

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1349 Session of  
1993

INTRODUCED BY TOMLINSON, FAIRCHILD, MELIO, GERLACH, TIGUE,  
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McCALL, RAYMOND, CLYMER, SCHEETZ, BROWN, CLARK, SEMMEL,  
FLICK, DeLUCA, EGOLF, GEIST AND CURRY, APRIL 21, 1993

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, APRIL 21, 1993

AN ACT

1 Amending the act of November 29, 1990 (P.L.585, No.148),  
2 entitled "An act providing for confidentiality of certain  
3 records; providing for the authorized sharing of certain  
4 information; providing for written consent prior to an HIV-  
5 related test, with certain exceptions; providing for civil  
6 immunity for certain licensed physicians; providing for  
7 protective procedures and equipment; and creating a civil  
8 cause of action," further providing for legislative intent,  
9 for definitions, for certification of exposure and testing  
10 and for court orders.

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

13 Section 1. Section 2 of the act of November 29, 1990  
14 (P.L.585, No.148), known as the Confidentiality of HIV-Related  
15 Information Act, is amended to read:

16 Section 2. Legislative intent.

17 (a) Findings.--The General Assembly finds that the incidence  
18 of acquired immune deficiency syndrome (AIDS) is increasing in  
19 this Commonwealth at a significant rate. Controlling the  
20 incidence of this disease is aided by providing testing and

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

12 (b) Further findings.--The General Assembly further finds  
13 that individual health care providers and first responders are  
14 increasingly concerned about occupational exposure to human  
15 immunodeficiency virus (HIV), the causative agent for acquired  
16 immune deficiency syndrome (AIDS). Due to the nature of their  
17 work, individual health care providers and first responders  
18 frequently come into contact with the blood and/or body fluids  
19 of individuals whose HIV infection status is not known.  
20 Regardless of the use of universal precautions to prevent HIV  
21 transmission between patients and individual health care  
22 providers, there will be instances of significant exposure to  
23 the blood and/or body fluids of patients.

24 (c) Intent.--It is the intent of the General Assembly to  
25 promote confidential testing on an informed and voluntary basis  
26 in order to encourage those most in need to obtain testing and  
27 appropriate counseling.

28 (d) Further intent.--It is the further intent of the General  
29 Assembly to provide a narrow exposure notification and  
30 information mechanism for individual health care providers or

1 first responders, who experience a significant exposure to a  
2 patients's blood and/or body fluids, to learn of a patient's HIV  
3 infection status and thereby obtain the means to make informed  
4 decisions with respect to modes and duration of therapy as well  
5 as measures to reduce the likelihood of transmitting an  
6 infection to others.

7 Section 2. The definition of "first responder" in section 3  
8 of the act is amended to read:

9 Section 3. Definitions.

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

13 \* \* \*

14 "First responder." Police, firefighters, rescue personnel,  
15 corrections officers or any other person who provides emergency  
16 response, first aid or other medically related assistance either  
17 in the course of their occupational duties or as a volunteer,  
18 which may expose them to contact with a person's bodily fluids.

19 \* \* \*

20 Section 3. Sections 6 and 8 of the act are amended to read:

21 Section 6. Certification of significant exposure and testing  
22 procedures.

23 (a) Physician's evaluation of significant exposure.--

24 (1) Whenever an individual health care provider or first  
25 responder experiences an exposure to a patient's blood or  
26 bodily fluids during the course of rendering health care or  
27 occupational services, the individual may request an  
28 evaluation of the exposure, by a physician, to determine if  
29 it is a significant exposure as defined in this act. No  
30 physician shall certify his own significant exposure or that

1 of any of his employees. Such requests shall be made within  
2 72 hours of the exposure.

3 (2) Within 72 hours of the request, the physician shall  
4 make written certification of the significance of the  
5 exposure.

6 (3) If the physician determines that the individual  
7 health care provider or first responder has experienced a  
8 significant exposure, the physician shall offer the exposed  
9 individual the opportunity to undergo testing, following the  
10 procedure outlined in section 5.

11 (b) Opportunity for source patient to consent.--

12 (1) In the event that an exposed individual health care  
13 provider or first responder is certified to have experienced  
14 a significant exposure and has submitted to an HIV-related  
15 test, no testing shall be performed on a source patient's  
16 available blood unless the certifying physician provides a  
17 copy of the written certification of significant exposure to  
18 the source patient's physician or institutional health care  
19 provider in possession of the available blood and the source  
20 patient's physician or institutional health care provider has  
21 made a good faith effort to:

22 (i) Notify the source patient or substitute  
23 decisionmaker of the significant exposure.

24 (ii) Seek the source patient's voluntary informed  
25 consent to the HIV-related testing as specified in  
26 section 5(a).

27 (iii) Provide counseling as required under section  
28 5(b).

29 (2) The source patient's physician or institutional  
30 health care provider that receives a certification of

1 significant exposure shall begin to comply with the request  
2 within 24 hours. If the source patient's physician or  
3 institutional health care provider is unable to secure the  
4 source patient's consent because the source patient or the  
5 source patient's substitute decisionmaker refuses to grant  
6 informed consent or the source patient cannot be located, the  
7 source patient's physician or institutional health care  
8 provider shall arrange for an entry to be placed on the  
9 source patient's medical record to that effect. If these  
10 procedures are followed and the entry is made on the source  
11 patient's medical record, then HIV-related tests shall be  
12 performed on the source patient's available blood if  
13 requested by the exposed individual health care provider or  
14 first responder who has submitted to an HIV-related test.

15 (3) The physician ordering the HIV-related test on a  
16 source patient's available blood on behalf of the source  
17 patient's physician or institutional health care provider  
18 shall comply with section 5(c) through (e).

19 (4) The health care provider or first responder shall be  
20 notified of the results of the HIV-related test on the source  
21 patient's blood if the health care provider or first  
22 responder's baseline HIV-related test is negative. Further  
23 disclosure of the test results is prohibited unless  
24 authorized under section 7.

25 (5) If there is no available blood supply, the source  
26 patient's physician or institutional health care provider  
27 that receives a certification of significant exposure shall  
28 do all of the following:

29 (i) Within 24 hours of receipt of the request,  
30 notify the source patient of the significant exposure.

- 1           (ii) Seek the source patient's voluntary informed  
2           consent to the HIV-related testing under section 5(a).  
3           (iii) Provide counseling under section 5(b).

4 Section 8. Court order.

5       (a) Order to disclose.--No court may issue an order to  
6 allow access to confidential HIV-related information unless the  
7 court finds, upon application, that one of the following  
8 conditions exists:

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

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

14       (b) Order to test and disclose.--No court may order the  
15 performance of an HIV-related test and allow access to the test  
16 result unless the court finds, upon application, that all of the  
17 following conditions exist:

18           (1) The individual whose test is sought was afforded  
19 informed consent and pretest counseling procedures required  
20 by section 5(a) and (b) and the subject refused to give  
21 consent or was not capable of providing consent.

22           (2) The applicant was exposed to a body fluid of the  
23 individual whose test is sought and that exposure presents a  
24 significant risk of exposure to HIV infection. A  
25 determination that the applicant has incurred a significant  
26 risk of exposure to HIV infection must be supported by  
27 medical and epidemiologic data regarding the transmission of  
28 HIV, including, if available, information about the HIV risk  
29 status of the source individual and the circumstances in  
30 which the alleged exposure took place.

(3) The applicant has a compelling need to ascertain the HIV test result of the source individual.

(b.1) Order to test and disclose for first responders.--The court shall order the performance of an HIV-related test and allow access to the test result by a first responder if all of the following apply:

(1) The first responder, in the course of rendering health care or occupational services, experienced a significant exposure as certified by a physician under section 6(a).

(2) The first responder submitted to an HIV-related test.

(3) The first responder was unable to obtain a test under section 6(b)(2) because there was no available blood supply.

(4) The first responder was unable to obtain the source patient's consent to undergo an HIV-related test under section 6(b)(5)(ii).

(c) Compelling need.--In assessing compelling need for subsections (a) and (b), 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.

(d) Pleadings.--Pleadings under this section shall substitute a pseudonym for the true name of the individual whose test result is sought. Disclosure to the parties of the individual's true name shall be communicated confidentially in documents not filed with the court.

(e) Notice.--Before granting an order for testing or disclosure and as soon as practicable after the filing of a petition under this section, the court shall provide the

1 individual whose test result is sought with notice and a  
2 reasonable opportunity to participate in the proceeding if the  
3 individual is not already a party.

4 (f) In camera proceedings.--Court proceedings under this  
5 section shall be conducted in camera, unless the individual  
6 agrees to a hearing in open court or unless the court determines  
7 that a public hearing is necessary to the public interest and  
8 the proper administration of justice.

9 (g) Expedited proceeding.--The court shall provide for an  
10 expedited proceeding if it is requested by the applicant and the  
11 application includes verified statements that:

12 (1) The applicant has been exposed to a body fluid that  
13 poses a risk of HIV infection from the individual whose test  
14 result is sought.

15 (2) The exposure occurred within six weeks of the filing  
16 of the application.

17 (3) The exposure involves:

18 (i) a percutaneous injury to the applicant's skin  
19 from a needle stick or other sharp object;

20 (ii) contact of the applicant's eyes, mouth or other  
21 mucous membrane;

22 (iii) contact of chapped or abraded skin of the  
23 applicant; or

24 (iv) prolonged contact of the applicant's skin.

25 An expedited proceeding on the application shall be held no  
26 later than five days after the court complies with subsection  
27 (e), pertaining to notice requirements.

28 (h) 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 7.

8 (i) Costs and fees.--The governmental unit which employs the  
9 first responder or for which the first responder volunteers is  
10 liable for court costs and attorney fees incurred in an action  
11 under this section.

12 Section 4. This act shall take effect in 60 days.