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H.696

Introduced by Representatives Lucke of Hartford, Cole of Burlington, Deen of
Westminster, Dickinson of St. Albans Town, Martel of
Waterford, Murphy of Fairfax, Nuovo of Middlebury, Parent of
St. Albans Town, Ryerson of Randolph, Savage of Swanton,
Sullivan of Burlington, Tate of Mendon, Till of Jericho, Troiano
of Stannard, Viens of Newport City, and Walz of Barre City

Referred to Committee on

Date:

Subject: Health; communicable disease testing; consent

Statement of purpose of bill as introduced: This bill proposes to enable a
health care worker, public safety personnel, or emergency personnel exposed
to the blood or bodily fluids of a patient to petition the Superior Court to order
the patient to obtain a test for bloodborne pathogen-related illnesses when
voluntary consent is denied.

An act relating to patient testing for bloodborne pathogen-related illnesses
after possible transmission to health care, safety, or emergency personnel

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 18 V.S.A. § 1141 is amended to read:

3 § 1141. COMMUNICABLE DISEASE TESTING

4 (a) A health care provider may order a test for bloodborne pathogens if a
5 health care worker, public safety personnel, or emergency personnel has been
6 exposed to the blood or bodily fluids of the source patient in a manner
7 sufficient to transmit a bloodborne pathogen-related illness to the affected
8 worker while engaged in rendering health services to the source patient, and
9 provided that:

10 (1) ~~the~~ The source patient:

11 (A) has provided informed consent, as defined in subdivision
12 9701(17) of this title; ~~or~~

13 (B) is deceased; or

14 (C) has not provided informed consent and the court has ordered the
15 source patient to obtain a blood test for bloodborne pathogen-related illnesses
16 pursuant to subsection (n) of this section.

17 (2) ~~the~~ The worker has provided a blood sample and consented to testing
18 for bloodborne pathogens and a physician has documented that bloodborne
19 pathogen test results are needed for beginning, continuing, modifying, or
20 discontinuing medical treatment for the worker; ~~;~~

1 (3) a A physician with specialty training in infectious diseases has
2 confirmed that the worker has been exposed to the blood or bodily fluids of the
3 source patient in a manner sufficient to transmit a bloodborne pathogen-related
4 illness;

5 (4) a A health care provider has informed the worker of the
6 confidentiality requirements in subsection (c) of this section and the penalties
7 for unauthorized disclosure of source patient information under subsection (e)
8 of this section; ~~and~~.

9 (5) a A health care provider has informed the source patient of the
10 purpose and confidentiality provisions in subsections (b) and (c) of this
11 section, respectively, if applicable.

12 (b) Bloodborne pathogen test results of a source patient obtained under
13 subsection (a) of this section are for diagnostic purposes and to determine the
14 need for treatment or medical care specific to a bloodborne pathogen-related
15 illness of a worker. Test results may not be used as evidence in any criminal or
16 civil proceedings.

17 (c) The result of a test ordered pursuant to subsection (a) of this section is
18 protected health information subject to the “Standards for Privacy of
19 Individually Identifiable Health Information” established under the Health
20 Insurance Portability and Accountability Act of 1996 and contained in
21 45 C.F.R., Parts 160 and 164, and any subsequent amendments. Test results

1 shall be confidential except that the worker who sustained the exposure, the
2 health care provider who ordered the test, and the source patient, upon his or
3 her request, shall be informed of the test results. Test results reported to the
4 worker and documented in his or her medical record shall not include any
5 personally identifying information relative to the source patient. Test results
6 shall be transmitted to the ~~commissioner of health~~ Commissioner of Health
7 pursuant to subsection (i) of this section.

8 (d) Prior to laboratory testing of a source patient's blood sample for
9 bloodborne pathogens, personal identifiers shall be removed from the sample.

10 (e) Unauthorized disclosures of test results obtained under this section shall
11 be subject to the penalties provided under the Health Insurance Portability and
12 Accountability Act of 1996, 42 U.S.C. subsections 1320d-5 and 1320d-6, and
13 may be considered unprofessional conduct under applicable licensing,
14 certification, and registration laws.

15 (f) The results of rapid testing technologies shall be considered preliminary
16 and may be released in accordance with the manufacturer's instructions as
17 approved by the federal Food and Drug Administration. Corroborating or
18 confirmatory testing ~~must~~ shall be conducted as follow-up to a positive
19 preliminary test.

1 (g) The health care provider who requested the test shall provide the source
2 patient and the worker an opportunity to receive follow-up testing and shall
3 provide information on options for counseling, as appropriate.

4 (h) Records pertaining to testing performed pursuant to this section shall
5 not be recorded in the source patient's medical record unless authorized by the
6 source patient and shall not be maintained in the location where the test is
7 ordered or performed for more than 60 days.

8 (i) A laboratory having personal knowledge of a test result under this
9 section shall transmit within 24 hours a report thereof to the ~~department of~~
10 ~~health~~ Department of Health pursuant to subsection 1001(k) of this title.

11 (j) The employer of any worker exposed to blood or bodily fluids while
12 rendering health services to a source patient during the performance of normal
13 job duties shall maintain an incident report with information regarding the
14 exposure that is relevant to a workers' compensation claim. The employer
15 shall not be provided or have access to information personally identifying the
16 source patient.

17 (k) The costs of all diagnostic tests authorized by these provisions shall be
18 borne by the employer of the worker.

19 (l) Notwithstanding any other law to the contrary, a health care provider
20 who orders a test in accordance with this section shall not be subject to civil or
21 criminal liability for ordering the test. Nothing in this subsection shall be

1 construed to establish immunity for the failure to exercise due care in the
2 performance or analysis of the test.

3 (m) A health care provider's duties under this section are not continuing
4 but limited to testing and services performed under this section.

5 (n)(1) A health care worker, public safety personnel, or emergency
6 personnel exposed to the blood or bodily fluids of the source patient while
7 engaged in rendering health services to the source patient may file a written
8 petition to the Superior Court in the unit in which the exposure occurred to
9 obtain a blood sample from the source patient against his or her consent for the
10 purpose of testing for HIV, Hepatitis B, Hepatitis C, or any other bloodborne
11 pathogen-related illnesses if:

12 (A) exposure to the blood or bodily fluids of the source patient
13 creates a significant risk of transmission of a bloodborne pathogen-related
14 illness to the affected worker;

15 (B) notice of the occupational exposure was provided to the source
16 patient and written informed consent for blood testing was sought from the
17 source patient by the employer or health care provider of the affected
18 worker; and

19 (C) written informed consent was not given by the source patient and
20 he or she refused to be tested.

1 (2) The petitioner shall serve notice of the petition on the source patient
2 as provided for by Rule 4 of the Vermont Rules of Civil Procedure.

3 (3) Upon receipt by the Superior Court of the petition, the court shall:

4 (A) schedule a hearing on the petition as soon as practicable;

5 (B) appoint counsel, if requested, for any indigent client not already
6 represented; and

7 (C) furnish counsel with copies of the petition.

8 (4) The hearing shall be confidential and the Vermont Rules of Evidence
9 shall apply. The report of the hearing proceedings are exempt from public
10 inspection and copying under the Public Records Act and shall be kept
11 confidential, except by permission of the source patient and with the approval
12 of the court.

13 (5) The court shall order the source patient to obtain a test for
14 bloodborne pathogen-related illnesses if it finds that the petitioner has proven
15 by a preponderance of the evidence that:

16 (A) exposure to the blood or bodily fluids of the source patient
17 creates a significant risk of transmission of a bloodborne pathogen-related
18 illness to the affected worker;

19 (B) notice of the occupational exposure was provided to the source
20 patient and written informed consent for blood testing was sought from the

1 source patient by the employer or health care provider of the affected
2 worker; and

3 (C) written informed consent was not given by the source patient and
4 he or she refused to be tested.

5 (6) The petitioner's employer is responsible for the reasonable costs
6 related to obtaining the results of a test for bloodborne pathogen-related
7 illnesses pursuant to this subsection, including the payment of the petitioner's
8 attorney fees.

9 (7) A source patient may appeal the order to the Supreme Court. Any
10 findings of fact of the Superior Court may not be set aside unless clearly
11 erroneous.

12 Sec. 2. EFFECTIVE DATE

13 This act shall take effect on July 1, 2016.