

CHAPTER 222

(Senate Bill 826)

AN ACT concerning

HIV Testing – Informed Consent and Treatment – ~~Pregnant Women~~

FOR the purpose of altering requirements for health care providers to obtain informed consent for HIV testing; establishing procedures for referral for treatment and supportive services for individuals who test positive; requiring local health officers to make certain information available to certain health care providers; requiring certain health care providers to notify pregnant women that they will be tested for HIV infection as part of certain routine tests; requiring certain health care providers to advise pregnant women that they have the right to make a certain refusal; requiring certain health care providers to obtain certain consent from pregnant women; requiring certain health care providers to test certain patients; making a certain exception; requiring certain health care providers to make certain offers of HIV testing and provide referrals for certain treatment and services under certain circumstances; requiring certain health care providers to offer certain HIV tests and antiretroviral prophylaxis during labor and delivery under certain circumstances; and generally relating to requirements for informed consent for HIV testing, referrals for treatment, and HIV testing ~~of pregnant women.~~

BY repealing and reenacting, with amendments,
Article – Health – General
Section 18–336 and 18–338.2
Annotated Code of Maryland
(2005 Replacement Volume and 2007 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 FACILITY” HAS THE SAME MEANING STATED IN § 18–338.2 OF THIS SUBTITLE.**

~~[(3)] (4)~~ “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]~~ **AFTER:**

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

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

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

~~[(2)] (3)~~ 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] **AS PROVIDED IN REGULATIONS ADOPTED BY THE DEPARTMENT.**

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

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

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

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

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

[(e)] **(G)** 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; **AND**

(2) IF THE TEST IS POSITIVE:

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

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

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

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

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

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

(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.]

18-338.2.

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

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

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

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

and

(iii) The office of a health care provider.

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

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

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

(i) Screening;

(ii) Physical examination;

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

(iv) Counseling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The counseling shall include:

(i) [Information that:

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

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

(ii) Education on:

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

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

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

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

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

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

Approved by the Governor, April 24, 2008.