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H.571

Introduced by Representative Pugh of South Burlington

Referred to Committee on

Date:

Subject: Health; public health; bloodborne pathogens; testing

Statement of purpose of bill as introduced: This bill proposes to enable a health care provider to order a test for bloodborne pathogens if a person assisting during an emergency is exposed to another person's blood or bodily fluids.

An act relating to testing for bloodborne pathogens on behalf of persons assisting in emergency situations

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, or person rendering assistance in good faith 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 worker or person while engaged in rendering health services to the source patient, and provided that:

1 (1) the source patient:

2 (A) has provided informed consent, as defined in subdivision  
3 9701(17) of this title; or

4 (B) is deceased;

5 (2) the worker or person who assisted in good faith has provided a blood  
6 sample and consented to testing for bloodborne pathogens and a physician has  
7 documented that bloodborne pathogen test results are needed for beginning,  
8 continuing, modifying, or discontinuing medical treatment for the worker or  
9 person;

10 (3) a physician with specialty training in infectious diseases has  
11 confirmed that the worker or person who assisted in good faith has been  
12 exposed to the blood or bodily fluids of the source patient in a manner  
13 sufficient to transmit a bloodborne pathogen-related illness;

14 (4) a health care provider has informed the worker or person who  
15 assisted in good faith of the confidentiality requirements in subsection (c) of  
16 this section and the penalties for unauthorized disclosure of source patient  
17 information under subsection (e) of this section; and

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

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

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

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

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

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

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

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

19 (i) A laboratory having personal knowledge of a test result under this  
20 section shall transmit within 24 hours a report thereof to the Department of  
21 Health pursuant to subsection 1001(k) of this title.

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

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

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

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

16          Sec. 2. EFFECTIVE DATE

17          This act shall take effect on July 1, 2020.