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HOUSE BILL 276

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY

Terry T. Marquardt

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, ~~[or]~~ 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 ~~[provided]~~ if there is documentation  
in the medical record that the test has been explained and

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1 the consent has been obtained."

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

4 "24-2B-5. INFORMED CONSENT NOT REQUIRED.--Informed  
5 consent for testing is not required and the provisions of  
6 Section [~~1 of the Human Immunodeficiency Virus Test Act~~]  
7 24-2B-2 NMSA 1978 do not apply for:

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

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

C. the performance of a test for the purpose of

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1 research if the testing is performed in a manner by which the  
2 identity of the test subject is not known and may not be  
3 retrieved by the researcher; or

4 ~~[D. the performance of a test in order to provide~~  
5 ~~appropriate care or treatment to a health care worker who may~~  
6 ~~have been exposed to excessive amounts of blood or bodily~~  
7 ~~fluids when the subject of the test is unable to grant or~~  
8 ~~withhold consent and the test results are necessary for~~  
9 ~~medical diagnostic purposes; or~~

10 ~~E-]~~ D. the performance of a test done in a setting  
11 where the identity of the test subject is not known, such as  
12 in public health testing programs and sexually transmitted  
13 disease clinics."

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

17 "24-2B-5.3. [NEW MATERIAL] INFORMED CONSENT NOT  
18 REQUIRED--TESTING OF PERSONS WHO ARE SOURCE INDIVIDUALS.--

19 A. As used in this section:

20 (1) "exposed individual" means a health care  
21 provider, first responder or other person, including an  
22 employee, volunteer or independent contracted agent of a  
23 health care provider or law enforcement agency, while acting  
24 within the scope of his employment; or a person who, while  
25 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

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1 proximately the result of the activity of the exposed  
2 individual or receipt of health care services from the source  
3 individual;

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

8 (3) "source individual" means a person whose  
9 blood or other potentially infectious material may have been  
10 or has been the source of a significant exposure.

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

15 C. If consent to perform a test on a source  
16 individual cannot be obtained pursuant to the provisions of  
17 Section 24-2B-2 or 24-2B-3 NMSA 1978, the exposed individual  
18 may petition the court to order that a test be performed on  
19 the source individual; provided that the same test shall  
20 first be performed on the exposed individual. The test may  
21 be performed on the source individual regardless of the  
22 result of the test performed on the exposed individual. If  
23 the exposed individual is a minor or incompetent, the parent  
24 or guardian may petition the court to offer that a test be  
25 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

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1 individual and the exposed individual have the right to be  
2 present. The hearing shall be conducted within seventy-two  
3 hours after the petition is filed. The petition and all  
4 proceedings in connection with the petition shall be under  
5 seal. The test shall be administered on the source  
6 individual within three days after the order for testing is  
7 entered.

8 E. The results of the test shall be disclosed only  
9 to the source individual and the exposed or the exposed  
10 individual's parent or guardian. When the source individual  
11 or the exposed individual has a positive test result, both  
12 shall be provided with counseling as provided in Section  
13 24-2B-4 NMSA 1978."