



**House Bill No. 6391**

**Public Act No. 09-133**

**AN ACT CONCERNING REVISIONS TO THE HIV TESTING CONSENT LAW.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 19a-582 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Except as required pursuant to section 19a-586, [or by federal or state law, no person shall order the performance of an HIV-related test without first receiving written informed consent or oral informed consent which has been documented in the medical record, of the subject of the test or of a person authorized to consent to health care for such individual] a person who has provided general consent as described in this section for the performance of medical procedures and tests is not required to also sign or be presented with a specific informed consent form relating to medical procedures or tests to determine human immunodeficiency virus infection or antibodies to human immunodeficiency virus. General consent shall include instruction to the patient that: (1) As part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus, and (2) such testing is voluntary and that the patient can choose not to be tested for human immunodeficiency virus or antibodies to human immunodeficiency virus. General consent that includes HIV-related

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testing shall be obtained without undue inducement or any element of compulsion, fraud, deceit, duress or other form of constraint or coercion. If a patient declines an HIV-related test, such decision by the patient shall be documented in the medical record. The consent of a parent or guardian shall not be a prerequisite to testing of a minor. The laboratory shall report the test result to the person who orders the performance of the test. [Whenever practicable written consent shall be obtained. A person ordering the performance of an HIV-related test shall certify that informed consent has been received prior to ordering testing by a licensed laboratory. No laboratory shall perform an HIV-related test without a written certification that such consent has been obtained, or without written certification that testing without consent is being ordered pursuant to one of the exceptions in subsection (e) of this section. The Department of Public Health shall develop recommended forms for health care providers for purposes of this section. Such forms shall satisfy the requirement for a written consent form but shall not fully satisfy the requirement for the explanation pursuant to subsections (b) and (c) of this section. Any form used pursuant to this section and all information conveyed pursuant to subsections (c) and (d) of this section shall be written or conveyed in a clear and coherent manner using plain language as described in section 42-152.]

(b) A person ordering the performance of an HIV-related test shall not be held liable for ordering a test without specific informed consent if a good faith effort is made to convey the [explanation] instruction required pursuant to [subsections (b), (c) and (d)] subsection (a) of this section. [The department shall develop guidelines for meeting the requirements of subsections (b), (c) and (d) of this section.]

[(b) Informed consent to an HIV-related test shall include a statement provided to the subject of the test or provided to a person authorized to consent to health care for the subject which includes at

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least the following: (1) An explanation of the test, including its purpose, the meaning of its results, and the benefits of early diagnosis and medical intervention; (2) acknowledgment that consent to an HIV test is not a precondition to receiving health care but that refusal to consent may, in some circumstances, affect the provider's ability to diagnose and treat the illness; (3) an explanation of the procedures to be followed, including that the test is voluntary, and a statement advising the subject on the availability of anonymous testing; and (4) an explanation of the confidentiality protections afforded confidential HIV-related information including the circumstances under which and classes of persons to whom disclosure of such information may be required, authorized or permitted by law. Such explanation shall specifically acknowledge that known partners of the protected individual may be warned of their potential risk of infection without identifying the protected individual and that the law permits the recording of HIV and AIDS-related information in medical charts and records. Informed consent shall be obtained without undue inducement or any element of compulsion, fraud, deceit, duress or other form of constraint or coercion.

(c) Prior to obtaining informed consent, a person ordering the performance of an HIV-related test shall provide the subject of an HIV-related test, or to a person authorized to consent to health care for the subject, an explanation of the nature of AIDS and HIV-related illness and information about behaviors known to pose risks for transmission of HIV infection.]

[(d)] (c) At the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV-related test shall provide the subject of the test or the person authorized to consent to health care for the subject with counseling or referrals for counseling, as needed: (1) For coping with the emotional consequences of learning the result; (2) regarding the discrimination problems that disclosure of

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the result could cause; (3) for behavior change to prevent transmission or contraction of HIV infection; (4) to inform such person of available medical treatments and medical services; (5) regarding local or community-based HIV/AIDS support services agencies; (6) to work towards the goal of involving a minor's parents or legal guardian in the decision to seek and in the ongoing provision of medical treatment; and [(6)] (7) regarding the need of the test subject to notify his partners and, as appropriate, provide assistance or referrals for assistance in notifying partners; except that if the subject of the test is a minor who was tested without the consent of his parents or guardian, such counseling shall be provided to such minor at the time of communicating such test result to such minor. A health care provider or health facility shall not withhold test results from the protected individual. The protected individual may refuse to receive his test result but the person ordering the performance of the test shall encourage him to receive the result and to adopt behavior changes that will allow him to protect himself and others from infection.

[(e)] (d) The provisions of this section shall not apply to the performance of an HIV-related test:

(1) By licensed medical personnel when the subject is unable to grant or withhold consent and no other person is available who is authorized to consent to health care for the individual and the test results are needed for diagnostic purposes to provide appropriate urgent care, except that in such cases the counseling, referrals and notification of test results described in subsection [(d)] (c) of this section shall be provided as soon as practical;

(2) By a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical research or therapy, or for transplantation to individuals, provided if the test results are

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communicated to the subject, the counseling, referrals and notification of test results described in subsection [(d)] (c) of this section shall be provided;

(3) For the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and is unable to be retrieved by the researcher;

(4) On a deceased person when such test is conducted to determine the cause or circumstances of death or for epidemiological purposes;

(5) In cases where a health care provider or other person, including volunteer emergency medical services, fire and public safety personnel, in the course of his occupational duties has had a significant exposure, provided the following criteria are met: (A) The worker is able to document significant exposure during performance of his occupation, (B) the worker completes an incident report within forty-eight hours of exposure identifying the parties to the exposure, witnesses, time, place and nature of the event, (C) the worker submits to a baseline HIV test within seventy-two hours of the exposure and is negative on that test, (D) the patient's or person's physician or, if the patient or person does not have a personal physician or if the patient's or person's physician is unavailable, another physician or health care provider has approached the patient or person and sought voluntary consent and the patient or person has refused to consent to testing, except in an exposure where the patient or person is deceased, (E) an exposure evaluation group determines that the criteria specified in subparagraphs (A), (B), (C), (D) and (F) of this subdivision are met and that the worker has a significant exposure to the blood of a patient or person and the patient or person, or the patient's or person's legal guardian, refuses to grant informed consent for an HIV test. If the patient or person is under the care or custody of the health facility, correctional facility or other institution and a sample of the patient's blood is available, said blood shall be tested. If no sample of blood is

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available, and the patient is under the care or custody of a health facility, correctional facility or other institution, the patient shall have a blood sample drawn at the health facility, correctional facility or other institution and tested. No member of the exposure evaluation group who determines that a worker has sustained a significant exposure and authorized the HIV testing of a patient or other person, nor the health facility, correctional facility or other institution, nor any person in a health facility or other institution who relies in good faith on the group's determination and performs that test shall have any liability as a result of his action carried out pursuant to this section, unless such person acted in bad faith. If the patient or person is not under the care or custody of a health facility, correctional facility or other institution and a physician not directly involved in the exposure certifies in writing that the criteria specified in subparagraphs (A), (B), (C), (D) and (F) of this subdivision are met and that a significant exposure has occurred, the worker may seek a court order for testing pursuant to subdivision (8) of this subsection, (F) the worker would be able to take meaningful immediate action, if results are known, which could not otherwise be taken, as defined in regulations adopted pursuant to section 19a-589, (G) the fact that an HIV test was given as a result of an accidental exposure and the results of that test shall not appear in a patient's or person's medical record unless such test result is relevant to the medical care the person is receiving at that time in a health facility or correctional facility or other institution, (H) the counseling described in subsection [(d)] (c) of this section shall be provided but the patient or person may choose not to be informed about the result of the test, and (I) the cost of the HIV test shall be borne by the employer of the potentially exposed worker;

(6) In facilities operated by the Department of Correction if the facility physician determines that testing is needed for diagnostic purposes, to determine the need for treatment or medical care specific to an HIV-related illness, including prophylactic treatment of HIV

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infection to prevent further progression of disease, provided no reasonable alternative exists that will achieve the same goal;

(7) In facilities operated by the Department of Correction if the facility physician and chief administrator of the facility determine that the behavior of the inmate poses a significant risk of transmission to another inmate or has resulted in a significant exposure of another inmate of the facility and no reasonable alternative exists that will achieve the same goal. No involuntary testing shall take place pursuant to subdivisions (6) and (7) of this subsection until reasonable effort has been made to secure informed consent. When testing without consent takes place pursuant to subdivisions (6) and (7) of this subsection, the counseling referrals and notification of test results described in subsection [(d)] (c) of this section shall, nonetheless be provided;

(8) Under a court order which is issued in compliance with the following provisions: (A) No court of this state shall issue such order unless the court finds a clear and imminent danger to the public health or the health of a person and that the person has demonstrated a compelling need for the HIV-related test result which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for a test result against the privacy interests of the test subject and the public interest which may be disserved by involuntary testing, (B) pleadings pertaining to the request for an involuntary test shall substitute a pseudonym for the true name of the subject to be tested. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court, (C) before granting any such order, the court shall provide the individual on whom a test result is being sought with notice and a reasonable opportunity to participate in the proceeding if he is not already a party, (D) court proceedings as to involuntary testing shall be conducted in camera unless the subject of the test

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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;

(9) When the test is conducted by any life or health insurer or health care center for purposes of assessing a person's fitness for insurance coverage offered by such insurer or health care center; or

(10) When the test is subsequent to a prior confirmed test and the subsequent test is part of a series of repeated testing for the purposes of medical monitoring and treatment, provided (A) the patient has previously given [informed consent and has been counseled concerning medical treatments and behavioral changes necessary to reduce HIV transmission, as required by this section] general consent that includes HIV-related tests, (B) the patient, after consultation with the health care provider, has declined reiteration of the [specific informed] general consent, counseling and education requirements of this section, and (C) a notation to that effect has been entered into the patient's medical record.

[(f) Except as provided in subsection (e) of this section, informed consent as described in this section shall be obtained for each HIV test, or in the case where a sequence of tests is required to confirm an initial positive result, for each sequence of tests.]

Sec. 2. Subsection (e) of section 19a-585 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(e) Except as provided in subparagraph (G) of subdivision (5) of subsection [(e)] (d) of section 19a-582, as amended by this act, nothing in this chapter shall prohibit the recording of HIV and AIDS-related information in the medical chart or medical records of a protected individual or the listing of AIDS, HIV-related illness or HIV infection

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in a certificate of death or autopsy report. This chapter shall not be construed to modify regulations relating to access to death certificates or autopsy reports. This chapter shall not be construed to modify the provisions of section 19a-25 or 19a-221.

Sec. 3. Section 19a-588 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

Each town shall notify its police, fire and emergency medical services personnel of the procedures under subdivision (5) of subsection [(e)] (d) of section 19a-582, as amended by this act, and subdivision (7) of subsection (a) of section 19a-583 pertaining to workers who have experienced a significant exposure.

Approved June 18, 2009