

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2826

**FISCAL
NOTE**

BY DELEGATE WALTERS (SOLE SPONSOR-
RESIGNED 3/7/18)

[Introduced March 8, 2017; Referred
to the Committee on Health and Human Resources
then Finance.]

1 A BILL to repeal §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-
 2 29G-7 and §16-29G-8 of the Code of West Virginia, 1931, as amended; and to amend
 3 and reenact §16-3C-1 and §16-3C-3 of said code, all relating to eliminating provisions and
 4 repealing statutes related to the West Virginia Health Information Network and health
 5 information exchanges.

Be it enacted by the Legislature of West Virginia:

1 That §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7
 2 and §16-29G-8 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-3C-
 3 1 and §16-3C-3 of said code be amended and reenacted, all to read as follows:

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

§16-3C-1. Definitions.

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency syndrome.

3 (b) "Bureau" means the Bureau for Public Health.

4 (c) "Commissioner" means the Commissioner of the Bureau for Public Health.

5 (d) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court
 6 having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial or a trial to a
 7 court and an adjudicated juvenile offender as defined in sections two and four, article one, chapter
 8 forty-nine of this code.

9 (e) "Department" means the State Department of Health and Human Resources.

10 (f) "Funeral director" has the same meaning ascribed to such term in section three, article
 11 six, chapter thirty of this code.

12 (g) "Funeral establishment" has the same meaning ascribed to that term in section three,
 13 article six, chapter thirty of this code.

14 (h) "HIV" means the human immunodeficiency virus identified as the causative agent of
15 AIDS.

16 (i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test
17 approved by the bureau, the federal drug administration or the Centers for Disease Control and
18 Prevention.

19 (j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank,
20 blood center, sperm bank, laboratory or other health care institution.

21 (k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist
22 or other person providing medical, dental, nursing, psychological or other health care services of
23 any kind.

24 ~~(l) "Health Information Exchange" means the electronic movement of health-related~~
25 ~~information in accord with law and nationally recognized standards~~

26 ~~(m)~~ (l) "High risk behavior" means behavior by a person including, but not limited to: (i)
27 Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money
28 or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or
29 needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing
30 injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

31 ~~(n)~~ (m) "Medical or emergency responders" means paid or volunteer firefighters, law-
32 enforcement officers, emergency medical technicians, paramedics, or other emergency service
33 personnel, providers or entities acting within the usual course of their duties; good samaritans
34 and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral
35 directors; health care providers; Commissioner of the Bureau for Public Health; and all employees
36 thereof and volunteers associated therewith.

37 ~~(o)~~ (n) "Patient" or "test subject" or "subject of the test" means the person upon whom a
38 HIV test is performed, or the person who has legal authority to make health care decisions for the
39 test subject.

40 ~~(p)~~ (o) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability
41 and Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a
42 patient or test subject.

43 ~~(e)~~ (p) "Person" includes any natural person, partnership, association, joint venture, trust,
44 public or private corporation or health facility.

45 ~~(r)~~ (q) "Release of test results" means a permitted or authorized disclosure of HIV-related
46 test results.

47 ~~(s)~~ (r) "Significant exposure" means:

48 (1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery or
49 traumatic events; or

50 (2) Exposure of mucous membranes to visible blood or body fluids, to which universal
51 precautions apply according to the National Centers for Disease Control and Prevention, and
52 laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

53 (3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped,
54 abraded or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

55 ~~(t)~~ (s) "Source patient" means any person whose body fluids have been the source of a
56 significant exposure to a medical or emergency responder.

57 ~~(u)~~ (t) "Targeted testing" means performing an HIV-related test for sub-populations at
58 higher risk, typically defined on the basis of behavior, clinical or demographic characteristics.

59 ~~(v)~~ (u) "Victim" means the person or persons to whom transmission of bodily fluids from
60 the perpetrator of the crimes of sexual abuse, sexual assault, incest or sexual molestation
61 occurred or was likely to have occurred in the commission of such crimes.

§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

1 (a) No person may disclose or be compelled to disclose the identity of any person upon
2 whom an HIV-related test is performed, or the results of such a test in a manner which permits
3 identification of the subject of the test, except to the following persons:

4 (1) The subject of the test;

5 (2) The victim of the crimes of sexual abuse, sexual assault, incest or sexual molestation
6 at the request of the victim or the victim's legal guardian, or of the parent or legal guardian of the
7 victim if the victim is a minor where disclosure of the HIV-related test results of the convicted sex
8 offender are requested;

9 (3) Any person who secures a specific release of test results executed by the subject of
10 the test;

11 (4) A funeral director or an authorized agent or employee of a health facility or health care
12 provider if the funeral establishment, health facility or health care provider itself is authorized to
13 obtain the test results, the agent or employee provides patient care or handles or processes
14 specimens of body fluids or tissues and the agent or employee has a need to know that
15 information: *Provided*, That the funeral director, agent or employee shall maintain the
16 confidentiality of this information;

17 (5) Licensed health care providers or appropriate health facility personnel providing care
18 to the subject of the test: *Provided*, That such personnel shall maintain the confidentiality of the
19 test results and may redisclose the results only for a permitted purpose or as permitted by law.
20 The entry on a patient's chart of an HIV-related illness by the attending or other treating physician
21 or other health care provider shall not constitute a breach of confidentiality requirements imposed
22 by this article;

23 (6) The Bureau or the Centers for Disease Control and Prevention of the United States
24 Public Health Service in accordance with reporting requirements for HIV and a diagnosed case
25 of AIDS, or a related condition;

26 (7) A health facility or health care provider which procures, processes, distributes or uses:
27 (A) A human body part from a deceased person with respect to medical information regarding
28 that person; (B) semen provided prior to the effective date of this article for the purpose of artificial
29 insemination; (C) blood or blood products for transfusion or injection; or (D) human body parts for

30 transplant with respect to medical information regarding the donor or recipient;

31 (8) Health facility staff committees or accreditation or oversight review organizations which
32 are conducting program monitoring, program evaluation or service reviews so long as any identity
33 remains anonymous;

34 (9) Claims management personnel employed by or associated with an insurer, health care
35 service contractor, health maintenance organization, self-funded health plan, state-administered
36 health care claims payer or any other payer of health care claims, where the disclosure is to be
37 used solely for the prompt and accurate evaluation and payment of medical or related claims.
38 Information released under this subsection is confidential and may not be released or available
39 to persons who are not involved in handling or determining medical claims payment;

40 (10) Persons, health care providers or health facilities engaging in or providing for the
41 exchange of protected health information among the same in order to provide health care services
42 to the patient, including, ~~but not limited to, disclosure through a health information exchange,~~
43 ~~disclosure and exchange within health care facilities, and~~ disclosure for a permitted purpose,
44 including disclosure to a legally authorized public health authority; and

45 (11) A person allowed access to the record by a court order that is issued in compliance
46 with the following provisions:

47 (i) No court of this state may issue the order unless the court finds that the person seeking
48 the test results has demonstrated a compelling need for the test results which cannot be
49 accommodated by other means. In assessing compelling need, the court shall weigh the need for
50 disclosure against the privacy interest of the test subject and the public interest;

51 (ii) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the
52 true name of the test subject of the test. The disclosure to the parties of the test subject's true
53 name shall be communicated confidentially in documents not filed with the court;

54 (iii) Before granting any such order, the court shall, if possible, provide the individual whose
55 test result is in question with notice and a reasonable opportunity to participate in the proceedings

56 if he or she is not already a party;

57 (iv) Court proceedings as to disclosure of test results shall be conducted in camera unless
58 the subject of the test agrees to a hearing in open court or unless the court determines that the
59 public hearing is necessary to the public interest and the proper administration of justice; and

60 (v) Upon the issuance of an order to disclose test results, the court shall impose
61 appropriate safeguards against unauthorized disclosure, which shall specify the person who may
62 have access to the information, the purposes for which the information may be used and
63 appropriate prohibitions on future disclosure.

64 (b) No person to whom the results of an HIV-related test have been disclosed pursuant to
65 subsection (a) of this section may disclose the test results to another person except as authorized
66 by said subsection.

67 (c) Notwithstanding the provisions set forth in subsections (a) through (c) of this section,
68 the use of HIV test results to inform individuals named or identified as spouses, sex partners or
69 contacts, or persons who have shared needles that they may be at risk of having acquired the
70 HIV infection as a result of possible exchange of body fluids, is permitted: *Provided*, That the
71 bureau shall make a good faith effort to inform spouses, sex partners, contacts or persons who
72 have shared needles that they may be at risk of having acquired the HIV infection as a result of
73 possible exchange of body fluids: *Provided, however*, That the bureau has no notification
74 obligations when the bureau determines that there has been no likely exposure of these persons
75 to HIV from the infected test subject within the ten-year period immediately prior to the diagnosis
76 of the infection. The name or identity of the person whose HIV test result was positive is to remain
77 confidential. Spouses, contacts, or sex partners or persons who have shared needles may be
78 tested anonymously at the state bureau for public health's designated test sites, or at their own
79 expense by a health care provider or an approved laboratory of their choice confidentially should
80 the test be positive. A cause of action may not arise against the bureau, a physician or other
81 health care provider from any such notification.

82 (d) There is no duty on the part of the physician or health care provider to notify the spouse
83 or other sexual partner of, or persons who have shared needles with, an infected individual of
84 their HIV infection and a cause of action may not arise from any failure to make such notification.
85 However, if contact is not made, the bureau will be so notified.

NOTE: The purpose of this bill is to eliminate provisions and repeal statutes related to the West Virginia Health Information Network and health information exchanges.

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