

¶ Approved for Filing: JWH ¶

¶ 01-12-00 7:29 AM ¶

1 **DISEASE TESTING AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Brent H. Goodfellow**

5 AN ACT RELATING TO DISEASE TESTING FOR EMERGENCY MEDICAL SERVICES
6 PROVIDERS; REQUIRING CERTAIN PERSONS TO SUBMIT TO IMMEDIATE TESTING
7 BASED UPON THE EMS PROVIDER'S DETERMINATION OF PROBABLE CAUSE;
8 PROVIDING FOR COURT SUPPRESSION OF TESTING RESULTS; AND MAKING
9 TECHNICAL CORRECTIONS.

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

11 AMENDS:

12 **26-6a-2**, as last amended by Chapter 137, Laws of Utah 1999

13 **26-6a-5**, as last amended by Chapter 137, Laws of Utah 1999

14 **78-29-102**, as last amended by Chapter 137, Laws of Utah 1999

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

16 Section 1. Section **26-6a-2** is amended to read:

17 **26-6a-2. Emergency medical services provider's significant exposure --**

18 **Documentation -- Request for testing -- Refusal or consent.**

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

23 (2) (a) Upon notification of a significant exposure, or upon receipt of the documentation
24 described in Subsection (1), the hospital, health care facility, or other facility that receives the
25 patient or individual shall request that he consent to testing of his blood to determine the presence
26 of any disease as defined in Section 26-6a-1. The patient shall be informed that he may refuse to
27 consent to the test and, if he refuses, the fact of his refusal will be forwarded to the designated

28 agent and to the department, and the emergency medical services provider may either seek a court
29 order, pursuant to Section 78-29-102, requiring the patient to undergo testing, or require immediate
30 testing pursuant to Subsection (2)(c)(ii). The designated agent shall forward that information to
31 the emergency medical services provider. The right to refuse a blood test under the circumstances
32 described in this section does not apply to an individual who has been convicted of a crime and
33 is in the custody or under the jurisdiction of the Department of Corrections, or to any person who
34 is otherwise legally required to submit to testing.

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

38 (c) If consent is not given, the emergency medical services provider may:

39 (i) petition the district court for an order requiring the patient to submit to testing, pursuant
40 to Section 78-29-102[-]; or
41 (ii) require that the individual submit to testing without consent if the emergency medical
42 services provider determines, using an objective standard, that there is probable cause to believe
43 that the individual will flee or conceal himself, or that it will not be possible to locate that
44 individual for testing at a future date.

45 (d) An individual who is required to submit to testing pursuant to Subsection (2)(c)(ii) may
46 within ten days file a petition with the district court challenging the finding of probable cause, and
47 seek to suppress the disclosure of the test results to the provider, designated agent, or agency that
48 requested the testing. If the court so orders, information regarding that testing may not be
49 disclosed to any person, agency, or facility.

50 Section 2. Section **26-6a-5** is amended to read:

51 **26-6a-5. Reporting of test results.**

52 (1) (a) [Results] Except as provided in Subsection 26-6a-2(d), results of tests conducted
53 under this chapter shall be reported by the facility that conducted the test to specified officials of
54 the department and to a designated agent of the emergency medical services agency that employs
55 or utilizes the emergency medical services provider who reported the significant exposure.

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

59 designated agent.

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

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

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

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

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

73 Section 3. Section **78-29-102** is amended to read:

74 **78-29-102. Petition -- HIV testing -- Notice -- Payment of testing.**

75 (1) An emergency medical services provider, or first aid volunteer who is significantly
76 exposed during the course of performing the emergency medical services provider's duties or
77 during the course of performing emergency assistance or first aid may:

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

80 (b) petition the district court for an order requiring that the person to whom he was
81 significantly exposed submit to testing to determine the presence of a disease, as defined in Section
82 78-29-101, and that the results of that test be disclosed to the petitioner by the Department of
83 Health[.]; or

84 (c) require that the person submit to immediate testing, based on a finding of probable
85 cause, pursuant to Subsection 26-6a-2(c)(ii).

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

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

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

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

92 (ii) an affidavit in which the emergency medical services provider or first aid volunteer
93 certifies that he has been significantly exposed to the individual who is the subject of the petition
94 and describes that exposure.

95 (b) The petitioner shall submit to testing to determine the presence of a disease, when the
96 petition is filed or within ten days after the petition is filed.

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

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

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

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

106 (6) The district court may enter an order requiring that an individual submit to testing for
107 a disease if the court finds probable cause to believe:

108 (a) the petitioner was significantly exposed; and

109 (b) the exposure occurred during the course of the emergency medical services provider's
110 duties, or the provision of emergency assistance or first aid by a first aid volunteer.

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

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

116 (9) (a) Upon order of the district court that a person submit to testing for a disease, that
117 person shall report to the designated local health department to have his blood drawn within ten
118 days from the issuance of the order, and thereafter as designated by the court, or be held in
119 contempt of court.

120 (b) The court shall send the order to the Department of Health and to the local health

121 department ordered to draw the blood.

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

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

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

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

134 (12) (a) Except as provided in Subsection (12)(b), the petitioner shall remit payment for
135 the drawing of the blood specimen and the analysis of the specimen for the mandatory disease
136 testing to the entity that draws the blood.

137 (b) If the petitioner is an emergency medical services provider, the agency which employs
138 the emergency medical services provider shall remit payment for the drawing of the blood
139 specimen and the analysis of the specimen for the mandatory disease testing to the entity that
140 draws the blood.

141 (13) The entity that draws the blood shall cause the blood and the payment for the analysis
142 of the specimen to be delivered to the Department of Health for analysis.

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

**Legislative Review Note
as of 1-7-00 10:43 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel