

SHORT TITLE: Public health and safety; communicable diseases;
confidential information; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 229

By: Smith

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Section 1-502.2, as amended by Section 1, Chapter 144, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-502.2), which relates to disease prevention and control; modifying conditions under which release of certain confidential information may be permissible; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-502.2, as amended by Section 1, Chapter 144, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-502.2), is amended to read as follows:

Section 1-502.2 A. Unless otherwise provided by law, all information and records which identify any person who has or may have any communicable or venereal disease which is required to be reported pursuant to Sections 1-501 through 1-532.1 of this title and which are held or maintained by any state agency, health care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director, third party payor, or any other agency, person, or organization in the state shall be confidential. Any information authorized to be released pursuant to paragraphs 1 through 7 of this subsection shall be released in such a way that no person can be identified unless otherwise provided for

in such paragraph or by law. Such information shall not be released except under the following circumstances:

1. Release is made upon court order;

2. Release is made in writing, by or with the written consent of the person whose information is being kept confidential or with the written consent of the legal guardian or legal custodian of such person, or if such person is a minor, with the written consent of the parent or legal guardian of such minor;

3. Release is necessary as determined by the State Department of Health to protect the health and well-being of the general public. Any such order for release by the Department and any review of such order shall be in accordance with the procedures specified in Sections 309 through 323 of Title 75 of the Oklahoma Statutes. Only the initials of the person whose information is being kept confidential shall be on public record for such proceedings unless the order by the Department specifies the release of the name of such person and such order is not appealed by such person or such order is upheld by the reviewing court;

4. Release is made of medical or epidemiological information to those persons who have had risk exposures pursuant to Section 1-502.1 of this title;

5. Release is made of medical or epidemiological information to health professionals, appropriate state agencies, or district courts to enforce the provisions of Sections 1-501 through 1-532.1 of this title and related rules and regulations concerning the control and treatment of communicable or venereal diseases;

6. Release is made of specific medical or epidemiological information for statistical purposes in such a way that no person can be identified; ~~or~~

7. Release is made of medical information among health care providers, their agents or employees, within the continuum of care for the purpose of diagnosis and treatment of the person whose

information is released. This exception shall not authorize the release of confidential information by a state agency to a health care provider unless such release is otherwise authorized by this section; or

8. Release is made of medical or epidemiological information about a person whose information is required to be kept confidential to or among emergency medical technicians, paramedics, fire fighters, health care workers or peace officers responding to a situation or incident involving a risk exposure to the emergency medical technician, paramedic, fire fighter, health care worker or peace officer responding to such situation or incident. This exception shall not authorize the release of confidential information by a state agency to an emergency medical technician, paramedic, fire fighter, health care worker or peace officer unless such release is otherwise authorized by this section.

B. For the purposes of this section only, the words "written consent" shall mean that the person whose information is required to be kept confidential by this section or the person legally authorized to consent to release by this section has been informed of all persons or organizations to whom such information may be released or disclosed by the specific release granted. Releases granted pursuant to paragraph 2 of subsection A of this section shall include a notice in bold typeface that the information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but are not limited to, diseases such as hepatitis, syphilis, gonorrhoea and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS). Consent obtained for release of information, pursuant to paragraph 2 of subsection A of this section, shall not be considered valid unless prior to consent, the person consenting to the release was given notice of the

provisions for release of confidential information pursuant to this section.

C. 1. The State Department of Health may convene a confidential meeting of a multidisciplinary team for recommendation on school placement of a student who is infected with the human immunodeficiency virus. The multidisciplinary team shall include, but not be limited to the following:

- a. the parent, parents, legal representative, or legal guardian or legal custodian of the student;
- b. the physician of the student;
- c. a representative from the superintendent's office of the affected school district;
- d. a representative from the State Department of Education; and
- e. a representative from the State Department of Health.

Each member of the team shall be responsible for protecting the confidentiality of the student and any information made available to such person as a member of the team. The multidisciplinary team shall be exempt from the requirements of Sections 301 through 314 of Title 25 of the Oklahoma Statutes and Sections 24A.1 through 24A.19 of Title 51 of the Oklahoma Statutes.

2. Each member of the local school board having jurisdiction over the student shall also be responsible for protecting the confidentiality of the student and any information made available to such person as a school board member.

D. The State Department of Health may convene a confidential meeting of a multidisciplinary advisory committee to make recommendations regarding the practice of health care workers who are infected with the human immunodeficiency virus (HIV) or hepatitis B (HBV), who may be performing exposure-prone procedures. The membership of the multidisciplinary advisory committee shall include, but not be limited to, the following:

1. The Commissioner of Health or her designee;
2. Legal counsel to the Commissioner of Health;
3. The state epidemiologist or his designee;
4. An infectious disease specialist with expertise in HIV/HBV infection; and
5. Two practicing health care workers from the same discipline as the HIV/HBV-infected health care worker.

In addition, the health care worker being discussed, and/or an advocate, and the personal physician of the health care worker being discussed shall be invited to the multidisciplinary advisory committee meeting. Discussion of the case shall be made without using the actual name of the health care worker. Each member of the multidisciplinary advisory committee shall be responsible for protecting the confidentiality of the HIV/HBV-infected health care worker and the confidentiality of any information made available to such person as a member of the multidisciplinary advisory committee. The multidisciplinary advisory committee shall be exempt from the requirements of the Open Meetings Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes.

E. Upon advice of the multidisciplinary advisory committee, the Commissioner of Health, or her designee, may notify an appropriate official at the health care facility where the HIV/HBV-infected health care worker practices that said health care worker is seropositive for HIV and/or HBV. Notification shall be made only when necessary to monitor the ability of the HIV/HBV-infected health care worker to comply with universal precautions and appropriate infection control practices, and/or to monitor the ongoing functional capacity of the health care worker to perform his or her duties. Notification shall occur through one of the following officials:

1. The facility administrator;

2. The hospital epidemiologist;

3. The chairman of the infection control committee of the facility; or

4. The medical chief of staff of the facility.

F. If the HIV/HBV-infected health care worker fails or refuses to comply with the recommendations of the multidisciplinary advisory committee, the Commissioner of Health, or her designee, may take such actions as may be required to perform the duties imposed by the laws of the State of Oklahoma, and may advise the appropriate licensing board.

G. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section, upon conviction, shall be guilty of a misdemeanor punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

H. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section shall be civilly liable to the person who is the subject of the disclosure for court costs, attorneys fees, exemplary damages and all actual damages, including damages for economic, bodily or psychological harm which is proximately caused by the disclosure.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-0726

CJ