

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 2648

Session of  
1988

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MURPHY, MAINE AND ITKIN, AUGUST 8, 1988

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, AUGUST 8, 1988

AN ACT

1 Providing for confidentiality of sources of information that  
2 identify an individual as a person with AIDS or an AIDS-  
3 related condition, or a person who has consented to an HIV-  
4 related test; providing for exceptions for authorized sharing  
5 of such information; establishing a penalty; and making a  
6 repeal.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the AIDS Testing  
11 Confidentiality Act.

12 Section 2. Legislative intent.

13 The General Assembly finds that the incidence of acquired  
14 immune deficiency syndrome (AIDS) is increasing in this  
15 Commonwealth at an alarming rate. Controlling the incidence of  
16 this disease is best achieved by providing testing and  
17 counseling activities for those persons who are at risk of  
18 exposure to or who are carrying the human immunodeficiency virus  
19 (HIV), which is the causative agent of AIDS. Testing and

1 counseling are promoted by establishing confidentiality  
2 requirements which protect individuals from inappropriate  
3 disclosure and subsequent misuse of medical information  
4 regarding an AIDS diagnosis or HIV-related test. The General  
5 Assembly also finds that, since certain specific behaviors place  
6 a person at risk for contracting the virus, testing and  
7 counseling persons who are at risk for exposure to the virus  
8 makes the most efficient use of available funding. It is the  
9 intent of the General Assembly to promote confidential testing  
10 on an informed and voluntary basis in order to encourage those  
11 most in need to obtain testing and appropriate counseling.

12 Section 3. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "AIDS." Acquired immune deficiency syndrome, either as  
17 diagnosed by a physician or as defined for reporting purposes by  
18 the CDC.

19 "CDC." The Centers for Disease Control of the United States  
20 Public Health Service.

21 "Department." The Department of Health of the Commonwealth.

22 "HIV." The human immunodeficiency virus.

23 "HIV-related test." A test to determine the presence of HIV  
24 or HIV antibody or antigen.

25 "Individual health care provider." A physician, nurse,  
26 emergency medical services worker, chiropractor, psychologist,  
27 nurse-midwife, physician assistant, dentist or other person  
28 providing medical, nursing or other health care services of any  
29 kind.

30 "Institutional health care provider." A hospital, nursing

1 home, hospice, personal care boarding home, clinic, blood bank,  
2 plasmapheresis or other blood product center, organ or tissue  
3 bank, sperm bank, clinical laboratory or any health care  
4 institution required to be licensed in this Commonwealth.

5 "Person." A natural person, partnership, association, joint  
6 venture, trust or corporation.

7 "Subject." An individual or the individual's legal guardian  
8 when the individual is not legally capable of representing his  
9 own interests.

#### 10 Section 4. Confidentiality of records.

11 (a) Limitations on disclosure.--No person may disclose or be  
12 compelled to disclose the identity of an individual in  
13 connection with a diagnosis of AIDS or an AIDS-related condition  
14 in that individual, or treatment of that individual, or the  
15 result of an HIV-related test performed on that individual,  
16 except to the following persons:

17 (1) The subject of the diagnosis or test.

18 (2) A person specifically identified in a legally  
19 effective release which both:

20 (i) allows for the disclosure of the particular  
21 AIDS-related diagnosis or HIV-related test result; and

22 (ii) is executed by the subject of the diagnosis or  
23 test.

24 (3) An authorized agent or employee of an individual or  
25 institutional health care provider if both:

26 (i) the health care provider is authorized to obtain  
27 the diagnostic information or test results; and

28 (ii) the agent or employee has a medical need to  
29 know the information for the benefit of the patient.

30 (4) Individual health care providers involved in the

1 care of the individual with an AIDS-related condition or a  
2 positive test, when knowledge of the condition or test result  
3 is necessary to provide emergency care or treatment,  
4 appropriate to the individual.

5 (5) The department and the CDC, in accordance with  
6 reporting requirements.

7 (6) The department, if the information is essential to a  
8 disease control investigation.

9 (7) Institutional health care provider staff committees  
10 or licensing, accreditation or oversight review organizations  
11 which are conducting program monitoring, program evaluation  
12 or service reviews.

13 (8) An individual or institutional health care provider  
14 which procures, processes, distributes or uses a human body  
15 part from a deceased person with respect to medical  
16 information regarding that person.

17 (9) A person allowed access to the record by court order  
18 which is issued in compliance with one of the following:

19 (i) No court of the Commonwealth may issue such  
20 order unless the court finds, upon application, that:

21 (A) The person seeking the test results has  
22 demonstrated a compelling need for the test results  
23 which cannot be accommodated by other means.

24 (B) The person seeking to disclose the diagnosis  
25 or test results has a compelling need to do so.

26 (ii) In assessing compelling need, the court shall  
27 weigh the need for disclosure against the privacy  
28 interest of the individual and the public interests which  
29 may be disserved by disclosure.

30 (iii) Pleadings pertaining to disclosure of a

1 diagnosis or test result shall substitute a pseudonym for  
2 the true name of the subject of the record. Disclosure to  
3 the parties of the subject's true name shall be  
4 communicated confidentially in documents not filed with  
5 the court.

6 (iv) Before granting an order for disclosure, the  
7 court shall provide the subject whose diagnosis or test  
8 result is in question with notice and a reasonable  
9 opportunity to participate in the proceeding if he or she  
10 is not already a party.

11 (v) Upon the issuance of an order to disclose a  
12 diagnosis or test result, the court shall impose  
13 appropriate safeguards against unauthorized disclosure  
14 which shall specify the following:

15 (A) The persons who may have access to the  
16 information.

17 (B) The purposes for which the information will  
18 be used.

19 (C) The appropriate prohibitions on future  
20 disclosure.

21 (b) Subsequent disclosure prohibited.--Notwithstanding the  
22 provisions of section 15 of the act of April 23, 1956 (1955  
23 P.L.1510, No.500), known as the Disease Prevention and Control  
24 Law of 1955, no person to whom the identity of an individual  
25 connected with an AIDS-related diagnosis or an HIV-related test  
26 has been disclosed under this act may disclose that information  
27 to another person, except as authorized by this act.

28 (c) Language required in notice.--

29 (1) Whenever written disclosure is made under this  
30 section, it shall be accompanied by a statement, in writing,

1 which includes the following or substantially similar  
2 language:

3 This information has been disclosed to you from  
4 records, the confidentiality of which is protected by  
5 State law. State law prohibits you from making any  
6 further disclosure of it without the specific written  
7 consent of the person to whom it pertains, or as  
8 otherwise permitted by law.

9 (2) An oral disclosure shall be accompanied or followed  
10 by this notice within ten days.

11 (d) Duty to establish written procedures.--An institutional  
12 health care provider that has access to or maintains  
13 individually identifying AIDS-related medical information or  
14 HIV-related test results shall establish written procedures for  
15 confidentiality and disclosure of the records which are in  
16 accordance with the provisions of this act.

17 Section 5. Counseling to accompany test.

18 (a) General rule.--The subject of an HIV-related test shall  
19 be informed of the results of the test.

20 (b) Counseling services.--At the time of informing the  
21 subject about a positive test result, the health care provider  
22 shall provide the subject of the test with counseling, or  
23 referral for counseling, for coping with the emotional  
24 consequences of learning the result and about methods for  
25 preventing transmission of HIV. If the test result is negative,  
26 the health care provider shall inform the subject of the result  
27 of the test and shall provide the subject with counseling, or  
28 referral for counseling, about methods to prevent becoming  
29 infected with HIV.

30 (c) Exceptions.--Notwithstanding section 4(a), the

1 provisions of section 4 do not apply to the following:

2 (1) An individual or institutional health care provider  
3 performing an HIV-related test when the health care provider  
4 procures, processes, distributes or uses a human body part  
5 donated for a purpose specified under 20 Pa.C.S. Ch. 86  
6 (relating to anatomical gifts), and the test is necessary to  
7 assure medical acceptability of the gift for the purpose  
8 intended.

9 (2) The performance of an HIV-related test for the  
10 purpose of research, if the testing is performed in a manner  
11 by which the identity of the test subject is not known and  
12 may not be retrieved by the researcher.

13 (3) The performance of an HIV-related test where the  
14 department and the Advisory Health Board determine, by  
15 regulation, that a mandatory, involuntary test is required in  
16 accordance with the act of April 23, 1956 (1955 P.L.1510,  
17 No.500), known as the Disease Prevention and Control Law of  
18 1955.

19 Section 6. Penalties.

20 A person who violates this act commits a misdemeanor of the  
21 third degree and shall, upon conviction, be sentenced to pay a  
22 fine of not more than \$2,500 or to imprisonment for not more  
23 than one year, or both.

24 Section 7. Severability.

25 The provisions of this act are severable. If any provision of  
26 this act or its application to any person or circumstance is  
27 held invalid, the invalidity shall not affect other provisions  
28 or applications of this act which can be given effect without  
29 the invalid provision or application.

30 Section 8. Repeals.

1       The provisions of the act of April 23, 1956 (1955 P.L.1510,  
2   No.500), known as the Disease Prevention and Control Law of  
3   1955, are repealed insofar as they are inconsistent with this  
4   act.

5   Section 9.   Effective date.

6       This act shall take effect in 60 days.