

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1163 Session of  
1989

INTRODUCED BY PETERSON, WILLIAMS, AFFLERBACH, GREENWOOD, O'PAKE,  
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GREENLEAF, HELFRICK, ROCKS, BAKER, FATTAH, PECORA, MELLOW,  
HOPPER, LOEPER AND ANDREZESKI, JULY 7, 1989

AS REPORTED FROM COMMITTEE ON HEALTH AND WELFARE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, DECEMBER 11, 1989

AN ACT

1 ~~Providing for confidentiality of certain records; providing for~~ <—  
2 ~~the authorized sharing of certain information; providing for~~  
3 ~~written consent prior to an HIV related test; providing for~~  
4 ~~civil immunity for certain licensed physicians; establishing~~  
5 ~~a criminal penalty, creating a civil cause of action; and~~  
6 ~~making a repeal.~~

7 PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; PROVIDING FOR <—  
8 THE AUTHORIZED SHARING OF CERTAIN INFORMATION; PROVIDING FOR  
9 WRITTEN CONSENT PRIOR TO AN HIV-RELATED TEST; PROVIDING FOR  
10 CIVIL IMMUNITY FOR CERTAIN LICENSED PHYSICIANS; AND CREATING  
11 A CIVIL CAUSE OF ACTION.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 ~~Section 1. Short title.~~ <—

15 ~~This act shall be known and may be cited as the~~  
16 ~~Confidentiality of HIV Related Information Act.~~

17 ~~Section 2. Legislative intent.~~

18 ~~(a) Findings. The General Assembly finds that the incidence~~  
19 ~~of acquired immune deficiency syndrome (AIDS) is increasing in~~  
20 ~~this Commonwealth at a significant rate. Controlling the~~

1 ~~incidence of this disease is aided by providing testing and~~  
2 ~~counseling activities for those persons who are at risk of~~  
3 ~~exposure to or who are carrying the human immunodeficiency virus~~  
4 ~~(HIV), which is the causative agent of AIDS. Testing and~~  
5 ~~counseling are promoted by establishing confidentiality~~  
6 ~~requirements which protect individuals from inappropriate~~  
7 ~~disclosure and subsequent misuse of confidential HIV related~~  
8 ~~information. The General Assembly also finds that, since certain~~  
9 ~~specific behaviors place a person at risk of contracting the~~  
10 ~~virus, testing and counseling of persons who are at risk of~~  
11 ~~exposure to the virus makes an efficient use of available~~  
12 ~~funding.~~

13 ~~(b) Intent. It is the intent of the General Assembly to~~  
14 ~~promote confidential testing on an informed and voluntary basis~~  
15 ~~in order to encourage those most in need to obtain testing and~~  
16 ~~appropriate counseling.~~

17 ~~Section 3. Definitions.~~

18 ~~The following words and phrases when used in this act shall~~  
19 ~~have the meanings given to them in this section unless the~~  
20 ~~context clearly indicates otherwise:~~

21 ~~"AIDS." Acquired immune deficiency syndrome, as defined by~~  
22 ~~the CDC.~~

23 ~~"CDC." The Centers for Disease Control of the United States~~  
24 ~~Public Health Service.~~

25 ~~"Confidential HIV related information." Any information~~  
26 ~~which is in the possession of a person who provides one or more~~  
27 ~~health or social services or who obtains the information~~  
28 ~~pursuant to a release of confidential HIV related information~~  
29 ~~and which concerns whether an individual has been the subject of~~  
30 ~~an HIV related test, or has HIV, HIV related illness or AIDS; or~~

~~any information which identifies or reasonably could identify an individual as having one or more of these conditions, including information pertaining to the individual's contacts.~~

~~"Contact." A sex sharing or needle sharing partner of the subject.~~

~~"HIV." The human immunodeficiency virus.~~

~~"HIV related test." Any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.~~

~~"Individual health care provider." A physician, nurse, emergency medical services worker, chiropractor, psychologist, nurse midwife, physician assistant, dentist or other person providing medical, nursing, drug or alcohol rehabilitation services or other health care services of any kind.~~

~~"Institutional health care provider." A hospital, nursing home, hospice, personal care boarding home, clinic, blood bank, plasmapheresis or other blood product center, organ or tissue bank, sperm bank, clinical laboratory, residential or outpatient drug and alcohol rehabilitation service, or any health care institution required to be licensed in this Commonwealth.~~

~~"Subject." An individual or a guardian of the person of that individual.~~

#### ~~Section 4. Consent to HIV related test.~~

~~(a) Consent. No HIV related test shall be performed without first obtaining the informed written consent of the subject. Any consent shall be preceded by an explanation of the test, including its purpose, potential uses, limitations and the meaning of its results.~~

~~(b) Pretest counseling. No HIV related test may be performed without first making available to the subject~~

~~information regarding measures for the prevention of, exposure to and transmission of HIV.~~

~~(c) Confirmatory testing. No test result shall be determined as positive, and no positive test result shall be revealed, without confirmatory testing if it is required by generally accepted medical standards.~~

~~(d) Posttest counseling. No positive test result shall be revealed to the subject without affording the subject the immediate opportunity for individual, face to face counseling about:~~

~~(1) The significance of the test results.~~

~~(2) Measures for the prevention of the transmission of HIV.~~

~~(3) The availability of any appropriate health care services, including mental health care, and appropriate social and support services.~~

~~(4) The benefits of locating and counseling any individual by whom the infected individual may have been exposed to HIV and any individual whom the infected individual may have exposed to HIV.~~

~~(5) The availability of any services with respect to locating and counseling any individual described in paragraph (4).~~

~~(e) Exceptions to consent requirement.~~

~~(1) The provisions of subsections (a) and (b) shall not apply to the performance of an HIV related test by an individual or institutional health care provider which procures, processes, distributes or uses a human body or a human body part, tissue or semen for use in medical research, therapy or transplantation.~~

~~(2) The provisions of this section shall not apply to the performance of an HIV related test for the purpose of medical research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.~~

~~(3) The provisions of this section shall not apply to the performance of an HIV related test in a medical emergency when the subject of the test is unable to grant or withhold consent and the test result is medically necessary for diagnostic purposes to provide appropriate emergency care to the subject, except that posttest counseling shall be required.~~

~~Section 5.— Confidentiality of records.~~

~~(a) Limitations on disclosure. No person who obtains confidential HIV related information in the course of providing any health or social service or pursuant to a release of confidential HIV related information under subsection (c) may disclose or be compelled to disclose the information, except to the following persons:~~

~~(1) The subject.~~

~~(2) Any person specifically designated in a written consent as provided for in subsection (c).~~

~~(3) An individual or institutional health care provider or their authorized agent or employee, provided that the person is:~~

~~(i) involved in the medical care or treatment of the subject; or~~

~~(ii) a peer review organization or committee as defined in the act of July 20, 1974 (P.L.564, No.193), known as the Peer Review Protection Act.~~

~~(4) Individual health care providers involved in the care of the individual with an AIDS related condition or a positive test, when knowledge of the condition or test result is necessary to provide emergency care or treatment appropriate to the individual.~~

~~(5) The Department of Health and the CDC, in accordance with reporting requirements.~~

~~(6) A person allowed access to the information by a court order issued pursuant to section 6.~~

~~(b) Subsequent disclosure prohibited. Notwithstanding the provisions of section 15 of the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955, no person to whom confidential HIV related information has been disclosed under this act may disclose that information to another person, except as authorized by this act.~~

~~(c) Required elements of written consent to disclosure. A written consent to disclosure of confidential HIV related information shall include:~~

~~(1) The specific name or general designation of the person permitted to make the disclosure.~~

~~(2) The name or title of the individual, or the name of the organization to which the disclosure is to be made.~~

~~(3) The name of the subject.~~

~~(4) The purpose of the disclosure.~~

~~(5) How much and what kind of information is to be disclosed.~~

~~(6) The signature of the subject.~~

~~(7) The date on which the consent is signed.~~

~~(8) A statement that the consent is subject to revocation at any time except to the extent that the person~~

~~who is to make the disclosure has already acted in reliance on it.~~

~~(9) The date, event or condition upon which the consent will expire, if not earlier revoked.~~

~~(d) Expired, deficient or false consent. A disclosure may not be made on the basis of a consent which:~~

~~(1) has expired;~~

~~(2) on its face substantially fails to conform to any of the requirements set forth in subsection (c);~~

~~(3) is known to have been revoked; or~~

~~(4) is known by the person holding the information to be materially false.~~

~~(e) Notice to accompany disclosure. Each disclosure made with the subject's written consent must be accompanied by the following written statement:~~

~~This information has been disclosed to you from records protected by Pennsylvania law. Pennsylvania law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or is authorized by the Confidentiality of HIV-Related Information Act. A general authorization for the release of medical or other information is not sufficient for this purpose.~~

~~(f) Duty to establish written procedures. An institutional health care provider that has access to or maintains individually identifying confidential HIV related information shall establish written procedures for confidentiality and disclosure of the records which are in accordance with the provisions of this act.~~

~~Section 6.— Court order.~~

~~(a) Findings.— No court may issue an order to allow access to confidential HIV-related information unless the court finds, upon application, that one of the following conditions exists:~~

~~(1) The person seeking the information has demonstrated a compelling need for that information which cannot be accommodated by other means.~~

~~(2) The person seeking to disclose the information has a compelling need to do so.~~

~~(b) Compelling need.— In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the individual and the public interests which may be harmed by disclosure.~~

~~(c) Pleadings.— Pleadings pertaining to disclosure of the information shall substitute a pseudonym for the true name of the subject of the record. Disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.~~

~~(d) Notice.— Before granting an order for disclosure, the court shall provide the subject of the disclosure with notice and a reasonable opportunity to participate in the proceeding if the subject is not already a party.~~

~~(e) In camera proceedings.— Court proceedings as to the disclosure of the information shall be conducted in camera, unless the subject agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.~~

~~(f) Safeguards against disclosure.— Upon the issuance of an order to disclose the information, the court shall impose appropriate safeguards against unauthorized disclosure which~~



1 ~~shall specify the following:~~

2 ~~(1) The particular information which is essential to~~  
3 ~~accommodate the need of the party seeking disclosure.~~

4 ~~(2) The persons who may have access to the information.~~

5 ~~(3) The purposes for which the information will be used.~~

6 ~~(4) The appropriate prohibitions on future disclosure as~~  
7 ~~provided for in section 5.~~

8 ~~Section 7. Civil immunity for certain physicians.~~

9 ~~(a) Permissible disclosure. Notwithstanding the provisions~~  
10 ~~of section 5, a physician may disclose confidential HIV related~~  
11 ~~information if all of the following conditions are met:~~

12 ~~(1) The disclosure is made to a known contact of the~~  
13 ~~subject.~~

14 ~~(2) The physician reasonably believes disclosure is~~  
15 ~~medically appropriate, and there is a significant risk of~~  
16 ~~future infection to the contact.~~

17 ~~(3) The physician has counseled the subject regarding~~  
18 ~~the need to notify the contact, and the physician reasonably~~  
19 ~~believes the subject will not inform the contact or abstain~~  
20 ~~from sexual or needle sharing behavior which poses a~~  
21 ~~significant risk of infection to the contact.~~

22 ~~(4) The physician has informed the subject of his intent~~  
23 ~~to make such disclosure.~~

24 ~~(b) Subject not to be identified. When making such~~  
25 ~~disclosure to a contact, the physician shall not disclose the~~  
26 ~~identity of the subject or any other contact. Disclosure shall~~  
27 ~~be made in person except where circumstances reasonably prevent~~  
28 ~~doing so.~~

29 ~~(c) Duties relating to contacts. A physician shall have no~~  
30 ~~duty to identify, locate or notify any contact, and no cause of~~

~~1 action shall arise for nondisclosure, or for disclosure in  
2 conformity with this section.~~

~~3 Section 8. Civil cause of action.~~

~~4 Any person aggrieved by a violation of this act shall have a  
5 cause of action against the person who committed such violation  
6 and may recover compensatory damages.~~

~~7 Section 9. Separate violations.~~

~~8 Each disclosure of confidential HIV related information in  
9 violation of this act or each HIV related test conducted in  
10 contravention of this act is separate for purposes of civil  
11 liability.~~

~~12 Section 10. Repeals.~~

~~13 The act of April 23, 1956 (1955 P.L.1510, No.500), known as  
14 the Disease Prevention and Control Law of 1955, is repealed  
15 insofar as it is inconsistent with this act.~~

~~16 Section 11. Effective date.~~

~~17 This act shall take effect in 90 days.~~

18 SECTION 1. SHORT TITLE.

<—

19 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE  
20 CONFIDENTIALITY OF HIV-RELATED INFORMATION ACT.

21 SECTION 2. LEGISLATIVE INTENT.

22 (A) FINDINGS.--THE GENERAL ASSEMBLY FINDS THAT THE INCIDENCE  
23 OF ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) IS INCREASING IN  
24 THIS COMMONWEALTH AT A SIGNIFICANT RATE. CONTROLLING THE  
25 INCIDENCE OF THIS DISEASE IS AIDED BY PROVIDING TESTING AND  
26 COUNSELING ACTIVITIES FOR THOSE PERSONS WHO ARE AT RISK OF  
27 EXPOSURE TO OR WHO ARE CARRYING THE HUMAN IMMUNODEFICIENCY VIRUS  
28 (HIV), WHICH IS THE CAUSATIVE AGENT OF AIDS. TESTING AND  
29 COUNSELING ARE PROMOTED BY ESTABLISHING CONFIDENTIALITY  
30 REQUIREMENTS WHICH PROTECT INDIVIDUALS FROM INAPPROPRIATE

1 DISCLOSURE AND SUBSEQUENT MISUSE OF CONFIDENTIAL HIV-RELATED  
2 INFORMATION. THE GENERAL ASSEMBLY ALSO FINDS THAT, SINCE CERTAIN  
3 SPECIFIC BEHAVIORS PLACE A PERSON AT RISK OF CONTRACTING THE  
4 VIRUS, TESTING AND COUNSELING OF PERSONS WHO ARE AT RISK OF  
5 EXPOSURE TO THE VIRUS MAKES AN EFFICIENT USE OF AVAILABLE  
6 FUNDING.

7 (B) INTENT.--IT IS THE INTENT OF THE GENERAL ASSEMBLY TO  
8 PROMOTE CONFIDENTIAL TESTING ON AN INFORMED AND VOLUNTARY BASIS  
9 IN ORDER TO ENCOURAGE THOSE MOST IN NEED TO OBTAIN TESTING AND  
10 APPROPRIATE COUNSELING.

11 SECTION 3. DEFINITIONS.

12 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
13 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
14 CONTEXT CLEARLY INDICATES OTHERWISE:

15 "AIDS." ACQUIRED IMMUNE DEFICIENCY SYNDROME, AS DEFINED BY  
16 THE CDC.

17 "CDC." THE CENTERS FOR DISEASE CONTROL OF THE UNITED STATES  
18 PUBLIC HEALTH SERVICE.

19 "CONFIDENTIAL HIV-RELATED INFORMATION." ANY INFORMATION  
20 WHICH IS IN THE POSSESSION OF A PERSON WHO PROVIDES ONE OR MORE  
21 HEALTH OR SOCIAL SERVICES OR WHO OBTAINS THE INFORMATION  
22 PURSUANT TO A RELEASE OF CONFIDENTIAL HIV-RELATED INFORMATION  
23 AND WHICH CONCERNS WHETHER AN INDIVIDUAL HAS BEEN THE SUBJECT OF  
24 AN HIV-RELATED TEST, OR HAS HIV, HIV-RELATED ILLNESS OR AIDS; OR  
25 ANY INFORMATION WHICH IDENTIFIES OR REASONABLY COULD IDENTIFY AN  
26 INDIVIDUAL AS HAVING ONE OR MORE OF THESE CONDITIONS, INCLUDING  
27 INFORMATION PERTAINING TO THE INDIVIDUAL'S CONTACTS.

28 "CONTACT." A SEX-SHARING OR NEEDLE-SHARING PARTNER OF THE  
29 SUBJECT.

30 "DEPARTMENT." THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH.

"HEALTH CARE PROVIDER." AN INDIVIDUAL OR INSTITUTIONAL  
HEALTH CARE PROVIDER.

"HIV." THE HUMAN IMMUNODEFICIENCY VIRUS.

"HIV-RELATED TEST." ANY LABORATORY TEST OR SERIES OF TESTS  
FOR ANY VIRUS, ANTIBODY, ANTIGEN OR ETIOLOGIC AGENT WHATSOEVER  
THOUGHT TO CAUSE OR TO INDICATE THE PRESENCE OF HIV INFECTION.

"INDIVIDUAL HEALTH CARE PROVIDER." A PHYSICIAN, NURSE,  
EMERGENCY MEDICAL SERVICE WORKER, CHIROPRACTOR, PSYCHOLOGIST,  
NURSE-MIDWIFE, PHYSICIAN ASSISTANT, DENTIST OR OTHER PERSON,  
INCLUDING A PROFESSIONAL CORPORATION OR PARTNERSHIP, PROVIDING  
MEDICAL, NURSING, DRUG OR ALCOHOL REHABILITATION SERVICES OR  
OTHER HEALTH CARE SERVICES OF ANY KIND.

"INSTITUTIONAL HEALTH CARE PROVIDER." A HOSPITAL, NURSING  
HOME, HOSPICE, PERSONAL CARE BOARDING HOME, CLINIC, BLOOD BANK,  
PLASMAPHERESIS OR OTHER BLOOD PRODUCT CENTER, ORGAN OR TISSUE  
BANK, SPERM BANK, CLINICAL LABORATORY, RESIDENTIAL OR OUTPATIENT  
DRUG AND ALCOHOL REHABILITATION SERVICE, OR ANY HEALTH CARE  
INSTITUTION REQUIRED TO BE LICENSED IN THIS COMMONWEALTH.

"INSURER." ANY INSURANCE COMPANY, ASSOCIATION OR EXCHANGE  
AUTHORIZED TO DO BUSINESS IN THIS COMMONWEALTH UNDER THE ACT OF  
MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE INSURANCE COMPANY  
LAW OF 1921, ANY ENTITY SUBJECT TO 40 PA.C.S. CH. 61 (RELATING  
TO HOSPITAL PLAN CORPORATIONS) OR CH. 63 (RELATING TO  
PROFESSIONAL HEALTH SERVICES PLAN CORPORATIONS), THE ACT OF  
DECEMBER 29, 1972 (P.L.1701, NO.364), KNOWN AS THE HEALTH  
MAINTENANCE ORGANIZATION ACT, OR THE ACT OF JULY 29, 1977  
(P.L.105, NO.38), KNOWN AS THE FRATERNAL BENEFIT SOCIETY CODE.

"SUBJECT." AN INDIVIDUAL OR A GUARDIAN OF THE PERSON OF THAT  
INDIVIDUAL.

SECTION 4. CONSENT TO HIV-RELATED TEST.

1 (A) CONSENT.--NO HIV-RELATED TEST SHALL BE PERFORMED WITHOUT  
2 FIRST OBTAINING THE INFORMED WRITTEN CONSENT OF THE SUBJECT. ANY  
3 CONSENT SHALL BE PRECEDED BY AN EXPLANATION OF THE TEST,  
4 INCLUDING ITS PURPOSE, POTENTIAL USES, LIMITATIONS AND THE  
5 MEANING OF ITS RESULTS.

6 (B) PRETEST COUNSELING.--NO HIV-RELATED TEST MAY BE  
7 PERFORMED WITHOUT FIRST MAKING AVAILABLE TO THE SUBJECT  
8 INFORMATION REGARDING MEASURES FOR THE PREVENTION OF, EXPOSURE  
9 TO AND TRANSMISSION OF HIV.

10 (C) CONFIRMATORY TEST.--NO TEST RESULT SHALL BE DETERMINED  
11 AS POSITIVE, AND NO POSITIVE TEST RESULT SHALL BE REVEALED,  
12 WITHOUT CONFIRMATORY TESTING IF IT IS REQUIRED BY GENERALLY  
13 ACCEPTED MEDICAL STANDARDS.

14 (D) NOTICE OF TEST RESULT.--THE PERSON WHO SECURED THE  
15 SUBJECT'S CONSENT TO THE TEST, THE PERSON'S DESIGNEE, OR A  
16 SUCCESSOR IN THE SAME RELATIONSHIP TO THE SUBJECT, SHALL MAKE A  
17 GOOD FAITH EFFORT TO INFORM THE SUBJECT OF THE RESULT REGARDLESS  
18 OF WHETHER THE RESULT IS POSITIVE OR NEGATIVE.

19 (E) POST-TEST COUNSELING.--

20 (1) NO POSITIVE OR NEGATIVE TEST RESULT SHALL BE  
21 REVEALED TO THE SUBJECT WITHOUT AFFORDING THE SUBJECT THE  
22 IMMEDIATE OPPORTUNITY FOR INDIVIDUAL FACE-TO-FACE COUNSELING  
23 ABOUT:

24 (I) THE SIGNIFICANCE OF THE TEST RESULTS.

25 (II) MEASURES FOR THE PREVENTION OF THE TRANSMISSION  
26 OF HIV.

27 (III) THE BENEFITS OF LOCATING AND COUNSELING ANY  
28 INDIVIDUAL BY WHOM THE SUBJECT MAY HAVE BEEN EXPOSED TO  
29 HIV AND THE AVAILABILITY OF ANY SERVICES WITH RESPECT TO  
30 LOCATING AND COUNSELING SUCH INDIVIDUAL.

1 (2) NO POSITIVE TEST RESULT SHALL BE REVEALED TO THE  
2 SUBJECT WITHOUT, IN ADDITION TO MEETING THE REQUIREMENTS OF  
3 PARAGRAPH (1), ALSO AFFORDING THE SUBJECT THE IMMEDIATE  
4 OPPORTUNITY FOR INDIVIDUAL, FACE-TO-FACE COUNSELING ABOUT:

5 (I) THE AVAILABILITY OF ANY APPROPRIATE HEALTH CARE  
6 SERVICES, INCLUDING MENTAL HEALTH CARE, AND APPROPRIATE  
7 SOCIAL AND SUPPORT SERVICES.

8 (II) THE BENEFITS OF LOCATING AND COUNSELING ANY  
9 INDIVIDUAL WHO THE INFECTED SUBJECT MAY HAVE EXPOSED TO  
10 HIV AND THE AVAILABILITY OF ANY SERVICES WITH RESPECT TO  
11 LOCATING AND COUNSELING SUCH INDIVIDUAL.

12 (F) EXCEPTIONS.--

13 (1) THE PROVISIONS OF SUBSECTIONS (A), (B), (C), (D) AND  
14 (E) SHALL NOT APPLY TO THE FOLLOWING:

15 (I) THE PERFORMANCE OF AN HIV-RELATED TEST ON A  
16 CADAVER BY A HEALTH CARE PROVIDER WHICH PROCURES,  
17 PROCESSES, DISTRIBUTES OR USES A HUMAN BODY OR A HUMAN  
18 BODY PART, TISSUE OR SEMEN FOR USE IN MEDICAL RESEARCH,  
19 THERAPY OR TRANSPLANTATION.

20 (II) THE PERFORMANCE OF AN HIV-RELATED TEST FOR THE  
21 PURPOSE OF MEDICAL RESEARCH IF THE TESTING IS PERFORMED  
22 IN A MANNER BY WHICH THE IDENTITY OF THE TEST SUBJECT IS  
23 NOT KNOWN AND MAY NOT BE RETRIEVED BY THE RESEARCHER.

24 (III) THE PERFORMANCE OF AN HIV-RELATED TEST WHEN  
25 THE TEST RESULT OF A SUBJECT IS REQUIRED BY AN INSURER  
26 FOR UNDERWRITING PURPOSES. HOWEVER, THE INSURER SHALL  
27 SATISFY THE REQUIREMENTS OF SUBSECTION (G).

28 (2) THE PROVISIONS OF SUBSECTIONS (A), (B) AND (C) SHALL  
29 NOT APPLY TO THE PERFORMANCE OF AN HIV-RELATED TEST IN A  
30 MEDICAL EMERGENCY WHEN THE SUBJECT OF THE TEST IS UNABLE TO

1 GRANT OR WITHHOLD CONSENT AND THE TEST RESULT IS MEDICALLY  
2 NECESSARY FOR DIAGNOSTIC PURPOSES TO PROVIDE APPROPRIATE  
3 EMERGENCY CARE TO THE SUBJECT.

4 (3) THE PROVISIONS OF SUBSECTIONS (D) AND (E) SHALL NOT  
5 APPLY WHEN A NEGATIVE HIV-RELATED TEST RESULT IS SECURED BY A  
6 SUBJECT WHO HAS TAKEN THE TEST SOLELY TO SATISFY A  
7 REQUIREMENT FOR DONATING A HUMAN BODY OR HUMAN BODY PART,  
8 TISSUE OR SEMEN FOR USE IN MEDICAL RESEARCH, THERAPY,  
9 TRANSFUSION OR TRANSPLANTATION. HOWEVER, IF THE SUBJECT  
10 REQUESTS IDENTIFICATION OF A NEGATIVE TEST RESULT, THE TEST  
11 RESULT SHALL BE PROVIDED TO THE SUBJECT IN ACCORDANCE WITH  
12 SUBSECTION (D).

13 (G) REQUIREMENTS APPLICABLE TO INSURERS.--

14 (1) NO HIV-RELATED TEST SHALL BE PERFORMED WITHOUT FIRST  
15 OBTAINING THE INFORMED WRITTEN CONSENT OF THE SUBJECT. ANY  
16 CONSENT SHALL BE PRECEDED, IN WRITING, BY:

17 (I) A DISCLOSURE OF THE EFFECTS OF THE TEST RESULT  
18 ON THE APPROVAL OF THE APPLICATION, OR THE RISK  
19 CLASSIFICATION OF THE SUBJECT.

20 (II) INFORMATION EXPLAINING AIDS, HIV AND THE HIV-  
21 RELATED TEST.

22 (III) A DESCRIPTION OF THE INSURER'S CONFIDENTIALITY  
23 STANDARDS.

24 (IV) A STATEMENT THAT, BECAUSE OF THE SERIOUS NATURE  
25 OF HIV-RELATED ILLNESSES, THE SUBJECT MAY DESIRE TO  
26 OBTAIN COUNSELING BEFORE UNDERGOING THE HIV-RELATED TEST.

27 (V) INFORMATION CONCERNING THE AVAILABILITY OF  
28 ALTERNATIVE HIV-RELATED TESTING AND COUNSELING PROVIDED  
29 BY THE DEPARTMENT AND LOCAL HEALTH DEPARTMENTS, AND THE  
30 TELEPHONE NUMBER OF THE DEPARTMENT FROM WHICH THE SUBJECT

1 MAY SECURE ADDITIONAL INFORMATION ON SUCH TESTING AND  
2 COUNSELING.

3 (2) THE INSURER IS REQUIRED TO DISCLOSE TO THE SUBJECT A  
4 NEGATIVE TEST RESULT ON AN HIV-RELATED TEST ONLY IF THE  
5 SUBJECT REQUESTS NOTIFICATION.

6 (3) THE INSURER SHALL NOT DISCLOSE TO THE SUBJECT OF AN  
7 HIV-RELATED TEST A POSITIVE TEST RESULT. ON THE FORM ON WHICH  
8 THE INSURER SECURES THE SUBJECT'S WRITTEN CONSENT TO THE HIV-  
9 RELATED TEST, THE SUBJECT SHALL BE REQUIRED TO DESIGNATE TO  
10 WHOM A POSITIVE TEST RESULT SHALL BE DISCLOSED. THE SUBJECT  
11 SHALL HAVE THE CHOICE OF DESIGNATING A PHYSICIAN, THE  
12 DEPARTMENT OR A LOCAL HEALTH DEPARTMENT, OR A LOCAL  
13 COMMUNITY-BASED ORGANIZATION FROM A LIST OF SUCH  
14 ORGANIZATIONS PREPARED BY THE DEPARTMENT. THE INSURER SHALL  
15 NOTIFY THE DESIGNEE OF A POSITIVE TEST RESULT.

16 (4) A POSITIVE TEST RESULT SHALL BE DISCLOSED TO THE  
17 SUBJECT, BY THE DESIGNEE, IN ACCORDANCE WITH SUBSECTIONS (D)  
18 AND (E). THE DEPARTMENT MAY ELECT TO HAVE ITS DISCLOSURE  
19 RESPONSIBILITIES SATISFIED BY A LOCAL HEALTH DEPARTMENT.

20 SECTION 5. CONFIDENTIALITY OF RECORDS.

21 (A) LIMITATIONS ON DISCLOSURE.--NO PERSON OR EMPLOYEE, OR  
22 AGENT OF SUCH PERSON, WHO OBTAINS CONFIDENTIAL HIV-RELATED  
23 INFORMATION IN THE COURSE OF PROVIDING ANY HEALTH OR SOCIAL  
24 SERVICE OR PURSUANT TO A RELEASE OF CONFIDENTIAL HIV-RELATED  
25 INFORMATION UNDER SUBSECTION (C) MAY DISCLOSE OR BE COMPELLED TO  
26 DISCLOSE THE INFORMATION, EXCEPT TO THE FOLLOWING PERSONS:

27 (1) THE SUBJECT.

28 (2) THE PHYSICIAN WHO ORDERED THE TEST, OR THE  
29 PHYSICIAN'S DESIGNEE.

30 (3) ANY PERSON SPECIFICALLY DESIGNATED IN A WRITTEN



1 CONSENT AS PROVIDED FOR IN SUBSECTION (C).

2 (4) AN AGENT, EMPLOYEE OR MEDICAL STAFF MEMBER OF A  
3 HEALTH CARE PROVIDER, WHEN THE HEALTH CARE PROVIDER HAS  
4 RECEIVED CONFIDENTIAL HIV-RELATED INFORMATION DURING THE  
5 COURSE OF THE SUBJECT'S DIAGNOSIS OR TREATMENT BY THE HEALTH  
6 CARE PROVIDER, PROVIDED THAT THE AGENT, EMPLOYEE OR MEDICAL  
7 STAFF MEMBER IS INVOLVED IN THE MEDICAL CARE OR TREATMENT OF  
8 THE SUBJECT. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO  
9 REQUIRE THE SEGREGATION OF CONFIDENTIAL HIV-RELATED  
10 INFORMATION FROM A SUBJECT'S MEDICAL RECORD.

11 (5) A PEER REVIEW ORGANIZATION OR COMMITTEE AS DEFINED  
12 IN THE ACT OF JULY 20, 1974 (P.L.564, NO.193), KNOWN AS THE  
13 PEER REVIEW PROTECTION ACT, A NATIONALLY RECOGNIZED  
14 ACCREDITING AGENCY, OR AS OTHERWISE PROVIDED BY LAW, ANY  
15 FEDERAL OR STATE GOVERNMENT AGENCY WITH OVERSIGHT  
16 RESPONSIBILITIES OVER HEALTH CARE PROVIDERS.

17 (6) INDIVIDUAL HEALTH CARE PROVIDERS INVOLVED IN THE  
18 CARE OF THE SUBJECT WITH AN HIV-RELATED CONDITION OR A  
19 POSITIVE TEST, WHEN KNOWLEDGE OF THE CONDITION OR TEST RESULT  
20 IS NECESSARY TO PROVIDE EMERGENCY CARE OR TREATMENT  
21 APPROPRIATE TO THE INDIVIDUAL; OR HEALTH CARE PROVIDERS  
22 CONSULTED TO DETERMINE DIAGNOSIS AND TREATMENT OF THE  
23 INDIVIDUAL.

24 (7) AN INSURER, TO THE EXTENT NECESSARY TO REIMBURSE  
25 HEALTH CARE PROVIDERS OR TO MAKE ANY PAYMENT OF A CLAIM  
26 SUBMITTED PURSUANT TO AN INSURED'S POLICY.

27 (8) THE DEPARTMENT AND PERSONS AUTHORIZED TO GATHER,  
28 TRANSMIT OR RECEIVE VITAL STATISTICS UNDER THE ACT OF JUNE  
29 29, 1953 (P.L.304, NO.66), KNOWN AS THE VITAL STATISTICS LAW  
30 OF 1953.

1           (9) THE DEPARTMENT AND LOCAL BOARDS AND DEPARTMENTS OF  
2 HEALTH, AS AUTHORIZED BY THE ACT OF APRIL 23, 1956 (1955  
3 P.L.1510, NO.500), KNOWN AS THE DISEASE PREVENTION AND  
4 CONTROL LAW OF 1955.

5           (10) A PERSON ALLOWED ACCESS TO THE INFORMATION BY A  
6 COURT ORDER ISSUED PURSUANT TO SECTION 6.

7       (B) SUBSEQUENT DISCLOSURE PROHIBITED.--NOTWITHSTANDING THE  
8 PROVISIONS OF THE ACT OF JUNE 29, 1953 (P.L.304, NO.66), KNOWN  
9 AS THE VITAL STATISTICS LAW OF 1953, OR SECTION 15 OF THE ACT OF  
10 APRIL 23, 1956 (1955 P.L.1510, NO.500), KNOWN AS THE DISEASE  
11 PREVENTION AND CONTROL LAW OF 1955, NO PERSON TO WHOM  
12 CONFIDENTIAL HIV-RELATED INFORMATION HAS BEEN DISCLOSED UNDER  
13 THIS ACT MAY DISCLOSE THAT INFORMATION TO ANOTHER PERSON, EXCEPT  
14 AS AUTHORIZED BY THIS ACT.

15       (C) REQUIRED ELEMENTS OF WRITTEN CONSENT TO DISCLOSURE.--A  
16 WRITTEN CONSENT TO DISCLOSURE OF CONFIDENTIAL HIV-RELATED  
17 INFORMATION SHALL INCLUDE:

18           (1) THE SPECIFIC NAME OR GENERAL DESIGNATION OF THE  
19 PERSON PERMITTED TO MAKE THE DISCLOSURE.

20           (2) THE NAME OR TITLE OF THE INDIVIDUAL, OR THE NAME OF  
21 THE ORGANIZATION TO WHICH THE DISCLOSURE IS TO BE MADE.

22           (3) THE NAME OF THE SUBJECT.

23           (4) THE PURPOSE OF THE DISCLOSURE.

24           (5) HOW MUCH AND WHAT KIND OF INFORMATION IS TO BE  
25 DISCLOSED.

26           (6) THE SIGNATURE OF THE SUBJECT.

27           (7) THE DATE ON WHICH THE CONSENT IS SIGNED.

28           (8) A STATEMENT THAT THE CONSENT IS SUBJECT TO  
29 REVOCATION AT ANY TIME EXCEPT TO THE EXTENT THAT THE PERSON  
30 WHO IS TO MAKE THE DISCLOSURE HAS ALREADY ACTED IN RELIANCE

1 ON IT.

2 (9) THE DATE, EVENT OR CONDITION UPON WHICH THE CONSENT  
3 WILL EXPIRE, IF NOT EARLIER REVOKED.

4 (D) EXPIRED, DEFICIENT OR FALSE CONSENT.--A DISCLOSURE MAY  
5 NOT BE MADE ON THE BASIS OF A CONSENT WHICH:

6 (1) HAS EXPIRED;

7 (2) ON ITS FACE SUBSTANTIALLY FAILS TO CONFORM TO ANY OF  
8 THE REQUIREMENTS SET FORTH IN SUBSECTION (C);

9 (3) IS KNOWN TO HAVE BEEN REVOKED; OR

10 (4) IS KNOWN BY THE PERSON HOLDING THE INFORMATION TO BE  
11 MATERIALLY FALSE.

12 (E) NOTICE TO ACCOMPANY DISCLOSURE.--EACH DISCLOSURE MADE  
13 WITH THE SUBJECT'S WRITTEN CONSENT MUST BE ACCOMPANIED BY THE  
14 FOLLOWING WRITTEN STATEMENT:

15 THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS  
16 PROTECTED BY PENNSYLVANIA LAW. PENNSYLVANIA LAW PROHIBITS  
17 YOU FROM MAKING ANY FURTHER DISCLOSURE OF THIS  
18 INFORMATION UNLESS FURTHER DISCLOSURE IS EXPRESSLY  
19 PERMITTED BY THE WRITTEN CONSENT OF THE PERSON TO WHOM IT  
20 PERTAINS OR IS AUTHORIZED BY THE CONFIDENTIALITY OF HIV-  
21 RELATED INFORMATION ACT. A GENERAL AUTHORIZATION FOR THE  
22 RELEASE OF MEDICAL OR OTHER INFORMATION IS NOT SUFFICIENT  
23 FOR THIS PURPOSE.

24 (F) DUTY TO ESTABLISH WRITTEN PROCEDURES.--AN INSTITUTIONAL  
25 HEALTH CARE PROVIDER THAT HAS ACCESS TO OR MAINTAINS  
26 INDIVIDUALLY IDENTIFYING CONFIDENTIAL HIV-RELATED INFORMATION  
27 SHALL ESTABLISH WRITTEN PROCEDURES FOR CONFIDENTIALITY AND  
28 DISCLOSURE OF THE RECORDS WHICH ARE IN ACCORDANCE WITH THE  
29 PROVISIONS OF THIS ACT WITHIN 60 DAYS OF THE EFFECTIVE DATE OF  
30 THIS ACT.

1 SECTION 6. COURT ORDER.

2 (A) FINDINGS.--NO COURT MAY ISSUE AN ORDER TO ALLOW ACCESS  
3 TO CONFIDENTIAL HIV-RELATED INFORMATION UNLESS THE COURT FINDS,  
4 UPON APPLICATION, THAT ONE OF THE FOLLOWING CONDITIONS EXISTS:

5 (1) THE PERSON SEEKING THE INFORMATION HAS DEMONSTRATED  
6 A COMPELLING NEED FOR THAT INFORMATION WHICH CANNOT BE  
7 ACCOMMODATED BY OTHER MEANS.

8 (2) THE PERSON SEEKING TO DISCLOSE THE INFORMATION HAS A  
9 COMPELLING NEED TO DO SO.

10 (B) COMPELLING NEED.--IN ASSESSING COMPELLING NEED, THE  
11 COURT SHALL WEIGH THE NEED FOR DISCLOSURE AGAINST THE PRIVACY  
12 INTEREST OF THE INDIVIDUAL AND THE PUBLIC INTERESTS WHICH MAY BE  
13 HARMED BY DISCLOSURE.

14 (C) PLEADINGS.--PLEADINGS PERTAINING TO DISCLOSURE OF THE  
15 INFORMATION SHALL SUBSTITUTE A PSEUDONYM FOR THE TRUE NAME OF  
16 THE SUBJECT OF THE RECORD. DISCLOSURE TO THE PARTIES OF THE  
17 SUBJECT'S TRUE NAME SHALL BE COMMUNICATED CONFIDENTIALLY IN  
18 DOCUMENTS NOT FILED WITH THE COURT.

19 (D) NOTICE.--BEFORE GRANTING AN ORDER FOR DISCLOSURE, THE  
20 COURT SHALL PROVIDE THE SUBJECT OF THE DISCLOSURE WITH NOTICE  
21 AND A REASONABLE OPPORTUNITY TO PARTICIPATE IN THE PROCEEDING IF  
22 THE SUBJECT IS NOT ALREADY A PARTY.

23 (E) IN CAMERA PROCEEDINGS.--COURT PROCEEDINGS AS TO THE  
24 DISCLOSURE OF THE INFORMATION SHALL BE CONDUCTED IN CAMERA,  
25 UNLESS THE SUBJECT AGREES TO A HEARING IN OPEN COURT OR UNLESS  
26 THE COURT DETERMINES THAT A PUBLIC HEARING IS NECESSARY TO THE  
27 PUBLIC INTEREST AND THE PROPER ADMINISTRATION OF JUSTICE.

28 (F) SAFEGUARDS AGAINST DISCLOSURE.--UPON THE ISSUANCE OF AN  
29 ORDER TO DISCLOSE THE INFORMATION, THE COURT SHALL IMPOSE  
30 APPROPRIATE SAFEGUARDS AGAINST UNAUTHORIZED DISCLOSURE WHICH

1 SHALL SPECIFY THE FOLLOWING:

2 (1) THE PARTICULAR INFORMATION WHICH IS ESSENTIAL TO  
3 ACCOMMODATE THE NEED OF THE PARTY SEEKING DISCLOSURE.

4 (2) THE PERSONS WHO MAY HAVE ACCESS TO THE INFORMATION.

5 (3) THE PURPOSES FOR WHICH THE INFORMATION WILL BE USED.

6 (4) THE APPROPRIATE PROHIBITIONS ON FUTURE DISCLOSURE AS  
7 PROVIDED FOR IN SECTION 5.

8 SECTION 7. CIVIL IMMUNITY FOR CERTAIN PHYSICIANS.

9 (A) PERMISSIBLE DISCLOSURE.--NOTWITHSTANDING THE PROVISIONS  
10 OF SECTION 5, A PHYSICIAN MAY DISCLOSE CONFIDENTIAL HIV-RELATED  
11 INFORMATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

12 (1) THE DISCLOSURE IS MADE TO A KNOWN CONTACT OF THE  
13 SUBJECT.

14 (2) THE PHYSICIAN REASONABLY BELIEVES DISCLOSURE IS  
15 MEDICALLY APPROPRIATE, AND THERE IS A SIGNIFICANT RISK OF  
16 FUTURE INFECTION TO THE CONTACT.

17 (3) THE PHYSICIAN HAS COUNSELED THE SUBJECT REGARDING  
18 THE NEED TO NOTIFY THE CONTACT, AND THE PHYSICIAN REASONABLY  
19 BELIEVES THE SUBJECT WILL NOT INFORM THE CONTACT OR ABSTAIN  
20 FROM SEXUAL OR NEEDLE-SHARING BEHAVIOR WHICH POSES A  
21 SIGNIFICANT RISK OF INFECTION TO THE CONTACT.

22 (4) THE PHYSICIAN HAS INFORMED THE SUBJECT OF HIS INTENT  
23 TO MAKE SUCH DISCLOSURE.

24 (B) SUBJECT NOT TO BE IDENTIFIED.--WHEN MAKING SUCH  
25 DISCLOSURE TO A CONTACT, THE PHYSICIAN SHALL NOT DISCLOSE THE  
26 IDENTITY OF THE SUBJECT OR ANY OTHER CONTACT. DISCLOSURE SHALL  
27 BE MADE IN PERSON EXCEPT WHERE CIRCUMSTANCES REASONABLY PREVENT  
28 DOING SO.

29 (C) DUTIES RELATING TO CONTACTS.--A PHYSICIAN SHALL HAVE NO  
30 DUTY TO IDENTIFY, LOCATE OR NOTIFY ANY CONTACT, AND NO CAUSE OF

1 ACTION SHALL ARISE FOR NONDISCLOSURE, OR FOR DISCLOSURE IN  
2 CONFORMITY WITH THIS SECTION.

3 SECTION 8. CIVIL CAUSE OF ACTION.

4 ANY PERSON AGGRIEVED BY A VIOLATION OF THIS ACT SHALL HAVE A  
5 CAUSE OF ACTION AGAINST THE PERSON WHO COMMITTED SUCH VIOLATION  
6 AND MAY RECOVER COMPENSATORY DAMAGES.

7 SECTION 9. SEPARATE VIOLATIONS.

8 EACH DISCLOSURE OF CONFIDENTIAL HIV-RELATED INFORMATION IN  
9 VIOLATION OF THIS ACT OR EACH HIV-RELATED TEST CONDUCTED IN  
10 CONTRAVENTION OF THIS ACT IS SEPARATE FOR PURPOSES OF CIVIL  
11 LIABILITY.

12 SECTION 10. DISEASE PREVENTION AND CONTROL LAW.

13 INSOFAR AS THE PROVISIONS OF THE ACT OF APRIL 23, 1956 (1955  
14 P.L.1510, NO.500), KNOWN AS THE DISEASE PREVENTION AND CONTROL  
15 LAW OF 1955, ARE INCONSISTENT WITH THIS ACT, THIS ACT SHALL  
16 APPLY.

17 SECTION 11. EFFECTIVE DATE.

18 THIS ACT SHALL TAKE EFFECT IN 90 DAYS.