

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

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

ENACTS:

26-6a-1.5, Utah Code Annotated 1953

78-29-103, Utah Code Annotated 1953

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

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

26-6a-1. Definitions.

For purposes of this chapter:

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

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

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

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

(5) "Emergency medical services provider" means an emergency medical technician as defined

in Section 26-8-2, a peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications, local fire department personnel, or officials or personnel employed by the Department of Corrections or by a county jail, who provides prehospital emergency medical care for an emergency medical services agency either as an employee or as a volunteer.

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

(7) "Significant exposure" means:

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

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

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

(i) percutaneous inoculation; or

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

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

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

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

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

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

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

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

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

(b) If consent is given, the facility shall obtain and test, or provide for testing of, the patient's

blood to determine the presence of any disease, in accordance with the provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In making a report to a designated agent under this chapter, the facility that conducted the test shall, or in the case of a test for AIDS or Human Immunodeficiency Virus infection the department shall, use a case number instead of the patient's name.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the disease by accident during the course of his duties as an emergency medical services provider if:

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

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

(2) Each emergency medical services agency shall inform the emergency medical services providers that it employs or utilizes of the provisions and benefits of this section at commencement of and termination of employment or service.

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

26-6a-11. Workers' compensation claims by emergency medical services providers -- Time limits.

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

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

(3) Any claim for workers' compensation benefits or medical expenses shall be filed with the Division of Adjudication of the Labor Commission within one year after the date on which the employee first becomes disabled or requires medical treatment for a disease, or within one year after

the termination of employment as an emergency medical services provider, whichever occurs later.

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

78-29-101. Definitions.

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

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

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

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

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

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

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

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

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

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

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

(6) "~~[Significantly]~~ Significant exposure" and "significantly exposed" ~~[means exposure of the~~

~~body of one person to HIV or other blood-borne pathogens from the blood of another person by:]~~
mean the same as the term "significant exposure" is defined in Section 26-6a-1.

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

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

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

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

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

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

(b) petition the district court for an order requiring that the person [who] to whom he was significantly exposed [the petitioner] submit to testing to determine the presence of [HIV or other blood-borne pathogens] a disease, as defined in Section 78-29-101, and that the results of that test be disclosed to the petitioner by the Department of Health.

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

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

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

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

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

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

after the petition is filed.

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

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

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

(c) The hearing shall be conducted in camera.

(6) The district court may enter an order requiring that an individual submit to testing for ~~[HIV or other blood-borne pathogens]~~ a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

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

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

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

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

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

~~[(c)]~~ (b) The court shall send the order to the Department of Health and to the local health

department ordered to draw the blood.

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

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

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

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

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

(b) If the petitioner is ~~[a public safety officer or]~~ an emergency medical services provider, the agency which employs the ~~[public safety officer or]~~ emergency medical services provider shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

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

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

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

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

Any person or entity entitled to receive confidential information under this chapter, other than

the individual tested and identified in the information, who violates the provisions of this chapter by releasing or making public that confidential information, or by otherwise breaching the confidentiality requirements of this chapter, is guilty of a class B misdemeanor, unless the information is otherwise released or provided pursuant to the provisions of Title 26, Chapter 6a.