

SENATE BILL 826

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By: **Senator Conway**

Introduced and read first time: February 8, 2008

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **HIV Testing - Informed Consent and Treatment - Pregnant Women**

3 FOR the purpose of altering requirements for health care providers to obtain informed
4 consent for HIV testing; establishing procedures for referral for treatment and
5 supportive services for individuals who test positive; requiring local health
6 officers to make certain information available to certain health care providers;
7 requiring certain health care providers to notify pregnant women that they will
8 be tested for HIV infection as part of certain routine tests; requiring certain
9 health care providers to test certain patients; making a certain exception;
10 requiring certain health care providers to make certain offers of HIV testing
11 and provide referrals for certain treatment and services under certain
12 circumstances; requiring certain health care providers to offer certain HIV tests
13 and antiretroviral prophylaxis during labor and delivery under certain
14 circumstances; and generally relating to requirements for informed consent for
15 HIV testing, referrals for treatment, and HIV testing of pregnant women.

16 BY repealing and reenacting, with amendments,
17 Article - Health - General
18 Section 18-336 and 18-338.2
19 Annotated Code of Maryland
20 (2005 Replacement Volume and 2007 Supplement)

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

23 **Article - Health - General**

24 18-336.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (3) "HEALTH CARE FACILITY" HAS THE SAME MEANING STATED
4 IN § 18-338.2 OF THIS SUBTITLE.

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

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

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

15 (2) **DOCUMENT IN THE MEDICAL RECORD THE PROVISION OF**
16 **INFORMED CONSENT; AND**

17 [(2)] (3) Provide the individual with pretest counseling[, including:

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

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

21 (iii) Assistance in accessing health care available to an
22 individual who tests positive for the HIV infection] **AS PROVIDED IN REGULATIONS**
23 **ADOPTED BY THE DEPARTMENT.**

24 (C) **PRETEST COUNSELING MAY BE PROVIDED IN WRITING, VERBALLY,**
25 **BY VIDEO, OR A COMBINATION OF THESE STRATEGIES AS APPROPRIATE BASED**
26 **ON THE INDIVIDUAL'S INFORMATIONAL NEEDS AND TESTING HISTORY.**

27 (D) (1) **IF THE HIV TEST IS ORDERED AT A LOCATION THAT IS NOT A**
28 **HEALTH CARE FACILITY, INFORMED CONSENT SHALL BE IN WRITING AND**
29 **SIGNED BY THE INDIVIDUAL ON AN INFORMED CONSENT FOR HIV TESTING**
30 **DOCUMENT THAT IS APPROVED BY THE DEPARTMENT.**

31 (2) **THE INFORMED CONSENT FOR HIV TESTING DOCUMENT**
32 **SHALL BE DISTINCT AND SEPARATE FROM ALL OTHER CONSENT FORMS.**

1 **(3) A PATIENT IDENTIFYING NUMBER OBTAINED FROM AN**
2 **ANONYMOUS AND CONFIDENTIAL TEST SITE WHICH IS APPROVED BY THE**
3 **DEPARTMENT MAY BE EVIDENCE OF A PATIENT’S INFORMED CONSENT IN LIEU**
4 **OF A PATIENT’S SIGNATURE.**

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

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

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

13 (1) Notify the individual from whom the fluid or tissue sample was
14 obtained of the [positive] result; **AND**

15 **(2) IF THE TEST IS POSITIVE:**

16 [(2)] **(I)** Provide [the individual with a copy of the Department’s
17 publication describing available counseling services] **A REFERRAL FOR TREATMENT**
18 **AND SUPPORTIVE SERVICES;**

19 [(3)] **(II)** Counsel the individual to inform all sexual and
20 needle-sharing partners of the individual’s positive HIV status;

21 [(4)] **(III)** Offer to assist in notifying the individual’s sexual and
22 needle-sharing partners **OR REFER THE INDIVIDUAL TO THE LOCAL HEALTH**
23 **OFFICER TO ASSIST THE INDIVIDUAL WITH NOTIFYING THE INDIVIDUAL’S**
24 **SEXUAL AND NEEDLE-SHARING PARTNERS;** and

25 [(5)] **(IV)** If necessary, take action appropriate to comply with §
26 18–337 of this subtitle.

27 **(H) LOCAL HEALTH OFFICERS SHALL MAKE AVAILABLE TO HEALTH**
28 **CARE PROVIDERS IN THEIR JURISDICTION INFORMATION ON REFERRAL**
29 **RESOURCES FOR AN INDIVIDUAL WITH A POSITIVE HIV STATUS, INCLUDING**
30 **COUNSELING TESTING, NEEDS ASSESSMENT, TREATMENT, AND SUPPORT**
31 **SERVICES.**

32 [(f)] The informed consent document shall be distinct and separate from all
33 other consent forms.

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

5 18-338.2.

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

7 (2) "Health care facility" means a facility or office where health or
 8 medical care is provided to patients by a health care provider, including:

9 (i) A hospital as defined in § 19-301 of this article;

10 (ii) A facility operated by the Department or a health officer;
 11 and

12 (iii) The office of a health care provider.

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

15 (4) "HIV" means the human immunodeficiency virus that causes
 16 acquired immune deficiency syndrome (AIDS).

17 (5) "Prenatal care" means obstetric and gynecologic service performed
 18 as part of a prenatal care program, including:

19 (i) Screening;

20 (ii) Physical examination;

21 (iii) Laboratory and diagnostic testing procedures and
 22 interpretation; and

23 (iv) Counseling.

24 **(B) A HEALTH CARE PROVIDER WHO PROVIDES PRENATAL MEDICAL**
 25 **CARE SHALL:**

26 **(1) NOTIFY EACH PREGNANT PATIENT THAT SHE WILL BE TESTED**
 27 **FOR HIV INFECTION AS PART OF THE ROUTINE PRENATAL BLOOD TESTS;**

28 **(2) TEST THE PATIENT, UNLESS THE PATIENT DECLINES THE**
 29 **TEST;**

1 **(3) DOCUMENT IN THE MEDICAL RECORD IF THE PATIENT**
2 **DECLINES THE TEST;**

3 **(4) OFFER AN HIV TEST IN THE THIRD TRIMESTER TO A**
4 **PREGNANT WOMAN WHO WAS NOT TESTED EARLIER IN HER PREGNANCY;**

5 **(5) CONSIDER ROUTINELY OFFERING A REPEAT HIV TEST IN THE**
6 **THIRD TRIMESTER TO ALL PREGNANT WOMEN:**

7 **(I) AT HEALTH CARE FACILITIES IN AREAS OF HIGH RATES**
8 **OF HIV PREVALENCE; AND**

9 **(II) WHO ARE AT A HIGH RISK OF ACQUIRING HIV; AND**

10 **(6) PROVIDE A REFERRAL FOR TREATMENT AND SUPPORTIVE**
11 **SERVICES.**

12 **(C) A HEALTH CARE PROVIDER WHO PROVIDES LABOR AND DELIVERY**
13 **SERVICES TO PREGNANT WOMEN SHALL OFFER:**

14 **(1) A RAPID HIV TEST TO PREGNANT WOMEN WITH UNKNOWN OR**
15 **UNDOCUMENTED HIV STATUS DURING LABOR AND DELIVERY; AND**

16 **(2) ANTIRETROVIRAL PROPHYLAXIS PRIOR TO RECEIVING THE**
17 **RESULTS OF THE CONFIRMATORY TEST IF A RAPID HIV TEST DURING LABOR**
18 **AND DELIVERY IS POSITIVE.**

19 **[(b)] (D) (1) As part of a health care provider's patient acceptance**
20 **procedures or protocol, a health care provider shall provide a pregnant woman with**
21 **counseling concerning being tested for the presence of HIV as part of the woman's**
22 **prenatal care program.**

23 **(2) The counseling shall include:**

24 **(i) [Information that:**

25 1. **The pregnant woman is not required to consent to a**
26 **test for the presence of HIV; and**

27 2. **The pregnant woman will not be denied prenatal care**
28 **by the health care provider or at the health care facility because the woman refuses to**
29 **have a test performed] INFORMATION REQUIRED FOR PRETEST COUNSELING**
30 **UNDER § 18-336 OF THIS ARTICLE; and**

31 **(ii) Education on:**

1 1. The effect of a positive HIV test result on the
2 pregnant woman and the fetus concerning the risk of transmission of HIV to the fetus;
3 and

4 2. Recognized methods of reducing that risk, including
5 the use of pharmaceuticals during pregnancy known to reduce the risk of transmission
6 of HIV to the fetus.

7 [(c)] (E) (1) Except as otherwise provided in paragraph (2) of this
8 subsection, the record of an HIV test performed under this section is confidential and
9 not discoverable or admissible in evidence in any criminal, civil, or administrative
10 action.

11 (2) Provided that the identity or any other information that could
12 readily be associated with the identity of the pregnant woman is not disclosed, the
13 results of an HIV test performed under this section may be introduced into evidence in
14 any criminal, civil, or administrative action, including the adjudication of a workers'
15 compensation claim.

16 [(d)] (F) A health care provider, including a health care facility, acting in
17 good faith to provide the counseling required under subsection [(b)] (D) of this section
18 may not be held liable in any cause of action related to a woman's decision to consent
19 or not to consent to have an HIV test.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 July 1, 2008.