

CHAPTER 212

(Senate Bill 987)

AN ACT concerning

Maryland HIV/AIDS Reporting Act

FOR the purpose of requiring certain physicians to report certain information to the Secretary of Health and Mental Hygiene and to certain health officers; requiring certain laboratories to report certain information to the Secretary; requiring certain institutions to report certain information to certain health officers; providing that certain reports, proceedings, records, or files are not discoverable and are not admissible in evidence in any civil action; making certain reports confidential; repealing certain authority for compiling or distributing certain lists of names of patients in certain reports; requiring certain custodians of public records to deny access to certain reports; establishing certain penalties for certain violations relating to the disclosure or acquisition of certain information; providing that a person is liable for actual damages arising out of certain offenses under certain circumstances; providing certain immunity from liability; defining certain terms; making this Act an emergency measure; and generally relating to reporting of diseases.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 18–201.1, 18–205, 18–207, and 18–215
Annotated Code of Maryland
(2005 Replacement Volume and 2006 Supplement)

BY adding to
Article – Health – General
Section 18–202.1
Annotated Code of Maryland
(2005 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 10–617(b)
Annotated Code of Maryland
(2004 Replacement Volume and 2006 Supplement)

Preamble

WHEREAS, The Ryan White HIV/AIDS Treatment Modernization Act of 2006 (H.R. 6143) became law on December 19, 2006, and the federal funding calculations for HIV care services will now be based on the names-based reporting of actual living HIV/AIDS cases; now, therefore

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

Article – Health – General

18–201.1.

(a) A physician who has diagnosed a patient under the physician's care with **HUMAN IMMUNODEFICIENCY VIRUS INFECTION OR** acquired immunodeficiency syndrome according to the current definition published in the morbidity and mortality weekly report by the Centers for Disease Control and Prevention of the Department of Health and Human Services shall submit immediately a report to the health officer for the county where the physician cares for that patient.

(b) The report shall:

- (1) Be on the form that the Secretary provides;
- (2) Identify the disease;
- (3) State the name, age, race, sex, and residence address of the patient; and
- (4) Be signed by the physician.

(c) (1) **A PHYSICIAN SHALL SUBMIT A REPORT AS DESCRIBED IN SUBSECTION (B) OF THIS SECTION TO THE SECRETARY WITHIN 48 HOURS OF THE BIRTH OF AN INFANT WHOSE MOTHER HAS TESTED POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS.**

(2) **IF A NEWBORN INFANT DOES NOT BECOME HIV POSITIVE AFTER 18 MONTHS FROM THE DATE THAT THE REPORT REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION WAS SUBMITTED, THE SECRETARY SHALL HAVE THE NEWBORN INFANT'S NAME REMOVED FROM THE HIV REGISTRY.**

- [(c)] (D) (1) All physician reports required under this section are:
- and
- (i) Confidential and subject to Title 4, Subtitle 1 of this article;
- (ii) Not medical records under Title 4, Subtitle 3 of this article, but are subject to the confidentiality requirements of Title 4, Subtitle 1 of this article.

(2) THE REPORTS AND ANY PROCEEDINGS, RECORDS, OR FILES RELATING TO THE REPORTS REQUIRED UNDER THIS SECTION ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION.

[(2)] (3) This subsection does not apply to a disclosure by the Secretary to another governmental agency performing its lawful duties pursuant to State or federal law where the Secretary determines the agency to whom the information is disclosed will maintain the confidentiality of the disclosure.

18-202.1.

(A) IN THIS SECTION, "INSTITUTION" INCLUDES:

- (1) A HOSPITAL;**
- (2) A NURSING HOME;**
- (3) A HOSPICE FACILITY;**
- (4) A MEDICAL CLINIC IN A CORRECTIONAL FACILITY;**
- (5) AN INPATIENT PSYCHIATRIC FACILITY; AND**
- (6) AN INPATIENT DRUG REHABILITATION FACILITY.**

(B) WHEN AN INSTITUTION HAS AN INDIVIDUAL IN THE CARE OF THE INSTITUTION WITH A DIAGNOSIS OF HUMAN IMMUNODEFICIENCY VIRUS OR ACQUIRED IMMUNODEFICIENCY SYNDROME ACCORDING TO THE CURRENT DEFINITION PUBLISHED IN THE MORBIDITY AND MORTALITY WEEKLY REPORT BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION, A CLINICAL OR INFECTION CONTROL PRACTITIONER ~~IMMEDIATELY~~ SHALL SUBMIT A REPORT

WITHIN 48 HOURS TO THE HEALTH OFFICER FOR THE COUNTY WHERE THE INSTITUTION IS LOCATED.

(C) THE REPORT SHALL:

(1) BE ON THE FORM THAT THE SECRETARY PROVIDES;

~~(1)~~ (2) IDENTIFY THE DISEASE;

~~(2)~~ (3) STATE THE NAME, AGE, RACE, SEX, AND RESIDENCE ADDRESS OF THE INDIVIDUAL WITH THE DISEASE;

~~(3)~~ (4) STATE THE NAME OF THE ADMINISTRATIVE HEAD OF THE INSTITUTION; AND

~~(4)~~ (5) STATE THE ADDRESS OF THE INSTITUTION.

(D) (1) ALL INSTITUTION REPORTS REQUIRED UNDER THIS SECTION ARE:

(I) CONFIDENTIAL AND SUBJECT TO TITLE 4, SUBTITLE 1 OF THIS ARTICLE; AND

(II) NOT MEDICAL RECORDS UNDER TITLE 4, SUBTITLE 3 OF THIS ARTICLE, BUT ARE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS OF TITLE 4, SUBTITLE 1 OF THIS ARTICLE.

(2) THE REPORTS AND ANY PROCEEDINGS, RECORDS, OR FILES RELATING TO THE REPORTS REQUIRED UNDER THIS SECTION ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION.

(3) THIS SUBSECTION DOES NOT APPLY TO A DISCLOSURE BY THE SECRETARY TO ANOTHER GOVERNMENTAL AGENCY PERFORMING ITS LAWFUL DUTIES IN ACCORDANCE WITH STATE OR FEDERAL LAW WHERE THE SECRETARY DETERMINES THE AGENCY TO WHOM THE INFORMATION IS DISCLOSED WILL MAINTAIN THE CONFIDENTIALITY OF THE DISCLOSURE.

18-205.

(a) In this section, “invasive disease” means a disease in which an organism is detected in a specimen taken from a normally sterile body site.

(b) (1) The director of a medical laboratory located in this State shall submit a report to the health officer for the county where the laboratory is located within 48 hours after an examination of a human specimen shows evidence of any disease or condition listed in subsection (c) of this section.

(2) The director of a medical laboratory located outside of this State that performs a medical laboratory test on a human specimen acquired from a person in this State shall submit a report to the Secretary within 48 hours after an examination of that specimen shows evidence of any disease or condition listed in subsection (c) of this section.

(c) The diseases or conditions reportable by a medical laboratory director under this section are:

- (1) Amoebiasis.
- (2) Anthrax.
- (3) Arbovirus infection (all types).
- (4) Bacteremia in newborns.
- (5) Botulism.
- (6) Brucellosis.
- (7) Campylobacter infection.
- (8) CD 4+ count[, if less than 200/MM3].
- (9) Chlamydia infection.
- (10) Cholera.
- (11) Coccidioidomycosis.
- (12) Creutzfeldt–Jakob Disease.
- (13) Cryptosporidiosis.

- (14) Cyclosporiasis.
- (15) Dengue fever.
- (16) Diphtheria.
- (17) Ehrlichiosis.
- (18) Encephalitis, infectious.
- (19) *E. Coli* 0157:H7 infection.
- (20) Giardiasis.
- (21) Gonorrhea.
- (22) *Haemophilus influenzae*, invasive disease.
- (23) Hansen disease (leprosy).
- (24) Hantavirus infection.
- (25) Hepatitis, viral, types A, B, C, and other types.
- (26) Human immunodeficiency virus infection.
- (27) Isosporiasis.
- (28) Legionellosis.
- (29) Leptospirosis.
- (30) Listeriosis.
- (31) Lyme disease.
- (32) Malaria.
- (33) Measles.
- (34) Meningococcal invasive disease.

- (35) Meningitis, infectious.
- (36) Microsporidiosis.
- (37) Mumps.
- (38) Pertussis.
- (39) Pesticide related illness.
- (40) Plague.
- (41) Poliomyelitis.
- (42) Psittacosis.
- (43) Q fever.
- (44) Rabies.
- (45) Ricin toxin.
- (46) Rocky Mountain spotted fever.
- (47) Rubella and congenital rubella syndrome.
- (48) Salmonellosis (nontyphoid fever types).
- (49) Severe acute respiratory syndrome.
- (50) Shiga-like toxin production.
- (51) Shigellosis.
- (52) Smallpox and other orthopox viruses.
- (53) Staphylococcal enterotoxin.
- (54) Streptococcal invasive disease, group A.
- (55) Streptococcal invasive disease, group B.

- (56) *Streptococcus pneumoniae*, invasive disease.
- (57) Syphilis.
- (58) Trichinosis.
- (59) Tuberculosis.
- (60) Tularemia.
- (61) Typhoid fever.
- (62) Varicella (chickenpox), fatal cases only.
- (63) Vibriosis, noncholera.
- (64) Viral hemorrhagic fevers (all types).
- (65) Yellow fever.
- (66) Yersiniosis.

(d) (1) When more than 1 specimen is taken from a patient during 1 disease episode, the director of the medical laboratory need not report every test result of a specimen that shows evidence of the same disease in that patient if:

- (i) At least 1 positive test result is reported; and
- (ii) The health officer has approved the reporting of less than all test results.

(2) The director of the medical laboratory need not report vibriosis, noncholera, under subsection (c)(62) of this section if the disease is found in a specimen obtained from the patient's teeth, gingival tissues, or oral mucosa.

(e) The report shall:

(1) Be either in the form that the Department prescribes or on the form that the Department provides; and

(2) State at a minimum:

(i) The date, type, and result of the test that shows evidence of a disease required to be reported;

(ii) [1. Except as provided in item 2 of this item, the] **THE** name, age, sex, and residence address of the patient from whom the specimen was taken; and

[2. For reports of human immunodeficiency virus infection and CD 4+ count under 200/MM3, the unique patient identifying number, age, sex, and zip code of residence of the patient; and]

(iii) The name and address of the physician who requested the test.

(f) This section does not relieve [an attending physician] **A PERSON** of the duty to report under § 18–201, § **18–201.1**, § **18–202**, **OR § 18–202.1** of this subtitle.

(g) (1) A health officer shall inform the Secretary of each laboratory examination report received under subsection (b)(1) of this section.

(2) The Secretary shall inform the health officer of the jurisdiction where the patient resides of a laboratory examination report received under this section from a medical laboratory located outside this State.

(h) The Secretary, a health officer, or an agent of the Secretary or health officer may discuss a laboratory report with the attending physician, but, if the physician is reasonably available, may communicate with a patient only with the consent of the attending physician.

(i) (1) **[All] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ALL** laboratory reports required under this section are:

(i) Confidential;

(ii) Not open to public inspection; and

(iii) Subject to subpoena or discovery in a criminal or civil proceeding only pursuant to a court order sealing the court record.

(2) REPORTS SUBMITTED UNDER THIS SECTION RELATING TO HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNODEFICIENCY SYNDROME ARE:

(I) CONFIDENTIAL AND SUBJECT TO TITLE 4, SUBTITLE 1 OF THIS ARTICLE; AND

(II) NOT MEDICAL RECORDS UNDER TITLE 4, SUBTITLE 3 OF THIS ARTICLE, BUT ARE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS OF TITLE 4, SUBTITLE 1 OF THIS ARTICLE.

(3) THE REPORTS AND ANY PROCEEDINGS, RECORDS, OR FILES SUBMITTED UNDER THIS SECTION RELATED TO HIV/AIDS ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION.

[(2)] (4) This subsection does not apply to a disclosure by the Secretary to another governmental agency performing its lawful duties as authorized by an act of the Maryland General Assembly or the United States Congress where the Secretary determines that:

(i) The agency to whom the information is disclosed will maintain the confidentiality of the disclosure; and

(ii) The disclosure is necessary to protect the public health or to prevent the spread of an infectious or contagious disease.

(j) To assure compliance with this section, the Secretary, a health officer, or an agent of the Secretary or health officer may inspect pertinent laboratory records.

[(k) (1)] Except as provided in paragraph (2) of this subsection, a director of a medical laboratory, the Secretary, a health officer, or an agent of the director, Secretary, or health officer may compile or distribute a reproducible list of any of the names of patients that are in reports required under this section.

(2) A director of a medical laboratory, the Secretary, a health officer, or an agent of the director, Secretary, or health officer may not compile or distribute a reproducible list of any of the names of patients in reports relating to human immunodeficiency virus infection or CD 4+ count, if less than 200/MM3.]

18–207.

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

(2) “HIV/AIDS case report” means an abstract of the medical record of a patient diagnosed with human immunodeficiency virus or acquired immunodeficiency syndrome which contains:

(i) Reasonably obtained patient demographic information, including **NAME AND** risk factors;

(ii) Relevant information on the:

1. Initial diagnosis;
2. Treatment and referral; and
3. Clinical condition; **AND**

(iii) Facility and other provider identification information[]; and

(iv) For reports of HIV, the unique identifier of the patient, but not the patient’s name[].

(3) “Report” means:

(i) A laboratory examination report for HIV or CD 4+ count as required by § 18–205 of this subtitle;

(ii) A [physician] report for **HIV OR** AIDS as required by § 18–201.1, § **18–202**, **OR** § **18–202.1** of this subtitle; or

(iii) An HIV/AIDS case report.

(4) “Designated anonymous HIV test site” means an HIV counseling and testing site approved by the Department of Health and Mental Hygiene as a site where a patient may have an anonymous HIV test.

(b) (1) Except for a designated anonymous HIV test site, a facility or office that orders a test for HIV and receives a test result that documents the presence of HIV as defined by the CDC laboratory criteria shall, upon the Secretary’s request, make available to the Secretary, or an agent of the Secretary, the information necessary to compile an HIV/AIDS case report.

(2) A report or information assembled or obtained under this section [shall be confidential]:

(I) **IS CONFIDENTIAL** and subject to Title 4, Subtitle 1 of this article[.]; **AND**

[(i)] (II) [A report in this section is] **IS** not a medical record under Title 4, Subtitle 3 of this article, but is subject to the confidentiality requirements of Title 4, Subtitle 1 of this article.

[(ii)] (III) This subsection does not apply to a disclosure by the Secretary to another governmental agency performing its lawful duties pursuant to State or federal law where the Secretary determines that the agency to whom the information is disclosed will maintain the confidentiality of the disclosure.

(3) THE REPORT AND ANY PROCEEDINGS, RECORDS, OR FILES RELATING TO THE REPORTS REQUIRED UNDER THIS SECTION ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION.

[(c) The director of a medical laboratory in which serum samples are tested for human immunodeficiency virus may not disclose, directly or indirectly, the identity of any individual tested for human immunodeficiency virus in any report submitted to the Department or the health officer for the county where the laboratory is located.]

18-215.

(a) In addition to any other penalty provided by law, a physician who fails to submit the report required under § 18-204 of this subtitle, on conviction, is subject to a fine not exceeding \$10.

(b) A person who violates any provision of § 18-202 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$50.

(c) In addition to any other penalty provided by law, a physician who fails to submit the report required under § 18-201 of this subtitle, on conviction, is subject to a fine not exceeding \$100.

(d) A person who violates any provision of § 18-205 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500.

(E) ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F) OF THIS SECTION, A~~ A HEALTH CARE PROVIDER OR ANY OTHER PERSON, INCLUDING AN

OFFICER OR EMPLOYEE OF A GOVERNMENTAL UNIT, WHO KNOWINGLY AND WILLFULLY DISCLOSES PERSONAL IDENTIFYING HEALTH INFORMATION ACQUIRED FOR THE PURPOSES OF HIV AND AIDS REPORTING UNDER § 18-201.1, § 18-202.1, § 18-205, OR § 18-207 OF THIS SUBTITLE TO ANY PERSON WHO IS NOT AUTHORIZED TO RECEIVE PERSONAL IDENTIFYING HEALTH INFORMATION UNDER THIS SUBTITLE OR OTHERWISE IN VIOLATION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$5,000 FOR EACH SUBSEQUENT CONVICTION FOR A VIOLATION OF ANY PROVISION OF THIS SUBTITLE.

(F) (1) A HEALTH CARE PROVIDER OR ANY OTHER PERSON, INCLUDING AN OFFICER OR EMPLOYEE OF A GOVERNMENTAL UNIT, WHO KNOWINGLY AND WILLFULLY REQUESTS OR OBTAINS INFORMATION ON HIV AND AIDS DEVELOPED UNDER § 18-201.1, § 18-202.1, § 18-205, OR § 18-207 OF THIS SUBTITLE UNDER FALSE PRETENSES OR THROUGH DECEPTION ON CONVICTION, IS SUBJECT TO:

(I) A FINE NOT EXCEEDING \$100,000, IMPRISONMENT FOR NOT MORE THAN 5 YEARS, OR BOTH; AND

(II) IF THE OFFENSE IS COMMITTED WITH INTENT TO SELL, TRANSFER, OR USE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION FOR COMMERCIAL ADVANTAGE, PERSONAL GAIN, OR MALICIOUS HARM, A FINE NOT EXCEEDING \$250,000, IMPRISONMENT FOR NOT MORE THAN 10 YEARS, OR BOTH.

(2) THIS SUBSECTION DOES NOT APPLY TO AN OFFICER OR EMPLOYEE OF A GOVERNMENTAL UNIT THAT IS CONDUCTING A CRIMINAL INVESTIGATION.

(G) A HEALTH CARE PROVIDER OR ANY OTHER PERSON WHO KNOWINGLY VIOLATES SUBSECTION (E) OR (F) OF THIS SECTION IS LIABLE FOR ACTUAL DAMAGES.

(H) A PHYSICIAN, LABORATORY, OR INSTITUTION AS DEFINED IN § 18-202.1 OF THIS SUBTITLE THAT IN GOOD FAITH SUBMITS A REPORT OR OTHERWISE DISCLOSES INFORMATION IN ACCORDANCE WITH THIS SUBTITLE IS NOT LIABLE IN ANY ACTION ARISING FROM THE DISCLOSURE OF THE INFORMATION.

Article – State Government

10–617.

(b) (1) In this subsection, “disability” has the meaning stated in Article 49B, § 20 of the Code.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains:

(i) medical or psychological information about an individual, other than an autopsy report of a medical examiner; [or]

(ii) personal information about an individual with a disability or an individual perceived to have a disability; **OR**

(III) ANY REPORT ON HUMAN IMMUNODEFICIENCY VIRUS OR ACQUIRED IMMUNODEFICIENCY SYNDROME SUBMITTED IN ACCORDANCE WITH TITLE 18 OF THE HEALTH – GENERAL ARTICLE.

(3) A custodian shall permit the person in interest to inspect the public record to the extent permitted under § 4–304(a) of the Health – General Article.

(4) [This] **EXCEPT FOR PARAGRAPH (2)(III) OF THIS SUBSECTION, THIS** subsection does not apply to:

(i) a nursing home as defined in § 19–1401 of the Health – General Article; or

(ii) an assisted living facility as defined in § 19–1801 of the Health – General Article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 24, 2007.