

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2259

Introduced by

Senator Kilzer

Representative Price

1 A BILL for an Act to amend and reenact sections 23-07.5-01 and 23-07.5-02 of the North
2 Dakota Century Code, relating to informed consent for HIV testing.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **23-07.5-01. Definitions.** In this chapter, unless the context otherwise requires:

- 7 1. "Exposed individual" means a human being who had a significant exposure with
8 another individual who is subject to testing and who is a firefighter, peace officer,
9 correctional officer, court officer, law enforcement officer, emergency medical
10 technician, or an individual trained and authorized by law or rule to render
11 emergency medical assistance or treatment, including a person rendering aid
12 under chapter 32-03.1.
- 13 2. "Health care provider" means any person licensed, certified, or otherwise
14 authorized by the law of this state to provide health care services.
- 15 3. "Health care services" means any services included in the furnishing to any
16 individual of hospitalization, or medical or dental care, or any services incident to
17 the furnishing of that care or hospitalization, as well as the furnishing to any person
18 of any other services for the purpose of preventing, alleviating, curing, or healing
19 human illness or injury.
- 20 4. "Human immunodeficiency virus" means any identified causative agent of acquired
21 immune deficiency syndrome.
- 22 5. "Human immunodeficiency virus infection" means the pathological state produced
23 by a human body in response to the presence of the human immunodeficiency
24 virus.

6. "Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus.

~~7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus.~~

~~8.~~ "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

~~9.~~ 8. "Significant exposure" means:

- a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
- b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
- c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.

~~40.~~ 9. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.

SECTION 2. AMENDMENT. Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing - Exception.

1. Except when testing is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or

the legal guardian of an incapacitated person who is the subject of the test, first provides informed consent for testing ~~as provided under subsection 2.~~

2. ~~A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:~~
- ~~a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.~~
 - ~~b. A statement of explanation that the test results may be disclosed as authorized by law.~~
 - ~~c. Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.~~

3. A health care provider or an exposed individual who had a significant exposure with another individual may subject that individual's blood to a test for the presence of the human immunodeficiency virus, without that individual's consent, if all of the following apply:

- a. A blood sample of the individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
- b. The personal physician of the individual exposed, based on information provided to the physician, determines and certifies in writing that the individual had a significant exposure. The certification must accompany the request for testing and disclosure.
- c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
- d. Before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one

1 without the test subject's consent, except to the exposed individual, the
2 department, and any other person as authorized by law; that if the exposed
3 individual knows the identity of the test subject, the exposed individual may
4 not disclose the identity to any other person except for the purpose of having
5 the test performed; and that a record of the test results may be placed in the
6 test subject's medical record, and if not in the medical record, may be kept
7 only if the record does not reveal the test subject's identity. Each exposed
8 individual who had a significant exposure and to whom test results are
9 disclosed must first sign a document indicating the exposed individual's
10 understanding that the exposed individual may not disclose the patient's
11 identity and that disclosing the information constitutes a class C felony.

- 12 ~~4.~~ 3. A patient who has received care from a health care provider, emergency medical
13 services provider, or a person rendering aid under chapter 32-03.1 and who has
14 had a significant exposure with the provider may subject the provider's blood to a
15 test for the presence of the human immunodeficiency virus, without the provider's
16 consent, if all of the following apply:
- 17 a. A sample of the provider's blood has been drawn for other purposes and is
18 available to be used to test for the presence of the human immunodeficiency
19 virus.
 - 20 b. A physician, based on information provided to the physician, determines and
21 certifies in writing that the patient has had a significant exposure. The
22 certification must accompany the request for testing and disclosure.
 - 23 c. The provider or a person rendering aid under chapter 32-03.1 is capable of
24 consenting when the test is requested, has been given an opportunity to be
25 tested with consent, and has not consented.
 - 26 d. Before testing, the provider is informed, while competent and conscious, that
27 the provider's blood may be tested for the presence of human
28 immunodeficiency virus; that the test results may be disclosed to the provider,
29 the individual who has had a significant exposure, and any other person as
30 authorized by law; that if the patient who has had a significant exposure
31 knows the identity of the provider, that patient may not disclose the identity to

any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.

~~5.~~ 4. If an individual who is the subject of a significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If an individual who is the subject of a significant exposure dies without an opportunity to consent to testing, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the individual who experienced the significant exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the significant exposure.

~~6.~~ 5. Any testing done pursuant to subsection 2, 3, or 4, ~~or 5~~ must be conducted in a reasonably expedient manner. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b

of subsection ~~3~~ 2 or subdivision b of subsection ~~4~~ 3, may petition an appropriate district court for issuance of an order directing another individual, patient, or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the test subject's blood is not available to be used to test for the human immunodeficiency virus;
- b. The court finds probable cause to believe that the person petitioning for the testing had a significant exposure with the test subject;
- c. The petition substitutes a pseudonym for the true name of the test subject;
- d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

- ~~7.~~ 6. An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a

1 blood sample within twenty-four hours after the first request and within seventy-two
2 hours after the second request, subject to the provisions of this chapter.
3 ~~8.~~ 7. A health care provider who subjects a patient to a significant exposure must notify
4 the patient of the exposure. A health care provider witnessing a significant
5 exposure may report the exposure pursuant to any appropriate facility or employer
6 guidelines to which the provider may be subject. The knowing failure to inform a
7 patient of a significant exposure or refusal to submit to testing as required under
8 this chapter may be considered by a health care provider's licensing board to
9 constitute conduct that may subject the licensee to disciplinary action.