
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1847 Session of
2013

INTRODUCED BY V. BROWN, NOVEMBER 19, 2013

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 19, 2013

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 definitions, for
9 certification of significant exposure and testing procedures,
10 for confidentiality of records and for court order.

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

13 Section 1. Section 3 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 by adding definitions to read:

16 Section 3. Definitions.

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

20 * * *

21 "Blood-borne pathogen." A pathogenic microorganism which is
22 present in human blood and can cause disease in humans. The term

1 includes hepatitis B virus (HBV), hepatitis C virus (HCV) and
2 human immunodeficiency virus (HIV).

3 * * *

4 "Community contract facility." A residential facility
5 operated by a private vendor that both:

6 (1) Houses offenders pursuant to a contract with the
7 Department of Corrections.

8 (2) Is operated in accordance with 61 Pa.C.S. Ch. 50
9 (relating to community corrections centers and community
10 corrections facilities).

11 "Community corrections center." A residential facility
12 operated by the Department of Corrections that houses inmates of
13 the Department of Corrections, parolees, parole violators or all
14 of the preceding.

15 * * *

16 "Corrections contractor." A person who provides services to
17 the Department of Corrections pursuant to a contract with the
18 Department of Corrections or as an employee of such a person.

19 "Corrections employee." Any employee of a department or
20 agency, responsible for operating a corrections facility in the
21 Commonwealth of Pennsylvania.

22 "Corrections facility." A State correctional institution,
23 community corrections center or community contract facility.

24 "Corrections volunteer." A person who, without financial
25 remuneration, provides services to inmates housed in a
26 corrections facility.

27 * * *

28 "High-risk worker." An individual health care provider,
29 first responder, corrections employee, corrections contractor or
30 corrections volunteer.

1 * * *

2 Section 2. Section 6 of the act, amended July 7, 2011
3 (P.L.274, No.59), is amended to read:

4 Section 6. Certification of significant exposure and testing
5 procedures.

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

7 (1) Whenever [an individual health care provider or
8 first responder] a high-risk worker experiences an exposure
9 to a patient's blood or bodily fluids during the course of
10 rendering health care or during the course of his or her
11 occupational services, the individual may request an
12 evaluation of the exposure, by a physician, to determine if
13 it is a significant exposure as defined in this act. No
14 physician shall certify his own significant exposure or that
15 of any of his employees. Such requests shall be made within
16 72 hours of the exposure.

17 (2) Within 72 hours of the request, the physician shall
18 make written certification of the significance of the
19 exposure.

20 (3) If the physician determines that the individual
21 health care provider or first responder has experienced a
22 significant exposure, the physician shall offer the exposed
23 individual the opportunity to undergo testing, following the
24 procedure outlined in section 5.

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

26 (1) In the event that an exposed [individual health care
27 provider or first responder] high-risk worker is certified to
28 have experienced a significant exposure and has submitted to
29 an HIV-related test, no testing shall be performed on a
30 source patient's available blood unless the certifying

1 physician provides a copy of the written certification of
2 significant exposure to the source patient's physician or
3 institutional health care provider in possession of the
4 available blood and the source patient's physician or
5 institutional health care provider has made a good faith
6 effort to:

7 (i) Notify the source patient or substitute
8 decisionmaker of the significant exposure.

9 (ii) Seek the source [patient's] patient or
10 substitute decisionmaker's voluntary informed consent to
11 the HIV-related testing as specified in section 5(a).

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

29 (2.1) If the source patient has provided a blood sample,
30 but does not consent to blood-borne pathogens testing, the

1 correctional facility shall ensure that the blood is tested
2 for blood-borne pathogens if the high-risk worker requests
3 the test, provided all of the following criteria are met:

4 (i) The high-risk worker and the Department of
5 Corrections have documented exposure to blood or body
6 fluids during performance of the high-risk worker's
7 services.

8 (ii) A licensed physician has determined that a
9 significant exposure has occurred as is prescribed in
10 this section and has documented that blood-borne pathogen
11 test results are needed for beginning, modifying,
12 continuing or discontinuing medical treatment for the
13 high-risk worker as recommended by the most current
14 guidelines of the United States Public Health Service.

15 (iii) The high-risk worker provides a blood sample
16 for testing for blood-borne pathogens within 72 hours or
17 as soon as feasible.

18 (iv) The correctional facility asks the source
19 patient to consent to a test for blood-borne pathogens
20 and the source patient does not consent.

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] high-
26 risk worker shall be notified of the results of the HIV-
27 related test on the source patient's blood if the [health
28 care provider or first responder's] high-risk worker's
29 baseline HIV-related test is negative. Further disclosure of
30 the test results is prohibited unless authorized under

1 section 7.

2 Section 3. Section 7(a) of the act is amended by adding
3 paragraphs to read:

4 Section 7. Confidentiality of records.

5 (a) Limitations on disclosure.--No person or employee, or
6 agent of such person, who obtains confidential HIV-related
7 information in the course of providing any health or social
8 service or pursuant to a release of confidential HIV-related
9 information under subsection (c) may disclose or be compelled to
10 disclose the information, except to the following persons:

11 (1) The subject.

12 (2) The physician who ordered the test, or the
13 physician's designee.

14 (3) Any person specifically designated in a written
15 consent as provided for in subsection (c).

16 (4) An agent, employee or medical staff member of a
17 health care provider, when the health care provider has
18 received confidential HIV-related information during the
19 course of the subject's diagnosis or treatment by the health
20 care provider, provided that the agent, employee or medical
21 staff member is involved in the medical care or treatment of
22 the subject. Nothing in this paragraph shall be construed to
23 require the segregation of confidential HIV-related
24 information from a subject's medical record.

25 (5) A peer review organization or committee as defined
26 in the act of July 20, 1974 (P.L.564, No.193), known as the
27 Peer Review Protection Act, a nationally recognized
28 accrediting agency, or as otherwise provided by law, any
29 Federal or State government agency with oversight
30 responsibilities over health care providers.

1 (6) Individual health care providers involved in the
2 care of the subject with an HIV-related condition or a
3 positive test, when knowledge of the condition or test result
4 is necessary to provide emergency care or treatment
5 appropriate to the individual; or health care providers
6 consulted to determine diagnosis and treatment of the
7 individual.

8 (7) An insurer, to the extent necessary to reimburse
9 health care providers or to make any payment of a claim
10 submitted pursuant to an insured's policy.

11 (8) The department and persons authorized to gather,
12 transmit or receive vital statistics under the act of June
13 29, 1953 (P.L.304, No.66), known as the Vital Statistics Law
14 of 1953.

15 (9) The department and local boards and departments of
16 health, as authorized by the act of April 23, 1956 (1955
17 P.L.1510, No.500), known as the Disease Prevention and
18 Control Law of 1955.

19 (10) A person allowed access to the information by a
20 court order issued pursuant to section 8.

21 (11) A funeral director responsible for the acceptance
22 and preparation of the deceased subject.

23 (12) Employees of county mental health/mental
24 retardation agencies, county children and youth agencies,
25 county juvenile probation departments, county or State
26 facilities for delinquent youth, and contracted residential
27 providers of the above-named entities receiving or
28 contemplating residential placement of the subject, who:

29 (i) generally are authorized to receive medical
30 information; and

1 (ii) are responsible for ensuring that the subject
2 receives appropriate health care; and

3 (iii) have a need to know the HIV-related
4 information in order to ensure such care is provided.

5 The above-named entities may release the information to a
6 court in the course of a dispositional proceeding under 42
7 Pa.C.S. §§ 6351 (relating to disposition of dependent child)
8 and 6352 (relating to disposition of delinquent child) when
9 it is determined that such information is necessary to meet
10 the medical needs of the subject.

11 (13) A person authorized to receive the information
12 pursuant to this section.

13 (14) A high-risk worker who has suffered a significant
14 exposure in the course of his or her occupational duties in a
15 corrections facility or county jail.

16 (15) The Pennsylvania State Police, local police
17 department, other law enforcement agency, Office of Attorney
18 General or office of the district attorney or an agency
19 investigating or prosecuting an allegation that an inmate of
20 a corrections facility or county jail has committed an
21 offense under one or more of the following:

22 (i) 18 Pa.C.S. § 2703 (relating to assault by
23 prisoner).

24 (ii) 18 Pa.C.S. § 2703.1 (relating to aggravated
25 harassment by prisoner).

26 (iii) 18 Pa.C.S. § 2704 (relating to assault by life
27 prisoner).

28 * * *

29 Section 4. Section 8(c) of the act is amended to read:

30 Section 8. Court order.

1 * * *

2 (c) Compelling need.--In assessing compelling need for
3 subsections (a) and (b), the court shall weigh the need for
4 disclosure against the privacy interest of the individual and
5 the public interests which may be harmed by disclosure. A high-
6 risk worker who has suffered a significant exposure in the
7 course of his or her occupational duties in a correctional
8 facility or county jail shall be presumed to have a compelling
9 need for the information that cannot be accommodated by other
10 means. The presumption can only be overcome by clear and
11 convincing evidence to the contrary.

12 * * *

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