

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 4041

By: McCall

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5
6 AS INTRODUCED

7 An Act relating to public health; amending 59 O.S.
8 2011, Section 396.27, which relates to notification
9 to employees of risk exposure; requiring certain
10 employee and transporter notification; amending 63
11 O.S. 2011, Section 1-502.3, which relates to
12 confidential records and testing of persons with
13 human immunodeficiency virus; requiring release of
14 certain records and information to funeral directors
15 and embalmers; amending 63 O.S. 2011, Section 1-523,
16 which relates to institutions and treatment of
17 infected inmates; requiring release of certain
18 records and information; amending 63 O.S. 2011,
19 Section 1-525, which relates to disclosure of
20 confidential information; updating statutory
21 references; providing for confidentiality of certain
22 records; providing for release of liability;
23 providing for codification; and providing an
24 effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 396.27, is
amended to read as follows:

Section 396.27 A. In handling and preparing dead human remains
for final disposition, any person who comes in direct contact with
an unembalmed dead human body or who enters a room where dead human

1 bodies are being embalmed shall exercise all reasonable precautions
2 to minimize the risk of transmitting any communicable disease from
3 the body in accordance with federal regulations regarding the
4 control of infectious diseases and occupational and workplace health
5 and safety.

6 B. Each funeral director shall notify employees concerning risk
7 exposures pursuant to Section 1-502.3 of this title and the rules
8 and guidelines promulgated by the State Board of Health.

9 C. If a funeral director or embalmer has been notified that a
10 deceased person has tested positive for human immunodeficiency virus
11 (HIV), MRSA, hepatitis or any other communicable disease the funeral
12 director or embalmer shall notify any person who may be transporting
13 the body or preparing the body for burial or other disposition of
14 the positive test.

15 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-502.3, is
16 amended to read as follows:

17 Section 1-502.3 A. No person who withdraws or tests blood for
18 human immunodeficiency virus (HIV), methicillin-resistant
19 staphylococcus aureus (MRSA), hepatitis or any other communicable
20 disease or employer of such person ~~nor~~ or any hospital or health
21 care facility where blood is withdrawn or tested for ~~human~~
22 ~~immunodeficiency virus~~ HIV, MRSA, hepatitis or any other
23 communicable disease shall incur any civil or criminal liability as
24 a result of the proper withdrawal of blood or testing for ~~human~~

1 ~~immunodeficiency virus~~ HIV, MRSA, hepatitis or any other
2 communicable disease when acting in compliance with the provisions
3 of this section. The withdrawal or testing shall be performed in a
4 reasonable manner, according to generally accepted standards of
5 clinical practice. The person, employer or facility shall be
6 presented with:

7 1. A written statement by the person whose blood is to be
8 withdrawn and tested; or

9 2. A written statement from a health care or emergency care
10 worker verifying that the health care or emergency care worker in an
11 occupational setting has been exposed to the bodily fluids of the
12 person whose blood is to be withdrawn and tested, which exposure
13 placed the health care or emergency care worker at risk for transfer
14 of the bodily fluids; or

15 3. An order from a court of competent jurisdiction that blood
16 be withdrawn and tested.

17 When presented with such a statement or court order, the person
18 authorized to withdraw the blood, the employer and the hospital or
19 other health care facility where the withdrawal or testing occurs
20 may rely on such statement or order as evidence that the person has
21 consented to or has been required to submit to the clinical
22 procedure and shall not be required to obtain any additional
23 consent, acknowledgement or waiver form. In such case, the person
24 authorized to perform the procedure, the employer of such person,

1 and the hospital or other health care facility shall not be liable
2 in any action alleging lack of consent or lack of informed consent.

3 B. No person specified in this section shall incur any civil or
4 criminal liability for:

5 1. Providing results of the testing to:

6 a. the person whose blood was tested,

7 b. the person incurring the exposure, ~~or~~

8 c. the funeral director or embalmer who will be or is
9 preparing the body of a person who has been tested
10 pursuant to this section for burial or other
11 disposition, or

12 d. the State Department of Health or such agency it may
13 designate;

14 2. Not providing the results of the testing to any other
15 person; or

16 3. Failing to diagnose or falsely diagnosing the presence of
17 ~~the human immunodeficiency virus~~ HIV, MRSA, hepatitis or any other
18 communicable disease where the procedure was performed in a
19 reasonable manner according to generally accepted standards of
20 clinical practice.

21 C. For the purposes of this section:

22 1. "Bodily fluids" means fluids which have been medically
23 proven and medically accepted as transmitters or conductors of ~~human~~

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1 ~~immunodeficiency virus~~ HIV, MRSA, hepatitis or any other
2 communicable disease; and

3 2. "Health care worker" or "emergency care worker" means one of
4 the persons specified in subsection A of Section 1-502.1 of this
5 title.

6 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-523, is
7 amended to read as follows:

8 Section 1-523. A. 1. Any and all institutions in this state,
9 whether penal or eleemosynary, public or private, and free or for
10 pay, shall make, and preserve for a period of at least one (1) year,
11 a record showing the name, age, sex, race, nationality and place of
12 residence of any ~~infected~~ inmate infected with a communicable
13 disease of such institution who may come to their knowledge.

14 2. The institution shall make available such record at all
15 reasonable hours for inspection by the State Commissioner of Health
16 or the local health officer.

17 3. Such institutions shall further furnish a physician and all
18 proper medicines, instruments and apparatus for the proper treatment
19 of such infected inmate.

20 B. Each institution and each Department of Corrections district
21 office, and each county or municipal jail shall notify their
22 correctional officers, probation and parole officers, and any
23 jailor, or other employee or any employee of the Pardon and Parole
24 Board, who has or will have direct contact with an inmate, when such

1 inmate is infected with ~~the~~ human immunodeficiency virus (HIV) ~~or~~
2 ~~has the~~, Acquired Immune Deficiency Syndrome (AIDS), methicillin-
3 resistant staphylococcus aureus (MRSA), hepatitis or any other
4 communicable disease.

5 C. 1. If an officer or employee of the State of Oklahoma, or
6 any other person comes into contact with the bodily fluids of an
7 inmate in a state correctional facility, the Director of the
8 Department of Corrections or designee, under such rules as the
9 Director shall promulgate to carry out the provisions of this
10 section, shall cause such inmate to be tested for such disease, if
11 no prior record of the existence of such disease exists. If an
12 officer or employee of a county jail, or any other person, comes
13 into contact with the bodily fluids of an inmate in a county jail,
14 the sheriff or designee, under policies the sheriff shall promulgate
15 to carry out the provisions of this section, shall cause the inmate
16 to be tested for such disease, if no prior record of the existence
17 of such disease exists.

18 2. The Director or designee shall promptly communicate in
19 writing the results of the test to the person so exposed and refer
20 the employee to the Department of Correction's Employee Assistance
21 Program for appropriate referrals for counseling, health care, and
22 support services for the person so exposed. If the exposure occurs
23 within a county jail, the sheriff or designee shall promptly
24 communicate in writing the results of the test to the person so

1 exposed and refer the employee to the employee assistance program of
2 the county for appropriate referrals for counseling, health care,
3 and support services for the person so exposed.

4 3. As used in this section, the term "serious transmissible
5 disease" means the human immunodeficiency virus (HIV) ~~and, MRSA,~~
6 hepatitis or any other communicable disease.

7 D. In the event a person who has tested positive for a serious
8 transmissible disease dies, each institution in this state, whether
9 penal or eleemosynary, and whether public or private, shall notify
10 the funeral director or embalmer who will be preparing the body for
11 burial or other disposition by written notice as to the positive
12 test upon first call, as defined in Section 396.2 of Title 59 of the
13 Oklahoma Statutes.

14 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-525, is
15 amended to read as follows:

16 Section 1-525. A. 1. Except as otherwise provided by law, the
17 prescription and records required by ~~the foregoing provisions~~
18 Sections 1-522 and 1-523 of this title to be filed and kept
19 maintained shall not be ~~exposed~~ released to or opened by any person
20 other than the State Commissioner of Health or local health officer,
21 or in the event a person has tested positive for human
22 immunodeficiency virus (HIV), methicillin-resistant staphylococcus
23 aureus (MRSA), hepatitis or any other communicable disease to the
24 funeral director or embalmer who will be or is preparing the body

1 for burial or other disposition, or when properly ordered by a court
2 of competent jurisdiction to be used as evidence in such court,~~and~~
3 ~~no.~~

4 2. No information ~~whatever~~ shall be given to any person
5 concerning any infected person except to ~~appropriate persons for use~~
6 ~~in the proper courts of this state~~ authorized pursuant to Sections
7 1-502.1 and 1-523 of this title to receive such information.

8 ~~Provided, that records~~ 3. Records of diagnosis and treatment
9 may be transmitted to physicians and to health authorities in this
10 and other states upon written request of the person affected.

11 ~~Provided further, results~~

12 B. 1. Results of examinations conducted on persons arrested by
13 lawful warrant for the offense of first or second degree rape,
14 forcible sodomy, or intentional infection or attempted infection of
15 a person with the human immunodeficiency virus, shall be provided to
16 the alleged victim of the crime upon the request of the victim, the
17 parent of the victim if the victim is a minor, or upon request of
18 the legal guardian or custodian of the victim.

19 2. The name of the arrested and examined person shall not be
20 disclosed on the transmitted record. The State Department of Health
21 shall provide to the victims the positive test results.

22 3. The Department shall provide free testing to the alleged
23 victim for any sexually transmitted infection (STI) or communicable
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1 disease for which the arrestee tests positive, as indicated in the
2 transmitted record of diagnosis.

3 4. Such testing shall be accompanied with pretest and ~~post-test~~
4 posttest counseling. Such counseling shall include the provision of
5 information to the victim or the parent, legal guardian or custodian
6 of the victim concerning the ~~venerereal~~ STI or communicable disease
7 indicated in the transmitted record and the location of public and
8 private facilities in the vicinity offering tests and counseling for
9 persons who have the sexually transmitted infection (STI) or
10 communicable disease.

11 ~~B. C.~~ C. The State Board of Health shall promulgate rules ~~and~~
12 ~~regulations~~ for the examination authorized or required by Section 1-
13 524 of this title and for the release of records containing results
14 of examinations authorized by ~~subsection~~ subsections A and B of this
15 section. The rules ~~and regulations~~ shall establish procedural
16 guidelines which respect the rights of the person arrested for the
17 alleged offense and the victim of the alleged offense.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 502.4 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 Any hospital, physician or other person who is responsible for
22 the release of the body of a person who has tested positive for
23 human immunodeficiency virus (HIV), methicillin-resistant
24 staphylococcus aureus (MRSA), hepatitis or any other communicable

1 disease to a funeral director or embalmer who will be preparing the
2 body for burial or other disposition shall notify, in writing, the
3 funeral director or embalmer of the positive test upon first call,
4 as the term is defined by the Funeral Services Licensing Act.

5 SECTION 6. This act shall become effective November 1, 2020.

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