

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2933 Session of  
1992

INTRODUCED BY BARLEY, FARGO, ULIANA, VROON, LAWLESS, NOYE,  
NICKOL, BOYES, BELFANTI, ADOLPH, SCHEETZ, PHILLIPS, WOGAN,  
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TIGUE, E. Z. TAYLOR, STABACK, DeLUCA, ARMSTRONG, CLYMER, LEH,  
HERSHEY, OLASZ, BILLOW, LEVDANSKY, BUNT, PETRONE, O'BRIEN,  
CIVERA, FAIRCHILD, STAIRS, SAURMAN, KREBS, TRELLO, COLAFELLA,  
LANGTRY AND RUDY, SEPTEMBER 22, 1992

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, SEPTEMBER 22, 1992

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 intent and consent to  
9 testing; and making repeals.

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

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

15 Section 2. Legislative intent.

16 \* \* \*

17 (c) Intent.--[It is the intent of the General Assembly to  
18 promote confidential testing on an informed and voluntary basis  
19 in order to encourage those most in need to obtain testing and

1 appropriate counseling.] It is the intent of the General  
2 Assembly to provide for the confidentiality of HIV-related  
3 information in order to encourage those at risk to obtain  
4 testing and treatment. It is the further intent to allow  
5 physician testing for HIV under the same circumstances  
6 physicians would test for other communicable diseases in order  
7 to encourage early detection, treatment and prevention.

8 \* \* \*

9 Section 2. The definitions of "first responder,"  
10 "significant exposure" and "source patient" in section 3 of the  
11 act are repealed.

12 Section 3. Section 5 of the act is amended to read:

13 Section 5. Consent to HIV-related test.

14 [(a) Consent.--Except as provided in section 6 with respect  
15 to the involuntary testing of a source patient, no HIV-related  
16 test shall be performed without first obtaining the informed  
17 written consent of the subject. Any consent shall be preceded by  
18 an explanation of the test, including its purpose, potential  
19 uses, limitations and the meaning of its results.

20 (b) Pretest counseling.--No HIV-related test may be  
21 performed without first making available to the subject  
22 information regarding measures for the prevention of, exposure  
23 to and transmission of HIV.

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

28 (d) Notice of test result.--The physician who ordered the  
29 test, the physician's designee or a successor in the same  
30 relationship to the subject shall make a good faith effort to

1 inform the subject of the result regardless of whether the  
2 result is positive or negative.

3 (e) Post-test counseling.--

4 (1) No positive or negative test result shall be  
5 revealed to the subject without affording the subject the  
6 immediate opportunity for individual, face-to-face counseling  
7 about:

8 (i) The significance of the test results.

9 (ii) Measures for the prevention of the transmission  
10 of HIV.

11 (iii) The benefits of locating and counseling any  
12 individual by whom the subject may have been exposed to  
13 HIV and the availability of any services with respect to  
14 locating and counseling such individual.

15 (2) No positive test result shall be revealed to the  
16 subject without, in addition to meeting the requirements of  
17 paragraph (1), also affording the subject the immediate  
18 opportunity for individual, face-to-face counseling about:

19 (i) The availability of any appropriate health care  
20 services, including mental health care, and appropriate  
21 social and support services.

22 (ii) The benefits of locating and counseling any  
23 individual who the infected subject may have exposed to  
24 HIV and the availability of any services with respect to  
25 locating and counseling such individual.

26 (f) Blinded HIV-related testing.--Blinded HIV-related  
27 testing for purposes of research performed in a manner by which  
28 the identity of the test subject is not known and may not be  
29 retrieved by the researcher is prohibited, unless reviewed and  
30 approved by the institutional review board established by the

1 department except for testing pursuant to research approved by  
2 an institutional review board prior to the effective date of  
3 this act. The department shall make a good faith effort to  
4 maintain records of the results of blinded HIV tests performed  
5 in this Commonwealth and shall, on a yearly basis, forward  
6 information concerning the results to the appropriate committees  
7 of the General Assembly.

8 (g) Exceptions.--

9 (1) The provisions of subsections (a), (b), (c), (d) and  
10 (e) shall not apply to the following:

11 (i) The performance of an HIV-related test on a  
12 cadaver by a health care provider which procures,  
13 processes, distributes or uses a human body or a human  
14 body part, tissue or semen for use in medical research,  
15 therapy or transplantation.

16 (ii) The performance of an HIV-related test for the  
17 purpose of medical research not prohibited by subsection  
18 (f) if the testing is performed in a manner by which the  
19 identity of the test subject is not known and may not be  
20 retrieved by the researcher.

21 (iii) The performance of an HIV-related test when  
22 the test result of a subject is required by an insurer  
23 for underwriting purposes. However, the insurer shall  
24 satisfy the requirements of subsection (h).

25 (2) The provisions of subsections (a), (b) and (c) shall  
26 not apply to the performance of an HIV-related test in a  
27 medical emergency when the subject of the test is unable to  
28 grant or withhold consent and the test result is medically  
29 necessary for diagnostic purposes to provide appropriate  
30 emergency care to the subject.

(3) The provisions of subsections (d) and (e) shall not apply when a negative HIV-related test result is secured by a subject who has taken the test solely to satisfy a requirement for donating a human body or human body part, tissue or semen for use in medical research, therapy, transfusion or transplantation. However, if the subject requests identification of a negative test result, the test result shall be provided to the subject in accordance with subsection (d).

(h) Requirements applicable to insurers.--

(1) No HIV-related test shall be performed without first obtaining the informed written consent of the subject. Any consent shall be preceded, in writing, by:

(i) A disclosure of the effects of the test result on the approval of the application, or the risk classification of the subject.

(ii) Information explaining AIDS, HIV and the HIV-related test.

(iii) A description of the insurer's confidentiality standards.

(iv) A statement that, because of the serious nature of HIV-related illnesses, the subject may desire to obtain counseling before undergoing the HIV-related test.

(v) Information concerning the availability of alternative HIV-related testing and counseling provided by the department and local health departments, and the telephone number of the department from which the subject may secure additional information on such testing and counseling.

(2) The insurer is required to disclose to the subject a

1 negative test result on an HIV-related test only if the  
2 subject requests notification.

3 (3) The insurer shall not disclose to the subject of an  
4 HIV-related test a positive test result. On the form on which  
5 the insurer secures the subject's written consent to the HIV-  
6 related test, the subject shall be required to designate to  
7 whom a positive test result shall be disclosed. The subject  
8 shall have the choice of designating a physician, the  
9 department or a local health department, or a local  
10 community-based organization from a list of such  
11 organizations prepared by the department. The insurer shall  
12 notify the designee of a positive test result.

13 (4) A positive test result shall be disclosed to the  
14 subject, by the designee, in accordance with subsections (d)  
15 and (e). The department may elect to have its disclosure  
16 responsibilities satisfied by a local health department.]

17 (a) Consent requirements applicable to insurers.--

18 (1) No HIV-related test shall be performed without first  
19 obtaining the informed written consent of the subject. Any  
20 consent shall be preceded in writing by:

21 (i) A disclosure of the effects of the test result  
22 on the approval of the application, or the risk  
23 classification of the subject.

24 (ii) Information explaining aids, HIV and the HIV-  
25 related test.

26 (iii) A description of the insurer's confidentiality  
27 standards.

28 (iv) A statement that, because of the serious nature  
29 of HIV-related illnesses, the subject may desire to  
30 obtain counseling before undergoing the HIV-related test.

1           (v) Information concerning the availability of  
2           alternative HIV-related testing and counseling provided  
3           by the department and local health departments, and the  
4           telephone number of the department from which the subject  
5           may secure additional information on such testing and  
6           counseling.

7           (2) The insurer is required to disclose to the subject a  
8           negative test result on an HIV-related test only if the  
9           subject requests notification.

10          (3) The insurer shall not disclose to the subject of an  
11          HIV-related test a positive test result. On the form on which  
12          the insurer secures the subject's written consent to the HIV-  
13          related test, the subject shall be required to designate to  
14          whom a positive test result shall be disclosed. The subject  
15          shall have the choice of designating a physician, the  
16          department or a local health department, or a local  
17          community-based organization from a list of such  
18          organizations prepared by the department. The insurer shall  
19          notify the designee of a positive test result.

20          (b) Consent requirements applicable to physicians.--A  
21          physician involved in the care of a patient who concludes in his  
22          reasonable medical judgment that a blood test is appropriate for  
23          the care of the patient, the protection of the public or of  
24          health care workers may perform or order an HIV test and the  
25          informed consent of the patient shall be deemed given.

26          Section 4. Section 6 of the act is repealed.

27          Section 5. This act shall take effect in 60 days.