

AMENDED IN ASSEMBLY MAY 15, 2002

AMENDED IN ASSEMBLY MAY 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2423

Introduced by Assembly Member Cardenas
(Principal coauthor: Assembly Member Negrete McLeod)
(Coauthors: Assembly Members Washington and Zettel)

February 21, 2002

An act to add Chapter 3.5 (commencing with Section 120260) to Part 1 of, and to repeal Chapter 10.5 (commencing with Section 121130) of Part 4 of, Division 105 of, the Health and Safety Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2423, as amended, Cardenas. Health: exposure to communicable diseases: first responders.

Existing law provides that the blood or other potentially infectious material of a person receiving health care services that has been the source of a significant exposure to an individual may be tested and the exposed individual may be informed of the HIV status of that patient if certain conditions are met. Existing law provides that if this source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any "available blood or patient sample," as defined, of the source patient may be tested. Existing law prohibits the disclosure of the source patient's identity.

Existing law exempts a health care provider from civil or criminal liability or professional disciplinary action for performing an HIV test

on a source patient, or for disclosing the HIV status of the source patient to prescribed persons, if the health care provider believes in good faith that his or her action is consistent with these provisions.

Existing law provides that any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of an HIV test on a source patient, that results in harm, without adhering to the procedure established by the bill, is guilty of a misdemeanor.

This bill would provide that these provisions apply to ~~any a~~ communicable disease, ~~including, but not limited to, HIV, meningitis, hepatitis A, hepatitis B, and hepatitis C.~~

This bill would change the definition of “available blood or patient sample” for purposes of these and related provisions to refer to blood or other material that was legally obtained from the source patient prior to the release of the patient from the health care facility.

This bill would define “communicable disease” to mean any disease that was transferable through the exposure incident, as determined by the certifying physician.

By expanding the scope of a crime this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.5 (commencing with Section
2 120260) is added to Part 1 of Division 105 of the Health and Safety
3 Code, to read:

4

5 CHAPTER 3.5. COMMUNICABLE DISEASES EXPOSURE
6 NOTIFICATION ACT

7

8 120260. (a) The Legislature finds and declares all of the
9 following:



1 (1) Early knowledge of infection with communicable diseases,
2 including, but not limited to, HIV, meningitis, hepatitis A,
3 hepatitis B, and hepatitis C, disease is important in order to permit
4 exposed persons to make informed health care decisions as well as
5 to take measures to reduce the likelihood of transmitting the
6 infection to others.

7 (2) Individual health care providers, agents and employees of
8 health care facilities and individual health care providers, and first
9 responders, including police, firefighters, rescue personnel, and
10 other persons who provide the first response to emergencies,
11 frequently come into contact with the blood and other potentially
12 infectious materials of individuals whose communicable disease
13 infection status is not known.

14 (3) Even if these exposed individuals use universal infection
15 control precautions to prevent transmission of communicable
16 diseases, there will be occasions when they experience significant
17 exposure to the blood or other potentially infectious materials of
18 patients.

19 (b) Therefore, it is the intent of the Legislature to provide a
20 narrow exposure notification and information mechanism to
21 permit individual health care providers, the employees or
22 contracted agents of health care facilities and individual health
23 care providers, and first responders, who have experienced a
24 significant exposure to the blood or other potentially infectious
25 materials of a patient, to learn of the communicable disease
26 infection status of the patient.

27 120261. ~~(a)~~ *For the purposes of this chapter, the following*
28 *definitions apply:*

29 (a) “Attending physician of the source patient” means any
30 physician and surgeon licensed pursuant to Chapter 5
31 (commencing with Section 2000) of Division 2 of the Business and
32 Professions Code and any person licensed pursuant to the
33 Osteopathic Initiative Act, who provides health care services to the
34 source patient. Notwithstanding any other provision of this
35 subdivision to the contrary, the attending physician of the source
36 patient shall include any of the following persons:

- 37 (1) The private physician of the source patient.
38 (2) The physician primarily responsible for the patient who is
39 undergoing inpatient treatment in a hospital.



1 (3) A registered nurse or licensed nurse practitioner who has
2 been designated by the attending physician of the source patient.

3 (b) “Available blood or patient sample” means blood or other
4 tissue or material that was legally obtained in the course of
5 providing health care services, and is in the possession of the
6 physician or other health care provider of the source patient prior
7 to the release of the source patient from the physician’s or health
8 care provider’s facility.

9 (c) “Certifying physician” means any physician consulted by
10 the exposed individual for the exposure incident. A certifying
11 physician shall have demonstrated competency and understanding
12 of the then applicable guidelines or standards of the Division of
13 Occupational Safety and Health.

14 (d) “Exposed individual” means any individual health care
15 provider, first responder, or any other person, including, but not
16 limited to, any employee, volunteer, or contracted agent of any
17 health care provider, who is exposed, within the scope of his or her
18 employment, to the blood or other potentially infectious materials
19 of a source patient.

20 (e) “Health care provider” means any person licensed or
21 certified pursuant to Division 2 (commencing with Section 500)
22 of the Business and Professions Code, any person licensed
23 pursuant to the Osteopathic Initiative Act or the Chiropractic
24 Initiative Act, any person certified pursuant to Division 2.5
25 (commencing with Section 1797), any clinic, health dispensary, or
26 health facility licensed or exempt from licensure pursuant to
27 Division 2 (commencing with Section 1200), any employee,
28 volunteer, or contracted agent of any group practice prepayment
29 health care service plan regulated pursuant to the Knox-Keene
30 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing
31 with Section 1340) of Division 2), and any professional student of
32 one of the clinics, health dispensaries, or health care facilities or
33 health care providers described in this subdivision.

34 (f) “First responder” means a police officer, firefighter, rescue
35 worker, or any other person who provides emergency response,
36 first aid care, or other medically related assistance either in the
37 course of the person’s occupational duties or as a volunteer.

38 (g) “Other potentially infectious materials” means those body
39 fluids identified by the Division of Occupational Safety and
40 Health as potentially capable of transmitting ~~any~~ a communicable



1 ~~disease, including, but not limited to, HIV, meningitis, hepatitis A,~~
2 ~~hepatitis B, and hepatitis C. disease.~~

3 (h) “Significant exposure” means direct contact with blood or
4 other potentially infectious materials of a patient in a manner that,
5 according to the then applicable guidelines of the Division of
6 Occupational Safety and Health, is capable of transmitting ~~any a~~
7 ~~communicable disease, including, but not limited to, HIV,~~
8 ~~meningitis, hepatitis A, hepatitis B, and hepatitis C. disease.~~

9 (i) “Source patient” means any person receiving health care
10 services whose blood or other potentially infectious material has
11 been the source of a significant exposure to an exposed individual.

12 (j) “Communicable disease” means any disease that was
13 transferable through the exposure incident, as determined by the
14 certifying physician.

15 120262. Notwithstanding Chapter 7 (commencing with
16 Section 120975) or any other provision of law, the blood or other
17 tissue or material of a source patient may be tested, and an exposed
18 individual may be informed whether the patient has tested positive
19 or negative for ~~any a~~ communicable disease, ~~including, but not~~
20 ~~limited to, HIV, meningitis, hepatitis A, hepatitis B, and hepatitis~~
21 ~~C,~~ if the exposed individual and the health care facility, if any, have
22 substantially complied with the then applicable guidelines of the
23 Division of Occupational Safety and Health and the State
24 Department of Health Services and if the following procedure is
25 followed:

26 (a) (1) Whenever a person becomes an exposed individual by
27 experiencing an exposure to the blood or other potentially
28 infectious material of a patient during the course of rendering
29 health care-related services or occupational services, the exposed
30 individual may request an evaluation of the exposure by a
31 physician to determine if it is a significant exposure, as defined in
32 subdivision (h) of Section 120261. No physician or other exposed
33 individual shall certify his or her own significant exposure.
34 However, an employing physician may certify the exposure of one
35 of his or her employees. Requests for certification shall be made
36 in writing within 72 hours of the exposure.

37 (2) A written certification by a physician of the significance of
38 the exposure shall be obtained within 72 hours of the request. The
39 certification shall include the nature and extent of the exposure.



1 (b) (1) The exposed individual shall be counseled regarding
2 the likelihood of transmission, the limitations of the testing
3 performed, the need for followup testing, and the procedures that
4 the exposed individual must follow regardless of whether the
5 source patient has tested positive or negative for ~~any~~*a*
6 communicable disease, ~~including, but not limited to, HIV,~~
7 ~~meningitis, hepatitis A, hepatitis B, and hepatitis C.~~ The exposed
8 individual may be tested in accordance with the then applicable
9 guidelines or standards of the Division of Occupational Safety and
10 Health. The result of this test shall be confirmed as negative before
11 available blood or other patient samples of the source patient may
12 be tested for evidence of infection to ~~any~~*a* communicable disease,
13 ~~including, but not limited to, HIV, meningitis, hepatitis A,~~
14 ~~hepatitis B, and hepatitis C,~~ without the consent of the source
15 patient pursuant to subdivision (d).

16 (2) Within 72 hours of certifying the exposure as significant,
17 the certifying physician shall provide written certification to an
18 attending physician of the source patient that a significant
19 exposure to an exposed individual has occurred, and shall request
20 information on whether the source patient has tested positive or
21 negative for ~~any~~*a* communicable disease, ~~including, but not~~
22 ~~limited to, HIV, meningitis, hepatitis A, hepatitis B, and hepatitis~~
23 ~~C,~~ and the availability of blood or other patient samples. An
24 attending physician shall respond to the request for information
25 within three working days.

26 (c) If test results of the source patient are already known to be
27 positive for ~~any~~*a* communicable disease, ~~including, but not~~
28 ~~limited to, HIV, meningitis, hepatitis A, hepatitis B, and hepatitis~~
29 ~~C,~~ then, except as provided in subdivisions (b) and (c) of Section
30 121010, when the exposed individual is a health care provider or
31 an employee or agent of the health care provider of the source
32 patient, an attending physician and surgeon of the source patient
33 shall attempt to obtain the consent of the source patient to disclose
34 to the exposed the testing results of the source patient regarding
35 communicable diseases. If the source patient cannot be contacted
36 or refuses to consent to the disclosure, then the exposed individual
37 may be informed of the test results regarding communicable
38 diseases of the source patient by an attending physician of the
39 source patient as soon as possible after the exposure has been



1 certified as significant, notwithstanding Section 120980 or any
2 other provision of law.

3 (d) If the communicable disease status of the source patient is
4 unknown to the certifying physician or an attending physician, if
5 blood or other patient samples are available, and if the exposed
6 individual has tested negative on a baseline test for communicable
7 diseases, the source patient shall be given the opportunity to give
8 informed consent to a test for communicable diseases in
9 accordance with the following:

10 (1) Within 72 hours after receiving a written certification of
11 significant exposure, an attending physician of the source patient
12 shall do all of the following:

13 (A) Make a good faith effort to notify the source patient or the
14 authorized legal representative of the source patient about the
15 significant exposure. A good faith effort to notify includes, but is
16 not limited to, a documented attempt to locate the source patient
17 by telephone or by first-class mail with a certificate of mailing. An
18 attempt to locate the source patient and the results of that attempt
19 shall be documented in the medical record of the source patient.
20 An inability to contact the source patient, or legal representative
21 of the source patient, after a good faith effort to do so as provided
22 in this subdivision, shall constitute a refusal of consent pursuant
23 to paragraph (2). An inability of the source patient to provide
24 informed consent shall constitute a refusal of consent pursuant to
25 paragraph (2), provided all of the following conditions are met:

26 (i) The source patient has no authorized legal representative.

27 (ii) The source patient is incapable of giving consent.

28 (iii) In the opinion of the attending physician, it is likely that the
29 source patient will be unable to grant informed consent within the
30 72-hour period during which the physician is required to respond
31 pursuant to paragraph (1).

32 (B) Attempt to obtain the voluntary informed consent of the
33 source patient or the authorized legal representative of the source
34 patient to perform a test for ~~any a communicable diseases-disease,~~
35 ~~including, but not limited to, HIV, meningitis, hepatitis A,~~
36 ~~hepatitis B, and hepatitis C,~~ on the source patient or on any
37 available blood or patient sample of the source patient. The
38 voluntary informed consent shall be in writing. The source patient
39 shall have the option not to be informed of the test result. An
40 exposed individual shall be prohibited from attempting to obtain



1 directly informed consent for testing for communicable diseases
2 from the source patient.

3 (C) Provide the source patient with medically appropriate
4 pretest counseling and refer the source patient to appropriate
5 posttest counseling and followup, if necessary. The source patient
6 shall be offered medically appropriate counseling whether or not
7 he or she consents to testing.

8 (2) If the source patient or the authorized legal representative
9 of the source patient refuses to consent to test for ~~any~~*a*
10 communicable diseases, ~~including, but not limited to, HIV,~~
11 ~~meningitis, hepatitis A, hepatitis B, and hepatitis C,~~ *disease* after
12 a documented effort has been made to obtain consent, any
13 available blood or patient sample of the source patient may be
14 tested. The source patient or authorized legal representative of the
15 source patient shall be informed that an available blood sample or
16 other tissue or material will be tested despite his or her refusal, and
17 that the exposed individual shall be informed of the test results
18 regarding communicable diseases.

19 (3) If the informed consent of the source patient cannot be
20 obtained because the source patient is deceased, consent to
21 perform a test for ~~any~~*a* communicable diseases, ~~including, but not~~
22 ~~limited to, HIV, meningitis, hepatitis A, hepatitis B, and hepatitis~~
23 ~~C,~~ *disease* on any blood or patient sample of the source patient
24 legally obtained in the course of providing health care services at
25 the time of the exposure event shall be deemed granted.

26 (4) A source patient or the authorized legal representative of a
27 source patient shall be advised that he or she shall be informed of
28 the results of the test for communicable diseases only if he or she
29 wishes to be so informed. If a patient refuses to provide informed
30 consent to testing for communicable diseases and refuses to learn
31 the results of the testing, he or she shall sign a form documenting
32 this refusal. The source patient's refusal to sign this form shall be
33 construed to be a refusal to be informed of the test results regarding
34 communicable diseases. Test results for communicable diseases
35 shall only be placed in the medical record when the patient has
36 agreed in writing to be informed of the results.

37 (5) Notwithstanding any other provision of law, if the source
38 patient or authorized legal representative of a source patient
39 refuses to be informed of the results of the test, the test results
40 regarding communicable diseases of that source patient shall only



1 be provided to the exposed individual in accordance with the then
2 applicable regulations established by the Division of Occupational
3 Safety and Health.

4 (6) The source patient's identity shall be encoded on the
5 communicable disease test result record.

6 (e) If an exposed individual is informed of the status of a source
7 patient with regard to ~~any a~~ communicable disease, ~~including, but~~
8 ~~not limited to, HIV, meningitis, hepatitis A, hepatitis B, and~~
9 ~~hepatitis C,~~ pursuant to this section, the exposed individual shall
10 be informed that he or she is subject to existing confidentiality
11 protections for any identifying information about the
12 communicable disease test results, and that medical information
13 regarding the communicable disease status of the source patient
14 shall be kept confidential and may not be further disclosed, except
15 as otherwise authorized by law. The exposed individual shall be
16 informed of the penalties for which he or she would be personally
17 liable for violation of Section 120980.

18 (f) The costs for the test and counseling for communicable
19 diseases of the exposed individual, or the source patient, or both,
20 shall be borne by the employer of the exposed individual, if any.
21 An employer who directs and controls the exposed individual shall
22 provide the postexposure evaluation and followup required by the
23 California Division of Occupational Safety and Health as well as
24 the testing and counseling for source patients required under this
25 chapter. If an exposed individual is a volunteer or a student, then
26 the health care provider or first responder that assigned a task to
27 the volunteer or student may pay for the costs of testing and
28 counseling as if that volunteer or student were an employee. If an
29 exposed individual, who is not an employee of a health facility or
30 of another health care provider, chooses to obtain postexposure
31 evaluation or followup counseling, or both, or treatment, he or she
32 shall be financially responsible for the costs thereof and shall be
33 responsible for the costs of the testing and counseling for the
34 source patient.

35 (g) Nothing in this section authorizes the disclosure of the
36 source patient's identity.

37 (h) Nothing in this section shall authorize a health care provider
38 to draw blood or other body fluids except as otherwise authorized
39 by law.



1 (i) The provisions of this section are cumulative only and shall
2 not preclude testing of source patients for ~~any~~ a communicable
3 diseases, including, but not limited to, ~~HIV, meningitis, hepatitis~~
4 ~~A, hepatitis B, and hepatitis C~~ disease, as authorized by any other
5 provision of law.

6 (j) Except as otherwise provided under this section, all
7 confidentiality requirements regarding medical records that are
8 provided for under existing law apply to this section.

9 121140. (a) No health care provider, as defined in this
10 chapter, shall be subject to civil or criminal liability or professional
11 disciplinary action for performing ~~tests for any~~ tests for a
12 communicable diseases, including, but not limited to, ~~HIV,~~
13 ~~meningitis, hepatitis A, hepatitis B, and hepatitis C,~~ disease on the
14 available blood or patient sample of a source patient, or for
15 disclosing the communicable disease status of a source patient to
16 the source patient, an attending physician of the source patient, the
17 certifying physician, the exposed individual, or any attending
18 physician of the exposed individual, if the health care provider has
19 acted in good faith in complying with this chapter.

20 (b) Any health care provider or first responder, or any exposed
21 individual, who willfully performs or permits the performance of
22 a test for ~~any~~ a communicable diseases, including, but not limited
23 to, ~~HIV, meningitis, hepatitis A, hepatitis B, and hepatitis C,~~
24 disease on a source patient, that results in economic, bodily, or
25 psychological harm to the source patient, without adhering to the
26 procedure set forth in this chapter is guilty of a misdemeanor,
27 punishable by imprisonment in the county jail for a period not to
28 exceed one year, or a fine not to exceed ten thousand dollars
29 (\$10,000), or by both.

30 SEC. 2. Chapter 10.5 (commencing with Section 121130) of
31 Part 4 of Division 105 of the Health and Safety Code is repealed.

32 SEC. 3. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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