

SENATE BILL 746

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By: **Senator Conway**

Introduced and read first time: February 12, 2007

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Human Immunodeficiency Virus – Test Counseling**

3 FOR the purpose of altering certain requirements for obtaining written informed
4 consent for human immunodeficiency virus (HIV) testing in accordance with
5 Department of Health and Mental Hygiene regulations; clarifying that an
6 informed consent for certain HIV testing be distinct from other consents;
7 altering the manner in which a certain patient identifying number is obtained;
8 requiring the Department to review and streamline certain regulations relating
9 to certain HIV test counseling requirements and to adopt or revise regulations
10 that address certain requirements; requiring the Department to report to the
11 Governor and General Assembly on or before a certain date; defining certain
12 terms; and generally relating to human immunodeficiency virus counseling and
13 testing procedures.

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 18–336
17 Annotated Code of Maryland
18 (2005 Replacement Volume and 2006 Supplement)

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

21 **Article – Health – General**

22 18–336.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

4 (3) "Health care provider" means a physician, nurse, or designee of a
5 health care facility.

6 (b) Except as provided in Title 11, Subtitle 1, Part II of the Criminal
7 Procedure Article or § 18-338.3 of this subtitle, before obtaining a fluid or tissue
8 sample from the body of an individual for the purpose of testing the fluid or tissue for
9 the presence of HIV infection, a health care provider shall:

10 (1) Obtain written informed consent from the individual [on a uniform
11 HIV informed consent form that the Department shall develop consistent with the
12 requirements of the Department] as established by regulations adopted by the
13 Department; and

14 (2) Provide the individual with pretest counseling, including:

15 (i) Education about HIV infection and methods for preventing
16 transmission;

17 (ii) Information about a physician's duty to warn; and

18 (iii) Assistance in accessing health care available to an
19 individual who tests positive for the HIV infection.

20 (c) Refusal to consent to the HIV antibody test or a positive test result may
21 not be used as the sole basis by an institution or laboratory to deny services or
22 treatment.

23 (d) If the individual is unable to give informed consent, substitute consent
24 may be given under § 5-605 of this article.

25 (e) A physician or physician's designee who obtains a positive result from an
26 HIV antibody test conducted in accordance with the provisions of subsection (b) of this
27 section shall:

28 (1) Notify the individual from whom the fluid or tissue sample was
29 obtained of the positive result;

1 (2) Provide the individual with a copy of the Department's publication
2 describing available counseling services;

3 (3) Counsel the individual to inform all sexual and needle-sharing
4 partners of the individual's positive HIV status;

5 (4) Offer to assist in notifying the individual's sexual and
6 needle-sharing partners; and

7 (5) If necessary, take action appropriate to comply with § 18-337 of
8 this subtitle.

9 (f) The informed consent [document] **FOR HIV DIAGNOSTIC TESTING** shall
10 be distinct [and separate] from all other [consent forms] **CONSENTS**.

11 (g) A patient identifying number obtained from an anonymous [and
12 confidential test] site which is approved by the Department of Health and Mental
13 Hygiene may be evidence of a patient's informed consent in lieu of a patient's
14 signature.

15 **SECTION 2. AND BE IT FURTHER ENACTED, That:**

16 (a) In consultation with HIV infected patients, AIDS advocacy organizations,
17 and other stakeholders, the Department of Health and Mental Hygiene shall review
18 and streamline the regulations relating to the pre-HIV test counseling and post-HIV
19 test counseling requirements in health care settings. The Department shall adopt or
20 revise the regulations that address these requirements.

21 (b) The Department of Health and Mental Hygiene shall report to the
22 Governor and the General Assembly on or before January 1, 2008, in accordance with
23 § 2-1246 of the State Government Article, on the changes recommended to be made in
24 regulations of the Department under subsection (a) of this section.

25 **SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect**
26 **June 1, 2007.**