

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 335

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO HEALTH; PERMITTING MANDATORY TESTING FOR VIRAL  
HEPATITIS IN CERTAIN CIRCUMSTANCES; LIMITING DISCLOSURE;  
PROVIDING PENALTIES.

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

Section 1. TESTING OF PERSONS FOR HEPATITIS-- CONSENT NOT  
REQUIRED. --

A. As used in this section:

(1) "exposed individual" means a health care provider or first responder, 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, who 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

. 137766. 2

underscored material = new  
[bracketed material] = delete

1 exposed individual acting within the scope of his employment;

2 (2) "significantly exposed" means direct  
3 contact with blood or other potentially infectious material of  
4 a source individual in a manner that is capable of  
5 transmitting viral hepatitis; and

6 (3) "source individual" means a person  
7 identified as at-risk for or believed to have viral hepatitis,  
8 whose blood or other potentially infectious material may have  
9 been or has been the source of a significant exposure.

10 B. A test designed to identify the viral  
11 hepatitis, its antigens or antibodies may be performed without  
12 the consent of a source individual when an exposed individual  
13 is significantly exposed.

14 C. If consent to perform a test on a source  
15 individual cannot be obtained on a voluntary basis, the  
16 exposed individual may petition the court to order that a test  
17 be performed on the source individual; provided that the same  
18 test shall first be performed on the exposed individual. The  
19 test may be performed on the source individual regardless of  
20 the result of the test performed on the exposed individual.  
21 If the exposed individual is a minor or incompetent, the  
22 parent or guardian may petition the court to order that a test  
23 be performed on the source individual.

24 D. The court may issue an order based on a finding  
25 of good cause after a hearing at which both the source

1 individual and the exposed individual have the right to be  
 2 present. The hearing shall be conducted within twenty-four  
 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 individual  
 6 within twenty-four hours after the order for testing is  
 7 entered.

8 E. Pursuant to rules adopted by the department of  
 9 health, the results of the test shall be disclosed only to the  
 10 source individual, to the exposed individual or, in the case  
 11 of a minor, to the exposed individual's parent or guardian and  
 12 to the infectious disease bureau of the public health division  
 13 of the department of health.

14 Section 2. CONFIDENTIALITY.--No person or the person's  
 15 agents or employees who require or administer a test for viral  
 16 hepatitis shall disclose the identity of any person upon whom  
 17 a test is performed or the result of such a test in a manner  
 18 that permits identification of the subject of the test, except  
 19 to the following persons:

20 A. the subject of the test or the subject's  
 21 legally authorized representative, guardian or legal  
 22 custodian;

23 B. any person designated in a legally effective  
 24 release of the test results executed prior to or after the  
 25 test by the subject of the test or the subject's legally

. 137766. 2

1 authorized representative;

2 C. an authorized agent, a credentialed or  
3 privileged physician or employee of a health facility or  
4 health care provider if the health care facility or health  
5 care provider itself is authorized to obtain the test results,  
6 the agent or employee provides patient care or handles or  
7 processes specimens of body fluids or tissues and the agent or  
8 employee has a need to know such information;

9 D. the department of health in accordance with  
10 reporting requirements established by rule;

11 E. a health facility or health care provider that  
12 procures, processes, distributes or uses:

13 (1) a human body part from a deceased person,  
14 with respect to medical information regarding that person;

15 (2) semen provided prior to the effective  
16 date of this 2001 act for the purpose of artificial  
17 insemination;

18 (3) blood or blood products for transfusion  
19 or injection; or

20 (4) human body parts for transplant with  
21 respect to medical information regarding the donor or  
22 recipient;

23 F. health facility staff committees or  
24 accreditation or oversight review organizations that are  
25 conducting program monitoring, program evaluation or service

1 reviews, so long as any identity remains confidential;

2 G. authorized medical or epidemiological  
3 researchers who may not further disclose any identifying  
4 characteristics or information; and

5 H. for purposes of application or reapplication  
6 for insurance coverage, an insurer or reinsurer upon whose  
7 request the test was performed.

8 Section 3. PENALTIES. --No person to whom the results  
9 of a viral hepatitis test have been disclosed may disclose  
10 the test results to another person except as authorized in  
11 this 2001 act. A person who makes an unauthorized  
12 disclosure of this information is guilty of a petty  
13 misdemeanor and shall be sentenced to imprisonment in the  
14 county jail for a definite term not to exceed six months or  
15 the payment of a fine of not more than five hundred dollars  
16 (\$500) or both. "

underscored material = new  
[bracketed material] = delete