

AN ACT

RELATING TO HUMAN IMMUNODEFICIENCY VIRUS TESTING; PROVIDING  
FOR TESTING WITHOUT INFORMED CONSENT FOR EXPOSED  
INDIVIDUALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-2B-2 NMSA 1978 (being Laws 1989,  
Chapter 227, Section 2, as amended) is amended to read:

"24-2B-2. INFORMED CONSENT.--No person shall perform a  
test designed to identify the human immunodeficiency virus  
or its antigen or antibody without first obtaining the  
informed consent of the person upon whom the test is  
performed, except as provided in Section 24-2B-5, 24-2B-5.1,  
24-2B-5.2 or  
24-2B-5.3 NMSA 1978. Informed consent shall be preceded by  
an explanation of the test, including its purpose, potential  
uses and limitations and the meaning of its results.  
Consent need not be in writing if there is documentation in  
the medical record that the test has been explained and the  
consent has been obtained."

Section 2. Section 24-2B-5 NMSA 1978 (being Laws 1989,  
Chapter 227, Section 5) is amended to read:

"24-2B-5. INFORMED CONSENT NOT REQUIRED.--Informed  
consent for testing is not required and the provisions of  
Section 24-2B-2 NMSA 1978 do not apply for:

A. a health care provider or health facility performing a test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part, including tissue and blood or blood products, donated for a purpose specified under the Uniform Anatomical Gift Act or for transplant recipients or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;

B. the performance of a test in bona fide medical emergencies when the subject of the test is unable to grant or withhold consent and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that post-test counseling or referral for counseling shall nonetheless be required when the individual is able to receive that post-test counseling. Necessary treatment shall not be withheld pending test results;

C. the performance of a test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or

D. the performance of a test done in a setting where the identity of the test subject is not known, such as

in public health testing programs and sexually transmitted disease clinics."

Section 3. A new section of the Human Immunodeficiency Virus Test Act, Section 24-2B-5.3 NMSA 1978, is enacted to read:

"24-2B-5.3. INFORMED CONSENT NOT REQUIRED--TESTING OF PERSONS WHO ARE SOURCE INDIVIDUALS.--

A. As used in this section:

(1) "exposed individual" means a health care provider, first responder or other person, including an employee, volunteer or independent contracted agent of a health care provider or law enforcement agency, while acting within the scope of his employment; or a person who, while receiving services from a health care provider, is significantly exposed to the blood or other potentially infectious material of another person, when the exposure is proximately the result of the activity of the exposed individual or receipt of health care services from the source individual;

(2) "significantly exposed" means direct contact with blood or other potentially infectious material of a source individual in a manner that is capable of transmitting the human immunodeficiency virus; and

(3) "source individual" means a person whose blood or other potentially infectious material may

have been or has been the source of a significant exposure.

B. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed without the consent of a source individual when an exposed individual is significantly exposed.

C. If consent to perform a test on a source individual cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the exposed individual may petition the court to order that a test be performed on the source individual; provided that the same test shall first be performed on the exposed individual. The test may be performed on the source individual regardless of the result of the test performed on the exposed individual. If the exposed individual is a minor or incompetent, the parent or guardian may petition the court to order that a test be performed on the source individual.

D. The court may issue an order based on a finding of good cause after a hearing at which both the source individual and the exposed individual have the right to be present. The hearing shall be conducted within seventy-two hours after the petition is filed. The petition and all proceedings in connection with the petition shall be under seal. The test shall be administered on the source individual within three days after the order for testing is entered.

E. The results of the test shall be disclosed only to the source individual and the exposed or the exposed individual's parent or guardian. When the source individual or the exposed individual has a positive test result, both shall be provided with counseling as provided in Section 24-2B-4 NMSA 1978."

---

---

HB 276  
Page 5

HB 276  
Page 5