

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1750

BY: VAUGHN (Ray)

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH; REQUIRING STATE BOARD OF HEALTH TO PRESCRIBE CERTAIN CRITERIA; AUTHORIZING CERTAIN PERSONS TO REQUEST TESTING OF CERTAIN OTHER PERSONS FOR COMMUNICABLE DISEASES; PROVIDING PROCEDURES THEREFORE; REQUIRING NOTICE TO PERSON SUBJECT TO ORDER; PROVIDING FOR PETITION TO DISTRICT COURT IN CERTAIN CASES; PROVIDING FOR ATTORNEY; SPECIFYING PROCEDURES FOR COURT REVIEW; PROVIDING FOR NOTIFICATION OF TEST RESULTS; REQUIRING DEPARTMENT OF HEALTH TO DEVELOP CERTAIN PROTOCOLS; PROVIDING PROCEDURES FOR WORKERS' COMPENSATION IN CASES OF RISK EXPOSURE; AUTHORIZING TESTING FOR COMMUNICABLE DISEASES IN CERTAIN INSTANCES; REQUIRING HOSPITALS TO PERFORM CERTAIN TESTS UPON COURT ORDER; PROVIDING THAT CERTAIN COSTS SHALL BE A COST OF THE COURT; AUTHORIZING THE TESTING OF CERTAIN INMATES FOR COMMUNICABLE DISEASES; AUTHORIZING SEGREGATION OF CERTAIN INMATES; REQUIRING THE DEPARTMENT OF HEALTH TO ESTABLISH CERTAIN PARTNER NOTIFICATION PROGRAMS; PROVIDING PROCEDURES FOR NOTIFICATION; PROVIDING SPECIFICS OF PROGRAM; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health by rule shall prescribe the criteria that constitute risk exposure to communicable diseases, including infection with the human immunodeficiency virus (HIV). The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

B. A person whose occupation or whose volunteer service is included in one or more of the following categories may request the Department of Health or a local health authority to issue an order for the testing of another person who may have exposed the person to a communicable disease, including HIV infection:

1. A law enforcement officer;
2. A fire fighter;
3. An medical service employee, health care provider or paramedic; or
4. A correctional officer.

C. A request under this section may be made only if the person has experienced the exposure in the course of the person's employment or volunteer service, believes that the exposure places the person at risk of contracting a communicable disease, including HIV infection and presents to the Department or local health authority, a sworn affidavit that delineates the reasons for the request.

D. The Department or a designee of the Department who meets the minimum training requirements prescribed by the Board shall review the person's request and inform the person whether the request meets

the criteria establishing risk of infection with a communicable disease.

E. The Department or a designee of the Department shall give the person who is subject to the order, prompt and confidential written notice of the order. The order shall:

1. State the grounds and provisions of the order, including the factual basis for its issuance;

2. Refer the person to appropriate health care facilities where the person can be tested for the communicable disease; and

3. Inform the person who is the subject of the order of his or her right to refuse to be tested and the authority of the Department of Health to ask for a court order requiring the test.

F. If the person who is subject to the order refuses to comply with an order of the Department, the prosecuting attorney who represents the state in district court, on request of the Department, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the individual has consulted with an attorney.

G. In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by the rules of the Board. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for communicable diseases, including HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. If the court finds that there was not reasonable cause for the person

to have requested the test, the court may assess court costs against the person who made the request.

H. The Department or a designee of the Department shall inform the person who requested the order of the results of the test. If the person who was the subject of the court order is found to have a communicable disease, the Department shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The Department of Health shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

I. Counseling and testing for the human immunodeficiency virus conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the Department.

J. For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a communicable disease, including HIV infection, shall provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that within ten (10) days after the exposure the employee had a test result that indicated an absence of the communicable disease including HIV infection.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A person or entity may not require another person to undergo any medical procedure or test pursuant to Section 1 of this act designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless otherwise required by this act or unless the medical procedure or test is necessary:

1. As a bona fide occupational qualification and there exists no less discriminatory means of satisfying the occupational qualification; or

2. To screen blood, blood products, bodily fluids, organs, or tissues for the purpose of determining suitability for donation; or

3. To test residents and clients of residential facilities of the Department of Mental Health and Substance Abuse Services, but only if:

a. the test result would change the medical or social management of the person tested or others who associated with that person, and

b. the test is conducted in accordance with guidelines that have been adopted by the residential facility and the Department of Mental Health and Substance Abuse Services; or

4. To test residents and clients of state-operated residential facilities, but only if:

a. the test result would change the medical or social management of the person tested or others who associate with that person, and

b. the test is conducted in accordance with guidelines adopted by the Department of Health.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the test or procedure pursuant to this act. The procedure or test shall be a cost of the court.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A county or municipality may test for communicable diseases an inmate confined in the county or municipal jail or in a contract facility to determine the proper medical treatment of the inmate or the proper social management of the inmate or other inmates in the jail or facility.

B. If the county or municipality determines that an inmate has a positive test result for AIDS or HIV, the county or municipality may segregate the inmate from other inmates in the jail or facility.

C. This section shall not require a duty to test for AIDS or HIV, and a cause of action does not arise under this section from a failure to test for AIDS or HIV.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Department of Health shall establish programs for partner notification and referral services. The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

B. If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

C. An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner:

1. Of the methods of transmission and methods of prevention of HIV infection;

2. Of the telephone numbers and addresses of local HIV antibody testing sites; and

3. Of the existence of local HIV support groups, mental health services, and medical facilities.

D. The employee shall not disclose:

1. The name of or other identifying information concerning the identity of the person who gave the partner's name; or

2. The date or period of the partner's exposure.

E. If the person with HIV infection also makes the notification, the person should provide the information listed in subsection C of this section.

F. A partner notification program shall provide counseling, testing, and referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

G. A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control of the United States Public Health Service for professionals participating in the program.

SECTION 6. This act shall become effective September 1, 1991.

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