprophylaxis treatment for the health care provider or first responder;

10 (2) (I) Informed consent, or substitute consent as required under §
11 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the
12 presence of HIV was sought and the patient was unavailable or unable to consent; OR

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

17 (3) THE PATIENT HAS BEEN INFORMED OF THE PROVISIONS OF THIS
18 SUBSECTION;

19 ~~(3)~~ (4) (i) In accordance with hospital procedures, the health care
20 provider involved in the exposure has given prompt notice of the exposure to the
21 designated hospital infectious disease/communicable disease officer where the
22 exposure occurred; or

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

25 2. The medical director has given prompt notice to the
26 designated hospital infectious disease/communicable disease officer where the patient
27 is admitted;

28 ~~(4)~~ (5) The health care provider or first responder involved in the
29 exposure has given informed consent and has submitted a blood sample to be tested
30 for the presence of HIV; and

31 ~~(5)~~ (6) The designated hospital infectious disease/communicable
32 disease officer has made a determination, in accordance with the Centers for Disease
33 Control and Prevention recommendations, that the testing of blood samples or other
34 body fluids of the patient for the presence of antibodies to the human
35 immunodeficiency virus (HIV) would be helpful in managing the risk of disease and
36 health outcome of the health care provider or first responder.

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

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

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

6 (3) The medical director and the designated hospital infectious
7 disease/communicable disease officer shall ensure that all communications and
8 information related to the exposure of the first responder are confidential.

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

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

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

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

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

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

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

28 ~~(1)~~ ~~{the}~~ ~~THE~~ designated hospital infectious disease/communicable
29 disease officer shall directly notify the patient of the results of the HIV test and, to
30 the extent possible, in a manner that will protect the confidentiality of the health care
31 provider or the first responder and the patient; ~~OR.~~

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

35 ~~{(f)}~~ ~~(G)~~ ~~{If}~~ ~~EXCEPT AS PROVIDED IN SUBSECTION (F)(2) OF THIS SECTION, IF~~
36 the results of an HIV test conducted in accordance with the provisions of subsection
37 (d) ~~OR (E)~~ of this section are positive, the designated hospital infectious
38 disease/communicable disease officer shall provide or arrange for the provision of

1 appropriate counseling and treatment recommendations to the health care provider
2 or first responder and the patient.

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

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

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

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

14 (i) Confidential; and

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

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

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

24 ~~{i}~~ ~~(J)~~ Each hospital shall develop written procedures to implement the
25 provisions of this section.

26 ~~{j}~~ ~~(K)~~ A health care provider, first responder, or hospital or designee of a
27 hospital acting in good faith to provide notification or maintain the confidentiality of
28 the results of a test conducted under this section may not be held liable in any cause
29 of action related to a breach of patient, health care provider, or first responder
30 confidentiality.

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

