

1 **DISEASE TESTING FOR AT-RISK**
2 **EMERGENCY SERVICE PROVIDERS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: John L. Valentine**

6 AN ACT RELATING TO EMERGENCY MEDICAL SERVICES PROVIDERS AND OTHER
7 PUBLIC SAFETY OFFICERS AND VOLUNTEER FIRST AID PROVIDERS; RECONCILING
8 CONFLICTS BETWEEN THE HEALTH CODE AND THE JUDICIAL CODE REGARDING
9 HIV TESTING PROCEDURES FOLLOWING A SIGNIFICANT EXPOSURE; AND
10 PROVIDING CONFIDENTIALITY REQUIREMENTS AND PENALTY FOR UNLAWFUL
11 DISCLOSURE OF INFORMATION.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **26-6a-1**, as last amended by Chapter 282, Laws of Utah 1998

15 **26-6a-2**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

16 **26-6a-3**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

17 **26-6a-5**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

18 **26-6a-6**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

19 **26-6a-7**, as last amended by Chapter 241, Laws of Utah 1991

20 **26-6a-8**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

21 **26-6a-9**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

22 **26-6a-10**, as enacted by Chapter 14, Laws of Utah 1988, Second Special Session

23 **26-6a-11**, as last amended by Chapter 375, Laws of Utah 1997

24 **78-29-101**, as last amended by Chapter 282, Laws of Utah 1998

25 **78-29-102**, as last amended by Chapter 10, Laws of Utah 1997

26 ENACTS:

27 **26-6a-1.5**, Utah Code Annotated 1953

28 **78-29-103**, Utah Code Annotated 1953

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **26-6a-1** is amended to read:

31 **26-6a-1. Definitions.**

32 For purposes of this chapter:

33 (1) "Designated agent" means a person or persons designated by an agency employing or
34 utilizing emergency medical services providers as employees or volunteers to receive and
35 distribute test results in accordance with this chapter.

36 (2) "Disability" means the event of becoming physically incapacitated from performing
37 any work for remuneration or profit.

38 (3) "Disease" means Acquired Immunodeficiency Syndrome, Human Immunodeficiency
39 Virus infection, Hepatitis B, Hepatitis B seropositivity, and any other infectious disease
40 specifically designated by the department for the purposes of this chapter and Title 78, Chapter 29.

41 (4) "Emergency medical services agency" means an agency, entity, or organization that
42 employs or utilizes emergency medical services providers as employees or volunteers.

43 (5) "Emergency medical services provider" means an emergency medical technician as
44 defined in Section 26-8-2, a peace officer as defined in Title 53, Chapter 13, Peace Officer
45 Classifications, local fire department personnel, or officials or personnel employed by the
46 Department of Corrections or by a county jail, who provides prehospital emergency medical care
47 for an emergency medical services agency either as an employee or as a volunteer.

48 (6) "Patient" means any individual cared for by an emergency medical services provider,
49 including but not limited to victims of accidents or injury, deceased persons, and prisoners or
50 persons in the custody of the Department of Corrections.

51 (7) "Significant exposure" means:

52 (a) contact of an emergency medical services provider's broken skin or mucous membrane
53 with a patient's blood or [~~body~~] body fluids other than tears or perspiration;

54 (b) that a needle stick, or scalpel or instrument wound has occurred in the process of caring
55 for a patient; [~~or~~]

56 (c) exposure of the body of one person to the blood or body fluids, other than tears or
57 perspiration, of another person by:

58 (i) percutaneous inoculation; or

59 (ii) contact with an open wound, non-intact skin including chapped, abraded, weeping, or
60 dermatitic skin, or mucous membranes; or

61 [~~(c)~~] (d) exposure that occurs by any other method of transmission defined by the
62 department as a significant exposure.

63 Section 2. Section **26-6a-1.5** is enacted to read:

64 **26-6a-1.5. Emergency medical services provider -- Choice of action.**

65 An emergency medical services provider may proceed under the provisions of this chapter
66 or pursuant to Section 78-29-102, or both.

67 Section 3. Section **26-6a-2** is amended to read:

68 **26-6a-2. Emergency medical services provider's significant exposure --**
69 **Documentation -- Request for testing -- Refusal or consent.**

70 (1) Whenever an emergency medical services provider has a significant exposure in the
71 process of caring for a patient, he shall document that exposure. That documentation shall be in
72 writing, on forms approved by the department, and in the manner and time designated by the
73 department.

74 (2) (a) Upon notification of a significant exposure, or upon receipt of the documentation
75 described in Subsection (1), the hospital, health care facility, or other facility that receives the
76 patient or individual shall request that he consent to testing of his blood to determine the presence
77 of any disease as defined in Section 26-6a-1. The patient shall be informed that he [~~has the right~~
78 ~~to~~] may refuse to consent to the test and, if he refuses, the fact of his refusal will be forwarded to
79 the designated agent and to the department, and the emergency medical services provider may seek
80 a court order, pursuant to Section 78-29-102, requiring the patient to undergo testing. The
81 designated agent shall forward that information to the emergency medical services provider. The
82 right to refuse a blood test under the circumstances described in this section does not apply to an
83 individual who has been convicted of a crime and is in the custody or under the jurisdiction of the
84 Department of Corrections, or to any person who is otherwise legally required to submit to testing.

85 (b) If consent is given, the facility shall obtain and test, or provide for testing of, the
86 patient's blood to determine the presence of any disease, in accordance with the provisions of this
87 chapter.

88 (c) If consent is not given, the emergency medical services provider may petition the
89 district court for an order requiring the patient to submit to testing, pursuant to Section 78-29-102.

90 Section 4. Section **26-6a-3** is amended to read:

91 **26-6a-3. Unconscious or incapable patient -- Testing -- Death of patient.**

92 (1) If a patient who is the subject of a reported significant exposure is unconscious or
93 incapable of giving informed consent for blood testing under this chapter, that consent may be
94 obtained from his next-of-kin or legal guardian, or proceedings may be commenced under Section
95 78-29-102. However, the following tests may be conducted on a patient who is unconscious or
96 incapable of giving informed consent without his consent or that of his next-of-kin or legal
97 guardian, and without proceeding under Section 78-29-102:

98 (a) tests for Hepatitis B and Hepatitis B seropositivity; and

99 (b) tests for any disease, other than AIDS or Human Immunodeficiency Virus infection,
100 designated as a disease by the department for purposes of this chapter and Title 78, Chapter 29.

101 (2) If a patient who is the subject of a reported significant exposure dies prior to admission
102 to or discharge or release from the facility that received him without an opportunity to consent to
103 blood testing under this chapter, testing for diseases under this chapter shall be conducted.

104 Section 5. Section **26-6a-5** is amended to read:

105 **26-6a-5. Reporting of test results.**

106 (1) (a) Results of tests conducted under this chapter shall be reported by the facility that
107 conducted the test to specified officials of the department and to a designated agent of the
108 emergency medical services agency that employs or utilizes the emergency medical services
109 provider who reported the significant exposure.

110 (b) In the case of tests for AIDS or Human Immunodeficiency Virus infection, the State
111 Health Laboratory shall report test results to specified officials in the department, and those
112 officials shall report the test results to the appropriate emergency medical services agency's
113 designated agent.

114 (c) The designated agent shall report the results of tests conducted under this chapter to
115 the appropriate emergency medical services provider.

116 (d) The facility that receives a patient shall inform the patient of test results for all tests
117 conducted under this chapter except tests for AIDS and Human Immunodeficiency Virus infection.
118 Results of tests for AIDS and Human Immunodeficiency Virus infection shall be reported to the
119 patient by the department or its designee, in accordance with Section 26-6a-8.

120 (2) In making a report to a designated agent under this chapter, the facility that conducted

121 the test shall, or in the case of a test for AIDS or Human Immunodeficiency Virus infection the
122 department shall, use a case number instead of the patient's name.

123 (3) In making a report to the emergency medical services provider who requested the test,
124 the designated agent shall use a case number instead of a patient's name.

125 (4) The reporting requirements of this section do not apply to court-ordered testing
126 conducted pursuant to Title 78, Chapter 29.

127 Section 6. Section **26-6a-6** is amended to read:

128 **26-6a-6. Confidentiality of information concerning test results -- Exceptions.**

129 (1) Information concerning test results obtained under this chapter that identify the patient
130 shall be maintained as strictly confidential by the hospital, health care or other facility that received
131 or tested the patient, designated agent, emergency medical services provider, emergency medical
132 services agency, and the department, except as provided by this chapter. That information may not
133 be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as
134 provided by this chapter or Title 78, Chapter 29.

135 (2) The information described in Subsection (1) may be released:

136 (a) with the written consent of the patient[~~, or~~];

137 (b) if the patient is deceased or incapable of giving informed consent, with the written
138 consent of his next-of-kin, legal guardian, or executor of his estate; or

139 (c) in accordance with Title 78, Chapter 29.

140 (3) Information concerning test results obtained under the authority of this chapter may
141 be released in such a way that no patient is identifiable, or in accordance with the provisions of
142 Title 78, Chapter 29.

143 Section 7. Section **26-6a-7** is amended to read:

144 **26-6a-7. Violation of confidentiality requirements -- Penalty.**

145 Any person or entity entitled to receive confidential information under this chapter, other
146 than the individual tested and identified in the information, who violates this section by releasing
147 or making public confidential information, or by otherwise breaching the confidentiality
148 requirements of this chapter, is guilty of a class B misdemeanor, unless the information is released
149 or provided pursuant to the provisions of Title 78, Chapter 29.

150 Section 8. Section **26-6a-8** is amended to read:

151 **26-6a-8. Patient notification and counseling.**

152 (1) With regard to testing for Acquired Immunodeficiency Syndrome and Human
153 Immunodeficiency Virus infection, [pretest] pre-test counseling, notification of test results, and
154 post-test counseling shall be provided to all patients tested under this chapter, in accordance with
155 rules established by the department, unless counseling is specifically declined by the patient.

156 (2) All [pretest] pre-test counseling required by Subsection (1) shall be provided by the
157 hospital or health care or other facility that received the patient.

158 (3) Notification of test results to patients tested for AIDS or Human Immunodeficiency
159 Virus infection, and post-test counseling required by Subsection (1) shall be provided by the
160 department or its designee. The appropriate emergency medical services agency is responsible for
161 the cost of that counseling.

162 Section 9. Section **26-6a-9** is amended to read:

163 **26-6a-9. Department authority -- Rules.**

164 The department has authority to establish rules as necessary for the purposes of Sections
165 26-6a-1 through 26-6a-8, consistent with the procedures and requirements of Title 78, Chapter 29.

166 Section 10. Section **26-6a-10** is amended to read:

167 **26-6a-10. Workers' compensation presumption for emergency medical services**
168 **providers.**

169 (1) An emergency medical services provider who claims to have contracted a disease, as
170 defined by [Section] Sections 26-6a-1 and 78-29-101, as a result of a significant exposure in the
171 performance of his duties as an emergency medical services provider, is presumed to have
172 contracted the disease by accident during the course of his duties as an emergency medical services
173 provider if:

174 (a) his employment or service as an emergency medical services provider in this state
175 commenced prior to July 1, 1988, and he tests positive for a disease during the tenure of his
176 employment or service, or within three months after termination of his employment or service; or

177 (b) the individual's employment or service as an emergency medical services provider in
178 this state commenced on or after July 1, 1988, and he tests negative for any disease at the time his
179 employment or service commenced, and again three months later, and he subsequently tests
180 positive during the tenure of his employment or service, or within three months after termination
181 of his employment or service.

182 (2) Each emergency medical services agency shall inform the emergency medical services

183 providers that it employs or utilizes of the provisions and benefits of this section at commencement
 184 of and termination of employment or service.

185 Section 11. Section **26-6a-11** is amended to read:

186 **26-6a-11. Workers' compensation claims by emergency medical services providers**

187 **-- Time limits.**

188 (1) For all purposes of establishing a workers' compensation claim, the "date of accident"
 189 is presumed to be the date on which an emergency medical services provider first tests positive for
 190 a disease, as defined in Sections 26-6a-1 and 78-29-101. However, for purposes of establishing
 191 the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a positive test for
 192 a disease occurs within three months after termination of employment, the last date of employment
 193 is presumed to be the "date of accident."

194 (2) The time limits prescribed by Section 34A-2-417 do not apply to an employee whose
 195 disability is due to a disease, so long as the employee who claims to have suffered a significant
 196 exposure in the service of his employer gives notice, as required by Section 34A-3-108, of the
 197 "date of accident."

198 (3) Any claim for workers' compensation benefits or medical expenses shall be filed with
 199 the Division of Adjudication of the Labor Commission within one year after the date on which the
 200 employee first becomes disabled or requires medical treatment for a disease, or within one year
 201 after the termination of employment as an emergency medical services provider, whichever occurs
 202 later.

203 Section 12. Section **78-29-101** is amended to read:

204 **78-29-101. Definitions.**

205 For purposes of this ~~[part]~~ chapter:

206 (1) "Blood or ~~[blood-contaminated]~~ contaminated body fluids" ~~[include]~~ includes blood,
 207 amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid,
 208 semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

209 (2) "Disease" means the same as that term is defined in Section 26-6a-1.

210 ~~[(2)]~~ (3) "Emergency medical services provider" means an emergency medical technician
 211 as defined in Section 26-8-2, a public safety officer, local fire department personnel, or personnel
 212 employed by the Department of Corrections or by a county jail ~~[personnel]~~, who provide
 213 ~~[prehospital]~~ pre-hospital emergency medical care for an emergency medical services agency either

214 as an employee or as a volunteer.

215 ~~[(3)]~~ (4) "First aid volunteer" means a person who provides voluntary emergency
216 assistance or first aid medical care to an injured person prior to the arrival of an emergency
217 medical services provider or public safety officer.

218 ~~[(4) "HIV" means the Human Immunodeficiency Virus infection as determined by current
219 medical standards and detected by any of the following:]~~

220 ~~[(a) presence of antibodies to HIV, verified by a positive confirmatory test, such as
221 Western blot or other methods approved by the Utah State Health Laboratory. Western blot
222 interpretation will be based on criteria currently recommended by the Association of State and
223 Territorial Public Health Laboratory Directors;]~~

224 ~~[(b) presence of HIV antigen;]~~

225 ~~[(c) isolation of HIV; or]~~

226 ~~[(d) demonstration of HIV proviral DNA.]~~

227 (5) "Public safety officer" means a peace officer as defined in Title 53, Chapter 13, Peace
228 Officer Classifications.

229 (6) "~~[Significantly]~~ Significant exposure" and "significantly exposed" ~~[means exposure
230 of the body of one person to HIV or other blood-borne pathogens from the blood of another person
231 by:]~~ mean the same as the term "significant exposure" is defined in Section 26-6a-1.

232 ~~[(a) percutaneous inoculation; or]~~

233 ~~[(b) contact with an open wound, nonintact skin which includes chapped, abraded,
234 weeping, or dermatitic skin, or mucous membranes to blood and blood-contaminated body fluids.]~~

235 Section 13. Section **78-29-102** is amended to read:

236 **78-29-102. Petition -- HIV testing -- Notice -- Payment of testing.**

237 (1) ~~[A person,]~~ An emergency medical services provider, ~~[or public safety officer]~~ or first
238 aid volunteer who is significantly exposed during the course of performing the emergency medical
239 services provider's ~~[or the public safety officer's]~~ duties or ~~[a first aid volunteer significantly~~
240 exposed] during the course of performing emergency assistance or first aid may:

241 (a) request that the person to whom he was significantly exposed voluntarily submit to
242 testing pursuant to Title 26, Chapter 6a; or

243 (b) petition the district court for an order requiring that the person [who] to whom he was
244 significantly exposed [the petitioner] submit to testing to determine the presence of [HIV or other

245 ~~blood-borne pathogens~~ a disease, as defined in Section 78-29-101, and that the results of that test
246 be disclosed to the petitioner by the Department of Health.

247 (2) (a) The petitioner shall file a petition with the district court [~~a petition~~] seeking [~~the~~]
248 an order to submit to testing and to disclose the results in accordance with the provisions of this
249 section.

250 (b) The petition shall be sealed upon filing and made accessible only to the petitioner, the
251 subject of the petition, and their attorneys, upon court order.

252 (3) (a) The petition described in Subsection (2) shall be accompanied by:

253 (i) the documentation required under Subsection 26-6a-2(1); or

254 (ii) an affidavit in which the [person, the public safety officer,] emergency medical
255 services provider or first aid volunteer [~~, or emergency medical services provider~~] certifies that he
256 has been significantly exposed to the individual who is the subject of the petition and describes that
257 exposure.

258 (b) The petitioner shall submit to testing to determine the presence of [~~HHV or other~~]
259 ~~blood-borne pathogens concurrently with~~ a disease, when the petition is filed or within ten days
260 [~~of~~] after the petition is filed.

261 (4) The petitioner shall [~~serve~~] cause the petition required under this section to be served
262 on the person who the petitioner is requesting to be tested in a manner that will best preserve the
263 confidentiality of that person.

264 (5) (a) The court shall set a time for a hearing on the matter within 20 days after the
265 petition is filed and shall give the petitioner and the individual who is the subject of the petition
266 notice of the hearing at least 72 hours prior to the hearing.

267 (b) The individual who is the subject of the petition shall also be notified that he may have
268 an attorney present at the hearing, and that his attorney may examine and cross-examine witnesses.

269 (c) The hearing shall be conducted in camera.

270 (6) The district court may enter an order requiring that an individual submit to testing for
271 **§ [~~HHV or other blood-borne pathogens~~] A DISEASE §** if the court finds probable cause to believe:

272 (a) the petitioner was significantly exposed; and

273 (b) the exposure occurred during the course of the [~~public safety officer's or~~] emergency
274 medical services provider's duties, or the provision of emergency assistance or first aid by a first
275 aid volunteer.

276 (7) The court may order that additional, follow-up testing be conducted, and that the
277 individual submit to that testing, as it determines to be necessary and appropriate.

278 ~~[(7)]~~ (8) The court is not required to order an individual to submit to a test under this
279 section if it finds that there is a substantial reason, relating to the life or health of the individual,
280 not to enter the order.

281 ~~[(8)]~~ (9) (a) Upon order of the district court that a person submit to testing for ~~[HIV or~~
282 ~~other blood-borne pathogens]~~ a disease, that person shall report to the designated local health
283 department to have his blood drawn within ten days from the issuance of the order, and thereafter
284 as designated by the court, or ~~[shall]~~ be held in contempt of court.

285 ~~[(b) The order shall include the name and address of the petitioner and the subject of the~~
286 ~~petition.]~~

287 ~~[(e)]~~ (b) The court shall send the order to the Department of Health and to the local health
288 department ordered to draw the blood.

289 ~~[(d)]~~ (c) Notwithstanding the provisions of Title 26, Chapter 6a, or of Section 26-6-27, the
290 Department of Health and a local health department may disclose the test results pursuant to a
291 court order as provided in this section.

292 ~~[(e)]~~ (d) Under this section, anonymous testing as provided under Section 26-6-3.5 or
293 under Title 26, Chapter 6a, shall not satisfy the requirements of the court order.

294 ~~[(f)]~~ (10) The local health department or the Department of Health shall inform the subject
295 of the petition and the petitioner of the results of the test and advise both parties ~~[of the~~
296 ~~confidential nature of]~~ that the test results are confidential. That information shall be maintained
297 as confidential by all parties to the action.

298 (11) The court, its personnel, the process server, the Department of Health, local health
299 department, and petitioner shall maintain confidentiality of the name and any other identifying
300 information regarding the individual tested and the results of the test as they relate to that
301 individual, except as specifically authorized by this chapter or by Title 26, Chapter 6a.

302 ~~[(9)]~~ (12) (a) ~~[The]~~ Except as provided in Subsection (12)(b), the petitioner shall remit
303 payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory
304 disease testing to the entity that draws the blood.

305 (b) If the petitioner is ~~[a public safety officer or]~~ an emergency medical services provider,
306 the agency which employs the ~~[public safety officer or]~~ emergency medical services provider shall

307 remit payment for the drawing of the blood specimen and the analysis of the specimen for the
 308 mandatory disease testing to the entity that draws the blood.

309 ~~[(10)]~~ (13) The entity that draws the blood shall cause the blood and the payment for the
 310 analysis of the specimen to be delivered to the Department of Health for analysis.

311 ~~[(11)]~~ (14) If the individual is incarcerated, the incarcerating authority shall either draw
 312 the blood specimen or shall pay the expenses of having the individual's blood drawn.

313 Section 14. Section **78-29-103** is enacted to read:

314 **78-29-103. Confidentiality -- Disclosure -- Penalty.**

315 Any person or entity entitled to receive confidential information under this chapter, other
 316 than the individual tested and identified in the information, who violates the provisions of this
 317 chapter by releasing or making public that confidential information, or by otherwise breaching the
 318 confidentiality requirements of this chapter, is guilty of a class B misdemeanor, unless the
 319 information is otherwise released or provided pursuant to the provisions of Title 26, Chapter 6a.

Legislative Review Note as of 1-21-99 7:23 AM

This legislation raises the following constitutional or statutory concerns:

In any legislation dealing with mandatory HIV testing, the Fourth Amendment, governing search and seizure, is at issue. The United States Supreme Court has held that drawing blood for the purposes of testing constitutes a Fourth Amendment search. The state, therefore, must justify the privacy intrusion with a legitimate governmental interest, and the intrusion must be narrowly limited in objective and scope. The test is one of balancing the intrusion with the promotion of a legitimate governmental interest. This legislation attempts to balance the privacy interests of individuals with the governmental interests of informing and assisting emergency medical service providers and public safety officers who have been significantly exposed to blood and other body fluids in the performance of emergency care. The legislation requires a probable cause finding, by a court, of significant exposure and includes confidentiality requirements. Some courts have utilized a "special needs" analysis with regard to HIV testing, allowing even greater flexibility to governmental interests and limiting the need for a probable cause finding.

It is likely that this legislation would withstand constitutional scrutiny and be upheld by the courts, if it were challenged. The existing Utah statute, which this bill amends, has been in effect since 1995 and has not been challenged.

Office of Legislative Research and General Counsel