

SENATE BILL 826

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8lr2592

By: ~~Senator Conway~~ **Senators Conway and Harrington**

Introduced and read first time: February 8, 2008

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 14, 2008

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2008

CHAPTER _____

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 advise pregnant women that they have the right to
10 make a certain refusal; requiring certain health care providers to obtain certain
11 consent from pregnant women; requiring certain health care providers to test
12 certain patients; making a certain exception; requiring certain health care
13 providers to make certain offers of HIV testing and provide referrals for certain
14 treatment and services under certain circumstances; requiring certain health
15 care providers to offer certain HIV tests and antiretroviral prophylaxis during
16 labor and delivery under certain circumstances; and generally relating to
17 requirements for informed consent for HIV testing, referrals for treatment, and
18 HIV testing ~~of pregnant women~~.

19 BY repealing and reenacting, with amendments,
20 Article - Health - General
21 Section 18-336 and 18-338.2
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Health – General**

4 18–336.

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

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

8 (3) **“HEALTH CARE FACILITY” HAS THE SAME MEANING STATED**
9 **IN § 18–338.2 OF THIS SUBTITLE.**

10 [(3)] (4) “Health care provider” means a physician, nurse, or designee
11 of a health care facility.

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

16 (1) Obtain [written] informed consent from the individual [on a
17 uniform HIV informed consent form that the Department shall develop consistent with
18 the requirements of the Department as established by regulations adopted by the
19 Department] **AFTER:**

20 **(I) INFORMING THE INDIVIDUAL THAT AN HIV TEST WILL**
21 **BE ADMINISTERED; AND**

22 **(II) ADVISING THE INDIVIDUAL OF THE RIGHT TO REFUSE**
23 **THE HIV TEST WITHOUT PENALTY; [and]**

24 **(2) DOCUMENT IN THE MEDICAL RECORD THE PROVISION OF**
25 **INFORMED CONSENT; AND**

26 [(2)] (3) Provide the individual with pretest counseling[, including:

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

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

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

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

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

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

13 (3) **A PATIENT IDENTIFYING NUMBER OBTAINED FROM AN**
14 **ANONYMOUS AND CONFIDENTIAL TEST SITE WHICH IS APPROVED BY THE**
15 **DEPARTMENT MAY BE EVIDENCE OF A PATIENT'S INFORMED CONSENT IN LIEU**
16 **OF A PATIENT'S SIGNATURE.**

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

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

22 [(e)] (G) A physician or physician's designee who obtains a [positive] result
23 from an HIV antibody test conducted in accordance with the provisions of subsection
24 (b) of this section shall:

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

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

28 [(2)] (I) Provide [the individual with a copy of the Department's
29 publication describing available counseling services] **A REFERRAL FOR TREATMENT**
30 **AND SUPPORTIVE SERVICES;**

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

1 [(4) (III) Offer to assist in notifying the individual's sexual and
2 needle-sharing partners **OR REFER THE INDIVIDUAL TO THE LOCAL HEALTH**
3 **OFFICER TO ASSIST THE INDIVIDUAL WITH NOTIFYING THE INDIVIDUAL'S**
4 **SEXUAL AND NEEDLE-SHARING PARTNERS;** and

5 [(5) (IV) If necessary, take action appropriate to comply with §
6 18-337 of this subtitle.

7 **(H) LOCAL HEALTH OFFICERS SHALL MAKE AVAILABLE TO HEALTH**
8 **CARE PROVIDERS IN THEIR JURISDICTION INFORMATION ON REFERRAL**
9 **RESOURCES FOR AN INDIVIDUAL WITH A POSITIVE HIV STATUS, INCLUDING**
10 **COUNSELING TESTING, NEEDS ASSESSMENT, TREATMENT, AND SUPPORT**
11 **SERVICES.**

12 [(f) The informed consent document shall be distinct and separate from all
13 other consent forms.

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

18 18-338.2.

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

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

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

23 (ii) A facility operated by the Department or a health officer;
24 and

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

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

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

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

32 (i) Screening;

- 1 (ii) Physical examination;
- 2 (iii) Laboratory and diagnostic testing procedures and
3 interpretation; and
- 4 (iv) Counseling.

5 (B) A HEALTH CARE PROVIDER WHO PROVIDES PRENATAL MEDICAL
6 CARE SHALL:

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

9 (2) ADVISE THE PREGNANT PATIENT THAT SHE HAS THE RIGHT
10 TO REFUSE THE TEST FOR HIV INFECTION WITHOUT PENALTY;

11 (3) OBTAIN INFORMED CONSENT FROM THE PREGNANT PATIENT
12 TO TEST HER FOR HIV INFECTION;

13 (4) TEST THE PATIENT, UNLESS THE PATIENT DECLINES THE
14 TEST;

15 ~~(3)~~ (5) DOCUMENT IN THE MEDICAL RECORD IF THE PATIENT
16 DECLINES THE TEST;

17 ~~(4)~~ (6) OFFER AN HIV TEST IN THE THIRD TRIMESTER TO A
18 PREGNANT WOMAN WHO WAS NOT TESTED EARLIER IN HER PREGNANCY;

19 ~~(5)~~ (7) CONSIDER ROUTINELY OFFERING A REPEAT HIV TEST
20 IN THE THIRD TRIMESTER TO ALL PREGNANT WOMEN:

21 (I) AT HEALTH CARE FACILITIES IN AREAS OF HIGH RATES
22 OF HIV PREVALENCE; AND

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

24 ~~(6)~~ (8) PROVIDE A REFERRAL FOR TREATMENT AND
25 SUPPORTIVE SERVICES, INCLUDING CASE MANAGEMENT SERVICES.

26 (C) A HEALTH CARE PROVIDER WHO PROVIDES LABOR AND DELIVERY
27 SERVICES TO PREGNANT WOMEN SHALL OFFER:

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

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

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

8 (2) The counseling shall include:

9 (i) [Information that:

10 1. The pregnant woman is not required to consent to a
11 test for the presence of HIV; and

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

16 (ii) Education on:

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

20 2. Recognized methods of reducing that risk, including
21 the use of pharmaceuticals during pregnancy known to reduce the risk of transmission
22 of HIV to the fetus.

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.