

No. 1990-148

AN ACT

SB 1163

Providing for confidentiality of certain records; providing for the authorized sharing of certain information; providing for written consent prior to an HIV-related test, with certain exceptions; providing for civil immunity for certain licensed physicians; providing for protective procedures and equipment; and creating a civil cause of action.

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

Section 1. Short title.

This act shall be known and may be cited as the Confidentiality of HIV-Related Information Act.

Section 2. Legislative intent.

(a) Findings.—The General Assembly finds that the incidence of acquired immune deficiency syndrome (AIDS) is increasing in this Commonwealth at a significant rate. Controlling the incidence of this disease is aided by providing testing and counseling activities for those persons who are at risk of exposure to or who are carrying the human immunodeficiency virus (HIV), which is the causative agent of AIDS. Testing and counseling are promoted by establishing confidentiality requirements which protect individuals from inappropriate disclosure and subsequent misuse of confidential HIV-related information. The General Assembly also finds that, since certain specific behaviors place a person at risk of contracting the virus, testing and counseling of persons who are at risk of exposure to the virus makes an efficient use of available funding.

(b) Further findings.—The General Assembly further finds that individual health care providers are increasingly concerned about occupational exposure to human immunodeficiency virus (HIV), the causative agent for acquired immune deficiency syndrome (AIDS). Due to the nature of their work, individual health care providers and first responders frequently come into contact with the blood and/or body fluids of individuals whose HIV infection status is not known. Regardless of the use of universal precautions to prevent HIV transmission between patients and individual health care providers, there will be instances of significant exposure to the blood and/or body fluids of patients.

(c) Intent.—It is the intent of the General Assembly to promote confidential testing on an informed and voluntary basis in order to encourage those most in need to obtain testing and appropriate counseling.

(d) Further intent.—It is the further intent of the General Assembly to provide a narrow exposure notification and information mechanism for individual health care providers or first responders, who experience a significant exposure to a patient's blood and/or body fluids, to learn of a patient's HIV infection status and thereby obtain the means to make informed deci-

sions with respect to modes and duration of therapy as well as measures to reduce the likelihood of transmitting an infection to others.

Section 3. Definitions.

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

“AIDS.” Acquired immune deficiency syndrome.

“Available blood.” Blood that is in the possession of the institutional health care provider or the source patient’s physician pursuant to a valid authorization.

“CDC.” The Centers for Disease Control of the United States Public Health Service.

“Confidential HIV-related information.” Any information which is in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV-related information and which concerns whether an individual has been the subject of an HIV-related test, or has HIV, HIV-related illness or AIDS; or any information which identifies or reasonably could identify an individual as having one or more of these conditions, including information pertaining to the individual’s contacts.

“Contact.” A sex-sharing or needle-sharing partner of the subject.

“Department.” The Department of Health of the Commonwealth.

“First responder.” Police, firefighters, rescue personnel or any other person who provides emergency response, first aid or other medically related assistance either in the course of their occupational duties or as a volunteer, which may expose them to contact with a person’s bodily fluids.

“Health care provider.” An individual or institutional health care provider.

“HIV.” The human immunodeficiency virus.

“HIV-related test.” Any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of HIV infection.

“Home care agency.” Any organization or part of an organization which is staffed and equipped to provide in-home health care services. The term includes, but is not limited to, Pennsylvania-licensed home health agencies, home health aide agencies or private duty care agencies.

“Individual health care provider.” A physician, nurse, emergency medical services worker, chiropractor, optometrist, psychologist, nurse-midwife, physician assistant, dentist or other person, including a professional corporation or partnership, providing medical, nursing, drug or alcohol rehabilitation services, mental health services, other health care services or an employee or agent of such individual or an institutional health care provider.

“Institutional health care provider.” A hospital, nursing home, hospice, clinic, blood bank, plasmapheresis or other blood product center, organ or tissue bank, sperm bank, clinical laboratory, residential or outpatient drug and alcohol rehabilitation service, mental health facility, mental retardation

facility, home care agency as defined in this act, or any health care institution required to be licensed in this Commonwealth whether privately or publicly operated.

“Insurer.” Any insurance company, association or exchange authorized to do business in this Commonwealth under the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, any entity subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations), the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act, or the act of July 29, 1977 (P.L.105, No.38), known as the Fraternal Benefit Society Code.

“Significant exposure.” Direct contact with blood or body fluids of a patient in a manner which, according to the most current guidelines of the Centers for Disease Control, is capable of transmitting human immunodeficiency virus, including, but not limited to, a percutaneous injury (e.g., a needle stick or cut with a sharp object), contact of mucous membranes or contact of skin (especially when the exposed skin is chapped, abraded or afflicted with dermatitis) or if the contact is prolonged or involves an extensive area.

“Source patient.” Any person whose body fluids have been the source of a significant exposure to an individual health care provider.

“Subject.” An individual or a guardian of the person of that individual.

“Substitute decisionmaker.” Any guardian or person who by law or medical practice is authorized to consent on behalf of an incompetent person for medical treatment.

Section 4. Prevention of transmission of infectious diseases.

The department shall, by regulation, require the use of protective measures and equipment by individuals, persons and institutions not covered by regulations promulgated by the Occupational Safety and Health Administration governing such protective measures and equipment. The department shall develop such regulations pursuant to guidelines established by the CDC. For health care providers covered by the provisions of the Occupational Safety and Health Administration governing such protective measures and equipment, the department shall encourage compliance with approved standards. This section shall not preclude the department from exercising rulemaking authority granted under any other act.

Section 5. Consent to HIV-related test.

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

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

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

(d) Notice of test result.—The physician who ordered the test, the physician's designee or a successor in the same relationship to the subject shall make a good faith effort to inform the subject of the result regardless of whether the result is positive or negative.

(e) Post-test counseling.—

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

(i) The significance of the test results.

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

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

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

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

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

(f) Blinded HIV-related testing.—Blinded HIV-related testing for purposes of research performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher is prohibited, unless reviewed and approved by the institutional review board established by the department except for testing pursuant to research approved by an institutional review board prior to the effective date of this act. The department shall make a good faith effort to maintain records of the results of blinded HIV tests performed in this Commonwealth and shall, on a yearly basis, forward information concerning the results to the appropriate committees of the General Assembly.

(g) Exceptions.—

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

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

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

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

(2) The provisions of subsections (a), (b) and (c) shall not apply to the performance of an HIV-related test in a medical emergency when the subject of the test is unable to grant or withhold consent and the test result is medically necessary for diagnostic purposes to provide appropriate 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 negative test result on an HIV-related test only if the subject requests notification.

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

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

Section 6. Certification of significant exposure and testing procedures.

(a) Physician's evaluation of significant exposure.—

(1) Whenever an individual health care provider or first responder experiences an exposure to a patient's blood or bodily fluids during the course of rendering health care or occupational services, the individual

may request an evaluation of the exposure, by a physician, to determine if it is a significant exposure as defined in this act. No physician shall certify his own significant exposure or that of any of his employees. Such requests shall be made within 72 hours of the exposure.

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

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

(b) Opportunity for source patient to consent.—

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

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

(ii) Seek the source patient's voluntary informed consent to the HIV-related testing as specified in section 5(a).

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

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

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

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

Section 7. Confidentiality of records.

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

- (1) The subject.
- (2) The physician who ordered the test, or the physician's designee.
- (3) Any person specifically designated in a written consent as provided for in subsection (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Subsequent disclosure prohibited.**—Notwithstanding the provisions of the Vital Statistics Law of 1953 or section 15 of the Disease Prevention and Control Law of 1955, no person to whom confidential HIV-related information has been disclosed under this act may disclose that information to another person, except as authorized by this act.

(c) **Required elements of written consent to disclosure.**—A written consent to disclosure of confidential HIV-related information shall include:

- (1) The specific name or general designation of the person permitted to make the disclosure.
- (2) The name or title of the individual, or the name of the organization to which the disclosure is to be made.
- (3) The name of the subject.
- (4) The purpose of the disclosure.
- (5) How much and what kind of information is to be disclosed.
- (6) The signature of the subject.
- (7) The date on which the consent is signed.
- (8) A statement that the consent is subject to revocation at any time except to the extent that the person who is to make the disclosure has already acted in reliance on it.
- (9) The date, event or condition upon which the consent will expire, if not earlier revoked.

(d) **Expired, deficient or false consent.**—A disclosure may not be made on the basis of a consent which:

- (1) has expired;
- (2) on its face substantially fails to conform to any of the requirements set forth in subsection (c);
- (3) is known to have been revoked; or
- (4) is known by the person holding the information to be materially false.

(e) **Notice to accompany disclosure.**—Each disclosure made with the subject's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Pennsylvania law. Pennsylvania law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or is authorized by the Confidentiality of HIV-Related Information Act. A general authorization for the release of medical or other information is not sufficient for this purpose.

(f) Duty to establish written procedures.—An institutional health care provider that has access to or maintains individually identifying confidential HIV-related information shall establish written procedures for confidentiality and disclosure of the records which are in accordance with the provisions of this act within 60 days of the effective date of this act.

Section 8. Court order.

(a) Order to disclose.—No court may issue an order to allow access to confidential HIV-related information unless the court finds, upon application, that one of the following conditions exists:

(1) The person seeking the information has demonstrated a compelling need for that information which cannot be accommodated by other means.

(2) The person seeking to disclose the information has a compelling need to do so.

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

(1) The individual whose test is sought was afforded informed consent and pretest counseling procedures required by section 5(a) and (b) and the subject refused to give consent or was not capable of providing consent.

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

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

(c) Compelling need.—In assessing compelling need for subsections (a) and (b), the court shall weigh the need for disclosure against the privacy interest of the individual and the public interests which may be harmed by disclosure.

(d) Pleadings.—Pleadings under this section shall substitute a pseudonym for the true name of the individual whose test result is sought. Disclosure to the parties of the individual's true name shall be communicated confidentially in documents not filed with the court.

(e) Notice.—Before granting an order for testing or disclosure and as soon as practicable after the filing of a petition under this section, the court shall provide the individual whose test result is sought with notice and a reasonable opportunity to participate in the proceeding if the individual is not already a party.

(f) In camera proceedings.—Court proceedings under this section shall be conducted in camera, unless the individual agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(g) Expedited proceeding.—The court shall provide for an expedited proceeding if it is requested by the applicant and the application includes verified statements that:

- (1) The applicant has been exposed to a body fluid that poses a risk of HIV infection from the individual whose test result is sought.
- (2) The exposure occurred within six weeks of the filing of the application.
- (3) The exposure involves:
 - (i) a percutaneous injury to the applicant's skin from a needle stick or other sharp object;
 - (ii) contact of the applicant's eyes, mouth or other mucous membrane;
 - (iii) contact of chapped or abraded skin of the applicant; or
 - (iv) prolonged contact of the applicant's skin.

An expedited proceeding on the application shall be held no later than five days after the court complies with subsection (e), pertaining to notice requirements.

(h) Safeguards against disclosure.—Upon the issuance of an order to disclose the information, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the following:

- (1) The particular information which is essential to accommodate the need of the party seeking disclosure.
- (2) The persons who may have access to the information.
- (3) The purposes for which the information will be used.
- (4) The appropriate prohibitions on future disclosure as provided for in section 7.

Section 9. Civil immunity for certain physicians.

(a) Permissible disclosure.—Notwithstanding the provisions of section 7, a physician may disclose confidential HIV-related information if all of the following conditions are met:

- (1) The disclosure is made to a known contact of the subject.
- (2) The physician reasonably believes disclosure is medically appropriate, and there is a significant risk of future infection to the contact.
- (3) The physician has counseled the subject regarding the need to notify the contact, and the physician reasonably believes the subject will not inform the contact or abstain from sexual or needle-sharing behavior which poses a significant risk of infection to the contact.
- (4) The physician has informed the subject of his intent to make such disclosure.

(b) Subject not to be identified.—When making such disclosure to a contact, the physician shall not disclose the identity of the subject or any other contact. Disclosure shall be made in person except where circumstances reasonably prevent doing so.

(c) Duties relating to contacts.—A physician shall have no duty to identify, locate or notify any contact, and no cause of action shall arise for non-disclosure or for disclosure in conformity with this section.

(d) Other immunity.—The physician who certifies that a significant exposure has occurred as provided by section 6 shall not be subject to civil liability for the exposure evaluation if acting in the good faith and reasonable belief that the certification was appropriate and consistent with this act.

Section 10. Civil cause of action.

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

Section 11. Separate violations.

Each disclosure of confidential HIV-related information in violation of this act or each HIV-related test conducted in contravention of this act is separate for purposes of civil liability.

Section 12. Disease Prevention and Control Law.

Insofar as the provisions of the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955, are inconsistent with this act, this act shall apply.

Section 13. Effective date.

This act shall take effect in 90 days.

APPROVED—The 29th day of November, A. D. 1990.

ROBERT P. CASEY