

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2456 Session of  
1994

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KING, EGOLF, DALEY, M. COHEN, LEDERER AND ADOLPH,  
JANUARY 25, 1994

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JANUARY 25, 1994

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 consent to testing, for counseling and for  
10 confidentiality of records; and repealing provisions relating  
11 to certification of significant exposure and testing  
12 procedures.

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

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

18 Section 2. Legislative intent.

19 \* \* \*

20 (c) Intent.--It is the intent of the General Assembly to  
21 [promote confidential testing on an informed and voluntary basis

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

9 \* \* \*

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12 "substitute decisionmaker" in section 3 of the act are repealed.

13 Section 3. Sections 5, 6, 7(b) and 8(b) of the act are  
14 amended to read:

15 Section 5. Consent to HIV-related test.

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

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

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

30 (d) Notice of test result.--The physician who ordered the

1 test, the physician's designee or a successor in the same  
2 relationship to the subject shall make a good faith effort to  
3 inform the subject of the result regardless of whether the  
4 result is positive or negative.

5 (e) Post-test counseling.--

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

10 (i) The significance of the test results.

11 (ii) Measures for the prevention of the transmission  
12 of HIV.

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

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

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

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

28 (f) Blinded HIV-related testing.--Blinded HIV-related  
29 testing for purposes of research performed in a manner by which  
30 the identity of the test subject is not known and may not be

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

10 (g) Exceptions.--

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

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

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

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

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

1 necessary for diagnostic purposes to provide appropriate  
2 emergency care to the subject.

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

12 (h) Requirements] (a) Consent requirements applicable to  
13 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 (b) Consent requirements applicable to physicians.--A  
21 physician involved in the care of a patient who concludes in the  
22 physician's reasonable medical judgment that a HIV-related test  
23 is appropriate for the case of the patient, the protection of  
24 the public or of health care providers may perform or order an  
25 HIV-related test and the informed consent of the patient shall  
26 be deemed given.

27 [Section 6. Certification of significant exposure and testing  
28 procedures.

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

30 (1) Whenever an individual health care provider or first

1 responder experiences an exposure to a patient's blood or  
2 bodily fluids during the course of rendering health care or  
3 occupational services, the individual may request an  
4 evaluation of the exposure, by a physician, to determine if  
5 it is a significant exposure as defined in this act. No  
6 physician shall certify his own significant exposure or that  
7 of any of his employees. Such requests shall be made within  
8 72 hours of the exposure.

9 (2) Within 72 hours of the request, the physician shall  
10 make written certification of the significance of the  
11 exposure.

12 (3) If the physician determines that the individual  
13 health care provider or first responder has experienced a  
14 significant exposure, the physician shall offer the exposed  
15 individual the opportunity to undergo testing, following the  
16 procedure outlined in section 5.

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

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

28 (i) Notify the source patient or substitute  
29 decisionmaker of the significant exposure.

30 (ii) Seek the source patient's voluntary informed

1 consent to the HIV-related testing as specified in  
2 section 5(a).

3 (iii) Provide counseling as required under section  
4 5(b).

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

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

25 (4) The health care provider or first responder shall be  
26 notified of the results of the HIV-related test on the source  
27 patient's blood if the health care provider or first  
28 responder's baseline HIV-related test is negative. Further  
29 disclosure of the test results is prohibited unless  
30 authorized under section 7.]



1 Section 6. Offer to counsel.

2 Any health care provider who orders a HIV-related test or  
3 notifies the patient of the test results shall make an oral  
4 offer to counsel the patient on at least the following:

5 (1) Measures for the prevention of the transmission of  
6 HIV.

7 (2) The significance of test results.

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

11 Section 7. Confidentiality of records.

12 \* \* \*

13 (b) Subsequent disclosure prohibited.--[Notwithstanding the  
14 provisions of the Vital Statistics Law of 1953 or section 15 of  
15 the Disease Prevention and Control Law of 1955, no] No person to  
16 whom confidential HIV-related information has been disclosed  
17 under this act may disclose that information to another person,  
18 except as authorized by this act[.] or by the Disease Prevention  
19 and Control Law of 1955. For the purposes of the Disease  
20 Prevention and Control Law of 1955, HIV shall be a communicable  
21 and reportable disease and shall be treated by the department as  
22 any other communicable disease.

23 \* \* \*

24 Section 8. Court order.

25 \* \* \*

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

30 (1) The individual whose test is sought [was afforded

1 informed consent and pretest counseling procedures required  
2 by section 5(a) and (b) and the subject] refused to give  
3 consent or was not capable of providing consent.

4 (2) The applicant was exposed to a body fluid of the  
5 individual whose test is sought and that exposure presents a  
6 significant risk of exposure to HIV infection. A  
7 determination that the applicant has incurred a significant  
8 risk of exposure to HIV infection must be supported by  
9 medical and epidemiologic data regarding the transmission of  
10 HIV, including, if available, information about the HIV risk  
11 status of the source individual and the circumstances in  
12 which the alleged exposure took place.

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

15 \* \* \*

16 Section 4. Section 9(d) of the act is repealed.

17 Section 5. Section 10 of the act is amended to read:

18 Section 10. Civil cause of action.

19 Any person aggrieved by a violation of this act shall have a  
20 cause of action against the person who committed such violation  
21 and may recover compensatory damages. [In the event of a  
22 violation of section 6 by a source patient's physician or an  
23 employee thereof, an aggrieved person may recover reasonable  
24 attorney fees and costs.]

25 Section 6. This act shall take effect in 60 days.