

/* Delaware statutes address testing and confidentiality; EMS notification; donor screening; and real estate disclosure. */

CHAPTER 12. INFORMED CONSENT AND CONFIDENTIALITY REGARDING HIV-RELATED TESTS

1201. Definitions.

For purposes of this chapter the following definitions shall apply:

- (1) "Aids" shall mean Acquired Immunodeficiency Syndrome.
- (2) "HIV" shall mean the human immunodeficiency virus identified as the causative agent of AIDS.
- (3) "HIV-related test" shall mean a test for the antibody or antigen to HIV.
- (4) "Health facility" shall mean a hospital, nursing home, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution.
- (5) "Health care provider" shall mean any nurse, physician, dentist or other dental worker, optometrist, podiatrist, chiropractor, laboratory and blood bank technologist and technician, phlebotomist, dialysis personnel, emergency health care provider (including any paramedic, emergency medical technician, law enforcement personnel or firefighter) or others whose activities involve contact with patients, their blood or corpses.
- (6) "Legal guardian" shall mean a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.
- (7) "Person" shall mean any natural person, partnership, association, joint venture, trust, public or private corporation or health facility.
- (8) "Release of test results" shall mean a written authorization for disclosure of HIV-related test results which is signed, dated and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.
- (9) "Manner known to transmit HIV" shall mean parenteral exposure to blood or blood products including but not limited to injection through the skin; or as otherwise determined by the Division of Public Health.

1202. Informed consent.

- (a) No health facility, health care provider or other person shall test or shall cause by any means to have tested, any specimen of any patient for HIV-related tests, without the informed consent of the subject of the test or the subject's

legal guardian. A health care provider shall ensure that informed consent has been received prior to ordering testing by a laboratory or other facility.

(b) Informed consent to an HIV-related test shall consist of a voluntary agreement executed by the subject of the test or the subject's legal guardian. If the agreement is oral, the facts pertaining thereto must be documented by customary practice. Informed consent shall consist of at least the following:

(1) An explanation of the test, including its purpose, potential uses, limitations and the meaning of its results;

(2) An explanation of the procedure to be followed, including that the test is voluntary, that consent may be withdrawn and the extent and limitations of the manner in which the results will be confidential;

(3) An explanation of the nature of AIDS and other manifestations of HIV infection and the relationship between the test result and those diseases; and

(4) Information about behaviors known to pose risks for transmission of HIV infection.

(c) Notwithstanding subsection (a) of this section the provisions of subsections (a) and (b) of this section do not apply when:

(1) Knowledge of such test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment and the subject of the test is unable to grant or withhold consent.

(2) The testing is done for the purposes of research; provided that the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(3) A health care provider or health care facility procures, processes, distributes or uses (i) blood, (ii) a human body part donated for a purpose specified under the Uniform Anatomical Gift Act or (iii) semen provided prior to July 11, 1988, for the purpose of artificial insemination, and such test is necessary to assure the medical acceptability of such gift or semen for the purposes intended.

(4) The health of a health care worker has been threatened during the course of a health care worker's duties, as a result of exposure to blood or body fluids of the patient in a manner known to transmit HIV.

(5) Necessary to control the transmission of HIV infection as may be allowed pursuant to Chapter 7 of this title as it relates to sexually transmitted diseases, or 6523(b) of Title 11 as it relates to the Department of Correction.

(6) Testing is ordered by a court of competent jurisdiction

within the confines of civil or criminal litigation where the results of an HIV-related test of a party, or a person in the custody or under the legal control of another party, is relevant to the ultimate issue of culpability and/or liability. Said order must be issued in compliance with the following provisions:

a. No court of this State shall issue such order unless the court finds that there is a compelling need for such test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure of the test results against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters future testing or which may lead to discrimination.

b. Pleadings pertaining to ordering of an HIV-related test shall substitute a pseudonym for the true name of the subject of the test. The 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 whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results so ordered shall be conducted in camera unless the subject of the test 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.

(d) Any person on whom an HIV-related test was performed without first having obtained informed consent pursuant to subsections (c)(1), (4) and (5) of this section shall be given notice promptly, personally and confidentially that a test sample was taken and the results of such test may be obtained upon request.

(e) At the time of learning the test result, the subject of the test or the subject's legal guardian shall be provided with counseling for coping with the emotional consequences of learning the result, for understanding the interpretation of the test result, for understanding measures for preventing infection to others and to urge the voluntary notification of sexual and needle-sharing partners of the risk of infection.

(f) Notwithstanding any other provision of law, a minor 12 years of age or older may consent or refuse consent to be a subject of HIV-related testing and to counseling relevant to the test. The consent or refusal of the minor shall be valid and binding as if the minor had achieved his or her majority, and shall not be voidable, nor subject to later disaffirmance, because of minority.

1203. Confidentiality.

(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such test in a manner which permits identification of the subject of the test, except to the following person:

(1) The subject of the test or the subject's legal guardian.

(2) Any person who secures a legally effective release of test results executed by the subject of the test or the subject's legal guardian.

(3) An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a medical need to know such information to provide health care to the patient.

(4) Health care providers providing medical care to the subject of the test, when knowledge of the test results is necessary to provide appropriate emergency care or treatment.

(5) When part of an official report to the Division of Public Health as may be required by regulation.

(6) A health facility or health care provider which procures, processes, distributes or uses: (i) blood; (ii) a human body part from a deceased person donated for a purpose specified under the Uniform Anatomical Gift Act; or (iii) semen provided prior to July 11, 1988, for the purpose of artificial insemination.

(7) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews.

(8) Pursuant to Chapter 9 of this title as it relates to investigation of child abuse.

(9) Pursuant to Chapter 7 of this title as it relates to sexually transmitted diseases and their control.

(10) A person allowed access to said record by 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 that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters future testing or which may lead to discrimination.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the

test. 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 whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test 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.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used and appropriate prohibitions on future disclosures.

(11) Pursuant to Chapter 12A of this title as it relates to notification of emergency medical care providers.

(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section shall disclose the test results to another person except as authorized by subsection (a) of this section.

(c) The provisions in this section shall not interfere with the transmission of information as may be necessary to obtain 3rd-party payment for medical care related to HIV infection or with the documentation of cause of death on death certificates.

1204. Enforcement of chapter.

(a) Any person aggrieved by a violation of this chapter shall have a right of action in the Superior Court and may recover for each violation:

(1) Against any person who negligently violates a provision of this chapter, damages of \$1,000 or actual damages, whichever is greater.

(2) Against any person who intentionally or recklessly violates a provision of this chapter, damages of \$5,000 or actual damages, whichever is greater.

(3) Reasonable attorneys' fees.

(4) Such other relief, including an injunction, as the court may deem appropriate.

(5) Any action under this chapter is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure pursuant to 1203 of this title, or that an HIV-related test has been conducted without informed

consent pursuant to 1202 of this title.

(b) The Attorney General may maintain a civil action to enforce this chapter in which the court may order any relief authorized by subsection (a) of this section.

(c) Nothing in this chapter shall be construed to impose civil liability or criminal sanction for disclosure of an HIV-related test result in accordance with any reporting requirement by the Division of Public Health.

CHAPTER 12A. NOTIFICATION OF EMERGENCY MEDICAL PROVIDERS OF PERSONS WITH COMMUNICABLE DISEASES

1201A. Definitions.

As used in this chapter:

(1) "Emergency medical care provider" means a fire fighter, law enforcement officer, paramedic, emergency medical technician or other person who serves as an employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical services.

(2) "Emergency medical service facility" means a licensed hospital or freestanding medical care facility that receives patients cared for by emergency services personnel.

(3) "Receiving medical facility" means a hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

(4) "Division" means Division of Public Health, Department of Health and Social Services.

(5) "Communicable disease" means human immunodeficiency virus, (HIV, the virus that causes AIDS), and hepatitis B.

(6) "Universal precautions" means those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments that minimize the risk of transmission of communicable diseases between patients and health care providers.

1202A. Report of exposed emergency medical provider.

(a) An emergency medical care provider may request notification concerning exposure to a communicable disease under this section if the exposure is of a manner known to transmit a communicable disease.

(b) If an emergency medical care provider desires to be notified under this section, the emergency medical care provider shall notify the receiving medical facility, within 24 hours after the patient is admitted to or treated by the facility, on a form that is prescribed or approved by the State Board of Health.

(c) The emergency medical care provider shall designate, on the form required by subsection (b) of this section, to whom

notification should be made, including the option that notification be made either to the emergency medical care provider directly or to a designated physician.

(d) The emergency medical care provider shall distribute a copy of the completed form to the receiving medical facility.

1203A. Notification of infection with a communicable disease.

(a) Each receiving medical facility shall designate an office or individual who shall receive completed forms as specified by 1202A(b) of this title and who shall insure compliance with the requirements of this section.

(b) The receiving medical facility shall notify only the person designated pursuant to 1202A(c) of this title when:

(1) Within 10 days after a patient is admitted or treated by the receiving medical facility, the facility obtains information from the patient's records or a finding at the facility indicates that the patient is infected with a communicable disease;

(2) The emergency medical care provider has complied with 1202A of this title; and

(3) The information as described on the completed form required by 1202A(b) of this title suggests that the exposure was of a manner known to transmit the communicable disease with which the patient is infected.

(c) The notification required by subsection (b) of this section shall be made within 96 hours after the receiving medical facility determines that a patient is infected with a communicable disease.

(d) The receiving medical facility, or other persons designated by the emergency medical care provider on the form completed pursuant to 1202A(b) and (c) of this title, shall provide the emergency medical care provider with:

(1) An explanation about the communicable disease;

(2) Information about post-exposure treatment which may be appropriate;

(3) Information about the mode of transmission, and preventive measures which can be taken to reduce the likelihood of transmission to others; and

(4) Information on associated counseling.

(e) The receiving medical facility shall provide to the Division a copy of each form completed pursuant to 1202A(b) of this title which shall include information about whether or not the patient is infected with a communicable disease, and if exposure to the patient is considered by the receiving medical facility to be in a manner known to transmit that communicable disease.

1204A. Universal precautions.

In recognition of the importance of universal precautions to the

control of communicable diseases from a patient to an emergency medical care provider, education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training requirements for this purpose shall be established by the State Board of Health.

1205A. Rules and regulations.

The State Board of Health shall make such rules and regulations as may in its judgment be necessary to carry out the provisions of this section, and may make additions of other communicable diseases which shall be subject to this chapter.

1206A. Confidentiality of HIV test results.

A person who has knowledge of the identity of any person upon whom an HIV related test is performed, or the results of such test, in accordance with this chapter, shall maintain the confidentiality of that information pursuant to 1203 of this title.

1207A. Liability of receiving medical facility; breach of confidentiality.

A receiving medical care facility acting in good faith to provide notification in accordance with this chapter shall not be liable in any cause of action related to the breach of patient confidentiality.

1208A. Failure to provide notice.

A receiving medical care facility acting in good faith to provide notification in accordance with this chapter shall not be liable in any cause of action for:

- (1) The failure to give the required notice if the emergency medical care provider fails to properly initiate the notification procedures pursuant to § 1202A of this title; or
- (2) The failure of the person or facility designated pursuant to § 1202A(c) of this title to subsequently notify the emergency medical care provider of the possible exposure.

CHAPTER 28. SPERM BANK AND TISSUE BANK REGISTRY

2801. Establishment of registry; testing of donors; penalties.

(a) The Board of Health shall establish a registry of all sperm banks and tissue banks operating in this State. All sperm banks and tissue banks operating in this State shall register with the Board by May 1 of each year. Any person, hospital, clinic, corporation, partnership or other legal entity which operates a

sperm bank or tissue bank in this State and fails to register with the Board pursuant to this section shall be subject to a fine of \$5,000.

(b) All donors of semen for purposes of artificial insemination, or donors of corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body, shall be tested for evidence of exposure to human immunodeficiency virus (HIV) and any other identified causative agent of Acquired Immunodeficiency Syndrome (AIDS) at the time of or after the donation, but prior to the semen, corneas, bones, organs or other human tissue being made available for such use. However, when in the opinion of the attending physician the life of a recipient of a bone, organ or other human tissue donation would be jeopardized by delays caused by testing for evidence for exposure to HIV and any other causative agent of AIDS, testing shall not be required prior to the life-saving measures.

(c) No person may intentionally, knowingly, recklessly or negligently use the semen, corneas, bones, organs or other human tissue of a donor unless the requirements of subsection (b) of this section have been met. No person may knowingly, recklessly or intentionally use the semen, corneas, bones, organs or other human tissue of a donor who has tested positive for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection shall be a class E felony.

(d) For the purposes of this section, "tissue bank" means any facility or program that is involved in procuring, furnishing, donating, processing, distributing corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body.

2929. Certain psychological impacts not material facts.

(a) As used in this section, "transferee" includes, but shall not be limited to, a buyer, purchaser, grantee, lessee, tenant or one making an exchange of any estate or interest in real property.

(b) As used in this section, the terms "psychologically impacted" and "psychological impacts" mean:

(1) That the property was, or was at any time suspected to have been the site of a homicide, suicide or other felony except arson.

(2) That an occupant of real property is or was at any time suspected to be infected or has been infected with Human Immunodeficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place.

(c) As used in this section, "agent" means any person licensed as a broker, salesperson or appraiser pursuant to this chapter.

(d) The fact or suspicion that a property might be or is psychologically impacted is not a material fact that must be disclosed in a real property transaction.

(e) No cause of action shall arise against an owner or appraiser of real property or the agent of such an owner or the agent of a transferee of real property for failure to inquire about, make a disclosure about or release information about the fact or suspicion that such property is psychologically impacted.

(f) If a potential transferee makes a specific written request to the owner or agent about the psychological impacts defined above in subsection (b)(1) of this section regarding a specific property, the owner or agent shall answer the transferee's questions truthfully, to the best of such owner's or agent's knowledge. The agent shall have no duty to inquire about the psychological impacts defined above in subsection (b)(1) of this section regarding a specific property unless a transferee, in writing, specifically requests the agent to ask the owner for such information.

(g) The agent shall not make any disclosure concerning those psychological impacts defined above in subsection (b)(2) of this section even if a buyer specifically asks about such psychological impacts.