

1
2
3
4
5
6
7
8
9
10
11

12
13
14
15
16
17
18
19
20

H.263

Introduced by Representatives Lucke of Hartford, Christie of Hartford, Dunn
of Essex, and Savage of Swanton

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

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

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

§ 1141. COMMUNICABLE DISEASE TESTING

(a) A health care provider may order a test for bloodborne pathogens if a
health care worker, public safety personnel, or emergency personnel has been
exposed to the blood or bodily fluids of the source patient in a manner
sufficient to transmit a bloodborne pathogen-related illness to the affected

1 worker while engaged in rendering health services to the source patient, and
2 provided that:

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

4 (A) has provided informed consent, as defined in subdivision
5 9701(17) of this title; ~~or~~

6 (B) is deceased; or

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

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

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

18 (4) ~~a~~ A health care provider has informed the worker of the
19 confidentiality requirements in subsection (c) of this section and the penalties
20 for unauthorized disclosure of source patient information under subsection (e)
21 of this section; ~~and~~

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

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

9 (c) The result of a test ordered pursuant to subsection (a) of this section is
10 protected health information subject to the “Standards for Privacy of
11 Individually Identifiable Health Information” established under the Health
12 Insurance Portability and Accountability Act of 1996 and contained in
13 45 C.F.R., Parts 160 and 164, and any subsequent amendments. Test results
14 shall be confidential except that the worker who sustained the exposure, the
15 health care provider who ordered the test, and the source patient, upon his or
16 her request, shall be informed of the test results. Test results reported to the
17 worker and documented in his or her medical record shall not include any
18 personally identifying information relative to the source patient. Test results
19 shall be transmitted to the ~~commissioner of health~~ Commissioner of Health
20 pursuant to subsection (i) of this section.

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

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

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

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

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

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

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

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

12 (l) Notwithstanding any other law to the contrary, a health care provider
13 who orders a test in accordance with this section shall not be subject to civil or
14 criminal liability for ordering the test. Nothing in this subsection shall be
15 construed to establish immunity for the failure to exercise due care in the
16 performance or analysis of the test.

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

19 (n)(1) A health care worker, public safety personnel, or emergency
20 personnel exposed to the blood or bodily fluids of the source patient while
21 engaged in rendering health services to the source patient may file a written

1 petition to the Superior Court in the unit in which the exposure occurred to
2 obtain a blood sample from the source patient against his or her consent for the
3 purpose of testing for HIV, Hepatitis B, Hepatitis C, or any other bloodborne
4 pathogen-related illnesses if:

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

8 (B) notice of the occupational exposure was provided to the source
9 patient and written informed consent for blood testing was sought from the
10 source patient by the employer or health care provider of the affected
11 worker; and

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Sec. 2. EFFECTIVE DATE

5 This act shall take effect on July 1, 2017.