

## CHAPTER 182

(Senate Bill 746)

AN ACT concerning

### **Human Immunodeficiency Virus – Test Counseling and Informed Consent – Review**

FOR the purpose of ~~altering certain requirements for obtaining written informed consent for human immunodeficiency virus (HIV) testing in accordance with Department of Health and Mental Hygiene regulations; clarifying that an informed consent for certain HIV testing be distinct from other consents; altering the manner in which a certain patient identifying number is obtained; requiring the Department to review and streamline certain regulations relating to certain HIV test counseling requirements and to adopt or revise regulations that address certain requirements; requiring the AIDS Administration to convene a workgroup including certain stakeholders to review and make recommendations regarding certain Centers for Disease Control and Prevention guidelines regarding HIV/AIDS; requiring the workgroup to review and consider certain best practices and research and data; requiring the Department workgroup to report to the Governor and General Assembly on or before a certain date; defining certain terms;~~ and generally relating to human immunodeficiency virus counseling and ~~testing~~ informed consent procedures.

BY repealing and reenacting, ~~with~~ without amendments,  
Article – Health – General  
Section 18–336  
Annotated Code of Maryland  
(2005 Replacement Volume and 2006 Supplement)

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

#### **Article – Health – General**

18–336.

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

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

(3) “Health care provider” means a physician, nurse, or designee of a health care facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

(a) The AIDS Administration shall convene a workgroup that includes HIV infected individuals, HIV/AIDS advocacy organizations, HIV service providers, and other stakeholders to review and make recommendations regarding the Centers for Disease Control and Prevention guidelines regarding HIV/AIDS, including the guidelines relating to pre- and post-test counseling and written informed consent. The workgroup shall review and consider best practices and research and data regarding treatment for HIV/AIDS.

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

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

**Approved by the Governor, April 24, 2007.**