

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 478

An Act to amend and reenact §§ 32.1-45.1 and 32.1-116.3 of the Code of Virginia, relating to deemed consent for HIV and hepatitis B and C testing.

[H 2449]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-45.1 and 32.1-116.3 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-45.1. Deemed consent to testing and release of test results related to infection with human immunodeficiency virus or hepatitis B or C viruses.

A. Whenever any health care provider, or any person employed by or under the direction and control of a health care provider, is directly exposed to body fluids of a patient in a manner ~~which~~ *that* may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit human immunodeficiency virus or hepatitis B or C viruses, the patient whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such patient shall also be deemed to have consented to the release of such test results to the person who was exposed. In other than emergency situations, it shall be the responsibility of the health care provider to inform patients of this provision prior to providing them with health care services which create a risk of such exposure.

B. Whenever any patient is directly exposed to body fluids of a health care provider, or of any person employed by or under the direction and control of a health care provider, in a manner ~~which~~ *that* may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the patient who was exposed.

C. For the purposes of this section, "health care provider" means any person, facility or agency licensed or certified to provide care or treatment by the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, or the Department of Social Services, any person licensed or certified by a health regulatory board within the Department of Health Professions except for the Boards of Funeral Directors and Embalmers and Veterinary Medicine or any personal care agency contracting with the Department of Medical Assistance Services.

D. "Health care provider," as defined in subsection C of this section, shall be deemed to include any person who renders emergency care or assistance, without compensation and in good faith, at the scene of an accident, fire, or any life-threatening emergency, or while en route therefrom to any hospital, medical clinic or doctor's office during the period while rendering such emergency care or assistance. The Department of Health shall provide appropriate counseling and opportunity for face-to-face disclosure of any test results to any such person.

E. Whenever any law-enforcement officer, *salaried or volunteer firefighter, paramedic or emergency medical technician* is directly exposed to body fluids of a person in a manner ~~which~~ *that* may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the ~~law-enforcement officer~~ *person* who was exposed. ~~In other than emergency situations, it shall be the responsibility of the law-enforcement officer to inform the person of this provision prior to the contact which creates a risk of such exposure.~~

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer, *salaried or volunteer firefighter, paramedic or emergency medical technician* in a manner ~~which~~ *that* may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit human immunodeficiency virus or hepatitis B or C viruses, the ~~law-enforcement officer~~ *person* whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The law-enforcement officer, *salaried or volunteer firefighter, paramedic or emergency medical technician* shall also be deemed to have consented to the release of such test results to the person *who was exposed*.

G. For the purposes of this section, "law-enforcement officer" means a person who is both (i) engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or

department under the direction and control of the Commonwealth or any local governing body that employs persons who have law-enforcement authority.

H. Whenever any school board employee is directly exposed to body fluids of any person in a manner ~~which~~ *that* may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the school board employee who was exposed. In other than emergency situations, it shall be the responsibility of the school board employee to inform the person of this provision prior to the contact that creates a risk of such exposure.

I. Whenever any person is directly exposed to the body fluids of a school board employee in a manner that may, according to the then current guidelines of the Centers for Disease Control *and Prevention*, transmit human immunodeficiency virus or hepatitis B or C viruses, the school board employee whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The school board employee shall also be deemed to have consented to the release of such test results to the person.

J. For the purposes of this section, "school board employee" means a person who is both (i) acting in the course of employment at the time of such exposure and (ii) employed by any local school board in the Commonwealth.

K. For purposes of this section, if the person whose blood specimen is sought for testing is a minor, and that minor refuses to provide such specimen, consent for obtaining such specimen shall be obtained from the parent, guardian, or person standing in loco parentis of such minor prior to initiating such testing. If the parent or guardian or person standing in loco parentis withholds such consent, or is not reasonably available, the person potentially exposed to the human immunodeficiency virus or hepatitis B or C viruses, or the employer of such person, may petition the juvenile and domestic relations district court in the county or city where the minor resides or resided, or, in the case of a nonresident, the county or city where the health care provider, law-enforcement agency or school board has its principal office or, in the case of a health care provider rendering emergency care pursuant to subsection D, the county or city where the exposure occurred, for an order requiring the minor to provide a blood specimen or to submit to testing and to disclose the test results in accordance with this section.

L. Except as provided in subsection K, if the person whose blood specimen is sought for testing refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus or hepatitis B or C viruses, or the employer of such person, may petition the general district court of the county or city in which the person whose specimen is sought resides or resided, or, in the case of a nonresident, the county or city where the health care provider, law-enforcement agency or school board has its principal office or, in the case of a health care provider rendering emergency care pursuant to subsection D, the county or city where the exposure occurred, for an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test results in accordance with this section. At any hearing before the court, the person whose specimen is sought or his counsel may appear. The court shall be advised by the Commissioner or his designee prior to entering any testing order. If a testing order is issued, both the petitioner and the person from whom the blood specimen is sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a licensed practitioner or trained counselor.

§ 32.1-116.3. Reporting of communicable diseases; definitions.

A. For the purposes of this section:

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual or person to another or to uninfected persons through airborne or nonairborne means and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. "Individual" shall include any companion animal.

"Communicable diseases" means any airborne infection or disease, including, but not limited to, tuberculosis, measles, certain meningococcal infections, mumps, chicken pox and Hemophilus Influenzae Type b, and those transmitted by contact with blood or other human body fluids, including, but not limited to, human immunodeficiency virus, Hepatitis B and Non-A, Non-B Hepatitis.

B. Every licensed health care facility which transfers or receives patients via emergency medical services ambulances or mobile intensive care units shall notify the emergency medical services agencies providing such patient transport of the name and telephone number of the individual who is the infection control practitioner with the responsibility of investigating exposure to infectious diseases in the facility.

Every licensed emergency medical services agency established in the Commonwealth shall notify all facilities to which they transport patients or from which they transfer patients of the names and telephone numbers of the members, not to exceed three persons, who have been appointed to serve as

the ~~communicable disease liaison exposure control~~ officers. Every licensed emergency medical services agency shall implement universal precautions and shall ensure that these precautions are appropriately followed and enforced.

C. Upon requesting any licensed emergency medical services agency to transfer (i) a patient who is known to be positive for or who suffers from any communicable disease ~~which, in the judgment of the physician authorizing the transfer or the facility's infection control practitioner, presents any risk to the transporting emergency medical services personnel or to patients who may be subsequently transported in the same vehicle,~~ or (ii) a patient who is known to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, the transferring facility shall inform the attendant-in-charge of the transferring crew of the general condition of the patient and the types of precautions to be taken to prevent the spread of the disease. The identity of the patient shall be confidential.

D. If any firefighter, law-enforcement officer, emergency medical services provider or paramedic has an exposure of blood or body fluid to mucous membrane, non-intact skin, or a contaminated needlestick injury, his ~~communicable disease liaison exposure control~~ officer shall be notified, a report completed and the infection control practitioner at the receiving facility notified.

E. If, during the course of medical care and treatment, any physician determines that a patient who was transported to a receiving facility by any licensed emergency medical services agency (i) is positive for or has been diagnosed as suffering from an airborne infectious disease or (ii) is subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, then the infection control practitioner in the facility shall immediately notify the ~~communicable disease liaison exposure control~~ officer who represents the transporting emergency medical services agency of the name of the patient, and the date and time of the patient's admittance to the facility. The ~~communicable disease liaison exposure control~~ officer for the transporting emergency medical services agency shall investigate the incident to determine if any exposure of emergency medical services personnel or other emergency personnel occurred. The identity of the patient and all personnel involved in any such investigation shall be confidential.

F. If any firefighter, law-enforcement officer, emergency medical services provider or paramedic shall be exposed to a communicable disease, the ~~communicable disease liaison exposure control~~ officer shall immediately notify the infection control practitioner of the receiving facility. The infection control practitioner of the facility shall conduct an investigation and provide information concerning the extent and severity of the exposure and the recommended course of action to the ~~communicable disease liaison exposure control~~ officer of the transporting agency. ~~This section shall not be construed to create a duty by the receiving facility to perform any test or tests beyond those necessary for the medical management of the patient delivered by an emergency medical services agency to the receiving facility nor shall it affect the operation of the provisions of § 32.1-45.1.~~

G. Any person requesting or requiring any employee of a public safety agency as defined in subsection J of § 32.1-45.2 to arrest, transfer, or otherwise exercise custodial supervision over an individual known to the requesting person (i) to be infected with any communicable disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title shall inform such public safety agency employee of a potential risk of exposure to a communicable disease.

H. Local or state correctional facilities which transfer patients known to have a communicable disease or to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title shall notify the emergency medical services agency providing transportation services of a potential risk of exposure to a communicable disease, including a communicable disease of public health threat. For the purposes of this section, the chief medical person at a local or state correctional facility or the facility director or his designee shall be responsible for providing such information to the transporting agency.

I. Any person who, as a result of this provision, becomes aware of the identity or condition of a person known to be (i) positive for or to suffer from any communicable disease, or to have suffered exposure to a communicable disease or (ii) subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, shall keep such information confidential, except as expressly authorized by this provision.

J. No person known to be (i) positive for or to suffer from any communicable disease, including any communicable disease of public health threat, or (ii) subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, shall be refused transportation or service for that reason by an emergency medical services, law-enforcement, or public safety agency.