

Senate Bill No. 428

(By Senator Stollings)

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[Introduced March 4, 2013; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §16-3C-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-4-19 of said code, all relating to removing the limitations on billing patients for HIV and sexually transmitted disease testing done by state or local public health agencies; and clarifying provisions relating to performing HIV or STD tests on persons accused of a sexual offense.

Be it enacted by the Legislature of West Virginia:

That §16-3C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §16-4-19 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

1 **§16-3C-2. Testing.**

2 (a) HIV-related testing ~~on a voluntary basis~~ should be
3 recommended by ~~any~~ healthcare ~~provider in a health facility~~
4 providers as part of a routine screening for treatable conditions
5 and as part of routine prenatal and perinatal care. A physician,
6 dentist, nurse practitioner, nurse midwife, physician assistant or
7 the commissioner may ~~also~~ request targeted testing for any of the
8 following:

9 (1) When there is cause to believe that the test could be
10 positive. Persons who engage in high risk behavior should be
11 encouraged to be screened for HIV at least annually;

12 (2) When there is cause to believe that the test could provide
13 information important in the care of the patient; or

14 (3) When there is cause to believe that the results of HIV-
15 testing of samples of blood or body fluids from a source patient
16 could provide information important in the care of medical or
17 emergency responders or other persons identified in regulations
18 proposed by the department for approval by the Legislature in
19 accordance with the provisions of article three, chapter twenty-
20 nine-a of this code: *Provided*, That the source patient whose blood
21 or body fluids is being tested pursuant to this section must have
22 come into contact with a medical or emergency responder or other
23 person in such a way that a significant exposure has occurred;

1 (4)When there is no record of any HIV-related testing during
2 pregnancy and the woman presents for labor and delivery.

3 (b) All patients who seek an HIV test shall be responsible for
4 paying the costs of the testing, whether they are tested by a
5 private healthcare provider, the bureau or at a local health
6 department. Local health departments may charge in accordance with
7 their existing fee schedules and may charge patients on a sliding
8 fee scale.

9 ~~(b)~~ (c) A patient ~~voluntarily~~ consents to the test as follows:

10 (1) The patient is informed either orally or in writing that
11 HIV-related testing will be performed as part of his or her routine
12 care, that HIV-related testing is voluntary and that the patient
13 may decline HIV-related testing (opt-out); or

14 (2) The patient is informed that the patient's general consent
15 for medical care includes consent for HIV-related testing.

16 ~~(c)~~ (d) A patient refuses to consent to the test if a patient
17 opts-out of HIV-related testing, the patient is informed when the
18 health care provider in the provider's professional opinion
19 believes HIV-related testing is recommended, and that HIV-related
20 testing may be obtained anonymously at a local or county health
21 department.

22 ~~(d)~~ (e) Any person seeking an HIV-related test in a local or
23 county health department or other HIV test setting provided by the

1 commissioner who wishes to remain anonymous has the right to do so,
2 and to be provided written informed consent through use of a coded
3 system with no linking of individual identity to the test request
4 or results. Such persons may arrange to pay the costs of the HIV-
5 related testing.

6 ~~(e)~~ (f) No option to opt-out of HIV-related testing is
7 required and the provisions of subsection (a) and (b) of this
8 section do not apply for the following:

9 (1) A health care provider or health facility performing an
10 HIV-related test on the donor or recipient when the health care
11 provider or health facility procures, processes, distributes or
12 uses a human body part (including tissue and blood or blood
13 products) donated for a purpose specified under the uniform
14 anatomical gift act, or for transplant recipients, or semen
15 provided for the purpose of artificial insemination and such test
16 is necessary to assure medical acceptability of a recipient ~~or~~ of
17 such gift or semen for the purposes intended;

18 (2) The performance of an HIV-related test in documented bona
19 fide medical emergencies, as determined by a treating physician
20 taking into account the nature and extent of the exposure to
21 another person, when the subject of the test is unable or unwilling
22 to grant or withhold consent, and the test results are necessary
23 for medical diagnostic purposes to provide appropriate emergency

1 care or treatment to a medical or emergency responder, or any other
2 person who has come into contact with a source patient in such a
3 way that a significant exposure necessitates HIV-testing or to a
4 source patient who is unable to consent in accordance with rules
5 proposed by the department for approval by the Legislature in
6 accordance with article three, chapter twenty-nine-a of this code:
7 *Provided*, That necessary treatment may not be withheld pending HIV
8 test results: *Provided, however*, That all sampling and HIV-testing
9 of samples of blood and body fluids, without the opportunity for
10 the source patient or patient's representative to opt-out of the
11 testing, shall be through the use of a pseudonym and in accordance
12 with rules proposed by the department for approval by the
13 Legislature in accordance with article three, chapter twenty-nine-a
14 of this code; or

15 (3) The performance of an HIV-related test for the purpose of
16 research if the testing is performed in a manner by which the
17 identity of the test subject is not known and may not be retrieved
18 by the researcher.

19 ~~(f)~~ (g) Mandated testing:

20 (1) The performance of any HIV-related testing that is or
21 becomes mandatory by a magistrate or circuit court order or other
22 legal process described herein does not require consent of the
23 subject but ~~will~~ may include counseling.

1 (2) The arresting authorities or a magistrate or circuit court
2 ~~having jurisdiction of the criminal prosecution judge,~~ upon the
3 request of the prosecutor in the case or upon the request of the
4 victim, shall ~~order that an HIV-related test be performed~~ cause the
5 accused to submit to one or more appropriate tests to determine if
6 the accused is infected with human immunodeficiency virus (HIV)
7 within forty-eight hours after the date on which the complaint,
8 information or indictment is filed or within forty-eight hours
9 after the date on which the complaint, information, or indictment
10 is served on the accused, whichever date is later, ~~on~~ for any
11 ~~persons charged with any~~ person accused of the following crimes or
12 offenses:

13 (i) Prostitution; or

14 (ii) Sexual abuse, sexual assault, incest or sexual
15 molestation.

16 (3) HIV-related tests performed on persons ~~charged with~~
17 accused of prostitution, sexual abuse, sexual assault, incest or
18 sexual molestation shall be confidentially administered by a
19 designee of the bureau or the local or county health department
20 having proper jurisdiction. The commissioner may designate health
21 care providers in regional jail or other correctional facilities to
22 administer HIV-related tests on such persons if he or she
23 determines it necessary and expedient. Nothing in this section may

1 be construed to prevent the court from ordering at any time during
2 which the complaint, information or indictment is pending, that the
3 accused submit to one or more appropriate tests to determine if the
4 accused is suffering from a sexually transmitted disease (STD) or
5 from the human immunodeficiency virus (HIV). The cost of testing
6 and treatment may be charged to and paid by the accused.

7 (4) When the Commissioner of the Bureau of Public Health knows
8 or has reason to believe, because of medical or epidemiological
9 information, that a person, including, but not limited to, a person
10 such as an IV drug abuser, or a person who may have a sexually
11 transmitted disease, or a person who has sexually molested, abused
12 or assaulted another, has HIV infection and is or may be a danger
13 to the public health, he or she may issue an order to:

14 (i) Require a person to be examined and tested to determine
15 whether the person has HIV infection;

16 (ii) Require a person with HIV infection to report to a
17 qualified physician or health worker for counseling; ~~and~~

18 (iii) Direct a person with HIV infection to cease and desist
19 from specified conduct which endangers the health of others; and

20 (iv) Bill that person for the necessary laboratory and
21 associated costs for testing either directly or by billing the
22 person's medical insurance provider.

23 (5) If any person violates a cease and desist order issued

1 pursuant to this section and, by virtue of that violation, the
2 person presents a danger to the health of others, the commissioner
3 shall apply to the circuit court of Kanawha County to enforce the
4 cease and desist order by imposing any restrictions upon the person
5 that are necessary to prevent the specific conduct that endangers
6 the health of others.

7 (6) A person convicted of the offenses described in this
8 section shall be required to undergo HIV-related testing and
9 counseling immediately upon conviction and the court having
10 jurisdiction of the criminal prosecution may not release the
11 convicted person from custody and shall revoke any order admitting
12 the defendant to bail until HIV-related testing and counseling have
13 been performed and the result is known. The HIV-related test result
14 obtained from the convicted person is to be transmitted to the
15 court and, after the convicted person is sentenced, made part of
16 the court record. If the convicted person is placed in the custody
17 of the Division of Corrections, the court shall transmit a copy of
18 the convicted person's HIV-related test results to the Division of
19 Corrections. The HIV-related test results shall be closed and
20 confidential and disclosed by the court and the bureau only in
21 accordance with the provisions of section three of this article.

22 (7) The prosecuting attorney shall inform the victim, or
23 parent or guardian of the victim, at the earliest stage of the

1 proceedings of the availability of voluntary HIV-related testing
2 and counseling conducted by the bureau and that his or her best
3 health interest would be served by submitting to HIV-related
4 testing and counseling. HIV-related testing for the victim shall be
5 administered at his or her request on a confidential basis and
6 shall be administered in accordance with the Centers for Disease
7 Control and Prevention guidelines of the United States Public
8 Health Service in effect at the time of such request. The victim
9 who obtains an HIV-related test shall be provided with pre and
10 post-test counseling regarding the nature, reliability and
11 significance of the HIV-related test and the confidential nature of
12 the test. HIV-related testing and counseling conducted pursuant to
13 this subsection shall be performed by the designee of the
14 commissioner of the bureau or by any local or county health
15 department having proper jurisdiction.

16 (8) If a person receives counseling or is tested under this
17 subsection and is found to be HIV infected and the person is not
18 incarcerated, the person shall be referred by the health care
19 provider performing the counseling or testing for appropriate
20 medical care and support services. The local or county health
21 departments or any other agency under this subsection may not be
22 held financially responsible for medical care and support services.

23 (9) The commissioner of the bureau or his or her designees may

1 require an HIV test for the protection of a person who was possibly
2 exposed to HIV infected blood or other body fluids as a result of
3 receiving or rendering emergency medical aid or who possibly
4 received such exposure as a funeral director. Results of such a
5 test of the person causing exposure may be used by the requesting
6 physician for the purpose of determining appropriate therapy,
7 counseling and psychological support for the person rendering
8 emergency medical aid including good Samaritans, as well as for the
9 patient, or individual receiving the emergency medical aid.

10 (10) If an HIV-related test required on persons accused of or
11 convicted of prostitution, sexual abuse, sexual assault, incest or
12 sexual molestation results in a negative reaction, upon motion of
13 the state, the court having jurisdiction over the criminal
14 prosecution may require the subject of the test to submit to
15 further HIV- related tests performed under the direction of the
16 bureau in accordance with the Centers for Disease Control and
17 Prevention guidelines of the United States Public Health Service in
18 effect at the time of the motion of the state.

19 (11) The costs of mandated testing and counseling provided
20 under this subsection and pre and post-conviction HIV-related
21 testing and counseling provided the victim under the direction of
22 the bureau pursuant to this subsection shall be paid by ~~the bureau~~
23 the individual to be tested or his or her medical insurance

1 provider, if possible.

2 (12) The court having jurisdiction of the criminal prosecution
3 shall order a person convicted of prostitution, sexual abuse,
4 sexual assault, incest or sexual molestation to pay restitution to
5 the state for the costs of any HIV-related testing and counseling
6 provided the convicted person and the victim, unless the court has
7 determined the convicted person to be indigent.

8 (13) Any funds recovered by the state as a result of an award
9 of restitution under this subsection shall be paid into the State
10 Treasury to the credit of a special revenue fund to be known as the
11 "HIV-testing fund" which is hereby created. The moneys so credited
12 to the fund may be used solely by the bureau for the purposes of
13 facilitating the performance of HIV-related testing and counseling
14 under the provisions of this article.

15 ~~(g) Nothing in this section is applicable to any insurer~~
16 ~~regulated under chapter thirty three of this code: Provided, That~~
17 ~~the commissioner of insurance shall develop standards regarding~~
18 ~~consent for use by insurers which test for the presence of the HIV~~
19 ~~antibody.~~

20 (h) Whenever consent of the subject to the performance of HIV-
21 related testing is required under this article, any such consent
22 obtained, whether orally or in writing, shall be considered to be
23 a valid and informed consent if it is given after compliance with

1 the provisions of subsection (b) of this section.

2 **ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

3 **§16-4-19. Voluntary submission to examination and treatment;**
4 **charges; disposition of money collected.**

5 (a) Any resident of the state may at any time report to any
6 municipal or county health officer ~~having jurisdiction of the case,~~
7 and voluntarily submit himself or herself to all tests and
8 examination ~~as are~~ necessary to ascertain whether ~~in fact~~ the
9 person ~~submitting himself for examination~~ is infected with a
10 ~~venereal~~ sexually transmitted disease. ~~and said~~ The health officer
11 ~~to whom any party has applied as above for tests and examination~~
12 shall ~~provide for making all such~~ conduct and administer all
13 necessary tests and examinations ~~as are necessary~~ to ascertain
14 whether ~~in fact said party so applying be so infected with a~~
15 ~~venereal~~ the person has any sexually transmitted disease.

16 (b) If such tests and examinations show ~~said party so applying~~
17 ~~to be so infected~~ the person to have a sexually transmitted
18 disease, then ~~said party~~ the person shall elect whether he or she
19 will take treatment ~~of~~ from a private physician, or whether he or
20 she will take treatment ~~to be provided by~~ from the local health
21 ~~officer through a clinic or otherwise~~ department, and if he or she
22 elects to take treatment through the local health ~~officer's~~

1 ~~arrangement department, he or she~~ may be required to pay for such
2 ~~treatment at a charge which shall in no case exceed the sum of five~~
3 ~~dollars for each dose of "neo" or arsphenamine administered for~~
4 ~~syphilis, and at a nominal cost for other medicines used; but if~~
5 ~~the patient is unable to pay anything, he shall be treated free of~~
6 ~~charge under the direction of the local health officer, at a clinic~~
7 ~~or otherwise~~ either directly or by the local health department
8 billing the person's health insurance provider.

9 (c) All proper charges for such examination and treatment ~~as~~
10 that may be necessary hereunder shall be ~~a proper charge against~~
11 ~~the municipality or county~~ paid by the individual or by that
12 persons health insurance provider. ~~as the case may be, whether said~~
13 ~~party so taking treatment lived in or out of a municipal~~
14 ~~corporation. And whether said person proposing to take treatment as~~
15 ~~provided hereunder elect to take from a private physician or elect~~
16 ~~to take treatment under the direction of the local health officer,~~
17 ~~he shall first sign the agreement required to be signed by persons~~
18 ~~about to be released from detention or quarantine, and shall~~
19 ~~observe all its provisions, and so long as such person so signing~~
20 ~~shall so observe these provisions he need not be detained or~~
21 ~~quarantined pending treatment, except that no person who is known~~
22 ~~as a prostitute, or as a person associating with such, or as a~~
23 ~~person who resides in any house having the reputation of being a~~

1 ~~house of prostitution, or who frequents the same, shall be allowed~~
2 ~~at liberty if infected with a venereal disease in an infectious~~
3 ~~stage, even though he does voluntarily submit for examination and~~
4 ~~treatment and does take treatment under the provisions of this~~
5 ~~section.~~

6 (d) All money collected under this section shall be paid into
7 ~~a clinic fund, if one is provided, and if not then into the county~~
8 ~~or city treasury, as the case may be;~~ to the local health
9 department doing the testing and the local health officer ~~having~~
10 ~~jurisdiction~~ shall collect and account for such funds collected
11 hereunder.

NOTE: The purpose of this bill is to remove the prohibition on billing persons for HIV testing or testing for sexually transmitted diseases conducted by the State Bureau for Public Health or county or local health departments. The bill allows public health agencies to charge patients or their medical insurance providers for the reasonable costs for testing. It also clarifies the procedures for testing persons accused of a sexual offense for HIV or STDs.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.