

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 641

An Act to amend and reenact §§ 32.1-37.2, 32.1-45.2, and 54.1-2403.01 of the Code of Virginia, relating to informed consent for testing for human immunodeficiency virus.

[H 1100]

Approved March 13, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-37.2, 32.1-45.2, and 54.1-2403.01 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-37.2. Consent for testing for human immunodeficiency virus; condition on disclosure of test results; counseling required; exceptions.

A. Prior to performing any test to determine infection with human immunodeficiency virus, the subject of the test shall be given an oral or written explanation of the meaning of the test. Except as otherwise authorized in this Code, informed consent shall be obtained before such a test is performed.

Informed consent for testing for infection with human immunodeficiency virus shall be deemed to have been obtained (i) when an individual seeks the services of a facility offering anonymous testing for infection with human immunodeficiency virus; (ii) when blood specimens which were obtained for routine diagnostic purposes are tested in order to conduct seroprevalence studies of infection with human immunodeficiency virus if such studies are designed to prevent any specimen from being identified with any specific individual; and (iii) when an individual donates or sells his blood. *a medical care provider shall inform the patient that the test is planned, provide information about the test, and advise the patient that he has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file.*

B. Every person who is the subject of any test to determine infection has a confirmed positive test result for human immunodeficiency virus shall be afforded the opportunity for individual face-to-face disclosure of the test results and appropriate counseling. Appropriate counseling shall include, but not be limited to, the meaning of the test results, the need for additional testing, the etiology, prevention and effects of acquired immunodeficiency syndrome, the availability of appropriate health care, mental health care and social services, the need to notify any person who may have been exposed to the virus and the availability of assistance through the Department of Health in notifying such individuals.

C. Opportunity for face-to-face disclosure of the test results and appropriate counseling shall not be required when the tests are conducted by blood collection agencies. However, all blood collection agencies shall notify the Board of Health of any positive tests.

D. In the case of a person applying for accident and sickness or life insurance who is the subject of a test to determine infection for human immunodeficiency virus, insurers' practices including an explanation of the meaning of the test, the manner of obtaining informed consent, the method of disclosure of the test results and any counseling requirements shall be as set forth in the regulations of the State Corporation Commission.

§ 32.1-45.2. Public safety employees; testing for blood-borne pathogens; procedure available for certain citizens; definitions.

A. If, in the course of employment, an employee of a public safety agency is involved in a possible exposure prone incident, the employee shall immediately, or as soon thereafter as practicable, notify the agency of the incident in accordance with the agency's procedures for reporting workplace accidents.

B. If, after reviewing the facts of the possible exposure prone incident with the employee and after medical consultation, the agency concludes that it is reasonable to believe that an exposure prone incident may have occurred, (i) the agency shall request the person whose body fluids were involved to give informed consent, as provided in ~~§ 32.1-37.2~~, to submit to testing for hepatitis B or C virus and human immunodeficiency virus *as provided in § 32.1-37.2* and to authorize disclosure of the test results or (ii) if the person is deceased, the agency shall request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to ~~provide informed consent~~, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.

C. If a person is involved in a possible exposure prone incident involving the body fluids of an employee of a public safety agency, the person may request the agency to review the facts of the possible exposure prone incident for purposes of obtaining the employee's informed consent, as provided in ~~§ 32.1-37.2~~, to test for hepatitis B or C virus and human immunodeficiency virus *as provided in § 32.1-37.2* and to authorize disclosure of the test results. If, after reviewing the facts and after medical consultation, the agency concludes it is reasonable to believe an exposure prone incident involving the person and the employee may have occurred, (i) the agency shall request the employee whose body fluids were involved to give informed consent to submit to testing for hepatitis B or C virus and human

immunodeficiency virus and to authorize disclosure of the test results or (ii) if the employee is deceased, the agency shall request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to provide ~~informed~~ consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.

D. If ~~informed~~ consent is refused under subsection B of this section, the public safety agency or the employee may petition the general district court of the city or county in which the person resides or resided, or in the case of a nonresident, the city or county of the public safety agency's principal office, to determine whether an exposure prone incident has occurred and to order testing and disclosure of the test results.

If ~~informed~~ consent is refused under subsection C of this section, the person involved in the possible exposure prone incident may petition the general district court of the city or county of the public safety agency's principal office to determine whether an exposure prone incident has occurred and to order testing and disclosure of the test results.

E. If the court finds by a preponderance of the evidence that an exposure prone incident has occurred, it shall order testing for hepatitis B or C virus and human immunodeficiency virus and disclosure of the test results. The court shall be advised by the Commissioner or his designee in making this finding. The hearing shall be held in camera as soon as practicable after the petition is filed. The record shall be sealed.

F. A party may appeal an order of the general district court to the circuit court of the same jurisdiction within ten days from the date of the order. Any such appeal shall be de novo, in camera, and shall be heard as soon as possible by the circuit court. The circuit court shall be advised by the Commissioner or his designee. The record shall be sealed. The order of the circuit court shall be final and nonappealable.

G. Disclosure of any test results provided by this section shall be made to the district health director of the jurisdiction in which the petition was brought or the district in which the person or employee was tested. The district health director or his designee shall inform the parties of the test results and counsel them in accordance with subsection B of § 32.1-37.2.

H. The results of the tests shall be confidential as provided in § 32.1-36.1.

I. No person known or suspected to be positive for infection with hepatitis B or C virus or human immunodeficiency virus shall be refused services for that reason by any public safety agency personnel.

J. For the purpose of this section and for no other purpose, the term "employee" shall include: (i) any person providing assistance to a person employed by a public safety agency who is directly affected by a possible exposure prone incident as a result of the specific crime or specific circumstances involved in the assistance and (ii) any victim of or witness to a crime who is directly affected by a possible exposure prone incident as a result of the specific crime.

K. This section shall not be deemed to create any duty on the part of any person where none exists otherwise, and a cause of action shall not arise from any failure to request consent or to consent to testing under this section. The remedies available under this section shall be exclusive.

L. For the purposes of this section, the following terms shall apply:

"Exposure prone incident" means a direct exposure to body fluids of another person in a manner which may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit hepatitis B or C virus or human immunodeficiency virus and which occurred during the commission of a criminal act, during the performance of emergency procedures, care or assistance, or in the course of public safety or law-enforcement duties.

"Public safety agency" means any sheriff's office and any adult or youth correctional, law-enforcement, fire safety organization or any agency or department that employs persons who have law-enforcement authority and which is under the direction and control of the Commonwealth or any local governing body.

§ 54.1-2403.01. Routine component of prenatal care.

A. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall ~~advise~~ *inform* every pregnant woman who is his patient ~~of the value of testing for Human Immunodeficiency Viruses (HIV) infection and shall request of each such pregnant woman consent to such testing that human immunodeficiency virus (HIV) screening is recommended for all pregnant patients and that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines (opt-out screening). The practitioner shall offer the pregnant woman oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meaning of positive and negative test results.~~ The confidentiality provisions of § 32.1-36.1, ~~the informed consent stipulations,~~ test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control *and Prevention* recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse ~~consent to~~ testing for

HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

B. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, upon receipt of a positive test result from a prenatal test for Down syndrome or other prenatally diagnosed conditions performed on a patient, the health care provider involved may provide the patient with information about the Virginia Department of Health genetics program website and shall provide the patient with up-to-date, scientific written information concerning the life expectancy, clinical course, and intellectual and functional development and treatment options for an unborn child diagnosed with or child born with Down syndrome or other prenatally diagnosed conditions. He may also provide a referral to support services providers, including information hotlines specific to Down syndrome or other prenatally diagnosed conditions, resource centers or clearinghouses, and other education and support programs. For the purposes of this section, "prenatally diagnosed condition" means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures.