

ASSEMBLY BILL

No. 2056

Introduced by Assembly Member Aghazarian

February 15, 2006

An act to amend Section 120262 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2056, as introduced, Aghazarian. Public health: exposure to communicable diseases.

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 communicable disease status of that patient if certain conditions are met. Existing law provides that if this source patient refuses to consent to a 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.

This bill would make a technical, nonsubstantive change to these provisions.

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

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

- 1 SECTION 1. Section 120262 of the Health and Safety Code
- 2 is amended to read:

1 120262. Notwithstanding Chapter 7 (commencing with
2 Section 120975) or any other provision of law, the blood or other
3 tissue or material of a source patient may be tested, and an
4 exposed individual may be informed whether the patient has
5 tested positive or negative for a communicable disease if the
6 exposed individual and the health care facility, if any, have
7 substantially complied with the then applicable guidelines of the
8 Division of Occupational Safety and Health and the State
9 Department of Health Services and if the following procedure is
10 followed:

11 (a) (1) Whenever a person becomes an exposed individual by
12 experiencing an exposure to the blood or other potentially
13 infectious material of a patient during the course of rendering
14 health care-related services or occupational services, the exposed
15 individual may request an evaluation of the exposure by a
16 physician to determine if it is a significant exposure, as defined
17 in subdivision (h) of Section 120261. No physician or other
18 exposed individual shall certify his or her own significant
19 exposure. However, an employing physician may certify the
20 exposure of one of his or her employees. Requests for
21 certification shall be made in writing within 72 hours of the
22 exposure.

23 (2) A written certification by a physician of the significance of
24 the exposure shall be obtained within 72 hours of the request.
25 The certification shall include the nature and extent of the
26 exposure.

27 (b) (1) The exposed individual shall be counseled regarding
28 the likelihood of transmission, the limitations of the testing
29 performed, the need for followup testing, and the procedures that
30 the exposed individual must follow regardless of whether the
31 source patient has tested positive or negative for a communicable
32 disease. The exposed individual may be tested in accordance
33 with the then applicable guidelines or standards of the Division
34 of Occupational Safety and Health. The result of this test shall be
35 confirmed as negative before available blood or other patient
36 samples of the source patient may be tested for evidence of
37 infection to a communicable disease, without the consent of the
38 source patient pursuant to subdivision (d).

39 (2) Within 72 hours of certifying the exposure as significant,
40 the certifying physician shall provide written certification to an

1 attending physician of the source patient that a significant
2 exposure to an exposed individual has occurred, and shall request
3 information on whether the source patient has tested positive or
4 negative for a communicable disease, and the availability of
5 blood or other patient samples. An attending physician shall
6 respond to the request for information within three working days.

7 (c) If *the* test results of the source patient are already known to
8 be positive for a communicable disease, then, except as provided
9 in subdivisions (b) and (c) of Section 121010, when the exposed
10 individual is a health care provider or an employee or agent of
11 the health care provider of the source patient, an attending
12 physician and surgeon of the source patient shall attempt to
13 obtain the consent of the source patient to disclose to the exposed
14 the testing results of the source patient regarding communicable
15 diseases. If the source patient cannot be contacted or refuses to
16 consent to the disclosure, then the exposed individual may be
17 informed of the test results regarding communicable diseases of
18 the source patient by an attending physician of the source patient
19 as soon as possible after the exposure has been certified as
20 significant, notwithstanding Section 120980 or any other
21 provision of law.

22 (d) If the communicable disease status of the source patient is
23 unknown to the certifying physician or an attending physician, if
24 blood or other patient samples are available, and if the exposed
25 individual has tested negative on a baseline test for
26 communicable diseases, the source patient shall be given the
27 opportunity to give informed consent to a test for communicable
28 diseases in accordance with the following:

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

32 (A) Make a good faith effort to notify the source patient or the
33 authorized legal representative of the source patient about the
34 significant exposure. A good faith effort to notify includes, but is
35 not limited to, a documented attempt to locate the source patient
36 by telephone or by first-class mail with a certificate of mailing.
37 An attempt to locate the source patient and the results of that
38 attempt shall be documented in the medical record of the source
39 patient. An inability to contact the source patient, or legal
40 representative of the source patient, after a good faith effort to do

1 so as provided in this subdivision, shall constitute a refusal of
2 consent pursuant to paragraph (2). An inability of the source
3 patient to provide informed consent shall constitute a refusal of
4 consent pursuant to paragraph (2), provided *that* all of the
5 following conditions are met:

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

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

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

12 (B) Attempt to obtain the voluntary informed consent of the
13 source patient or the authorized legal representative of the source
14 patient to perform a test for a communicable disease, on the
15 source patient or on any available blood or patient sample of the
16 source patient. The voluntary informed consent shall be in
17 writing. The source patient shall have the option not to be
18 informed of the test result. An exposed individual shall be
19 prohibited from attempting to obtain directly informed consent
20 for testing for communicable diseases from the source patient.

21 (C) Provide the source patient with medically appropriate
22 pretest counseling and refer the source patient to appropriate
23 posttest counseling and followup, if necessary. The source
24 patient shall be offered medically appropriate counseling whether
25 or not he or she consents to testing.

26 (2) If the source patient or the authorized legal representative
27 of the source patient refuses to consent to test for a
28 communicable disease after a documented effort has been made
29 to obtain consent, any available blood or patient sample of the
30 source patient may be tested. The source patient or authorized
31 legal representative of the source patient shall be informed that
32 an available blood sample or other tissue or material will be
33 tested despite his or her refusal, and that the exposed individual
34 shall be informed of the test results regarding communicable
35 diseases.

36 (3) If the informed consent of the source patient cannot be
37 obtained because the source patient is deceased, consent to
38 perform a test for a communicable disease on any blood or
39 patient sample of the source patient legally obtained in the course

1 of providing health care services at the time of the exposure
2 event shall be deemed granted.

3 (4) A source patient or the authorized legal representative of a
4 source patient shall be advised that he or she shall be informed of
5 the results of the test for communicable diseases only if he or she
6 wishes to be so informed. If a patient refuses to provide informed
7 consent to testing for communicable diseases and refuses to learn
8 the results of the testing, he or she shall sign a form documenting
9 this refusal. The source patient's refusal to sign this form shall be
10 construed to be a refusal to be informed of the test results
11 regarding communicable diseases. Test results for communicable
12 diseases shall only be placed in the medical record when the
13 patient has agreed in writing to be informed of the results.

14 (5) Notwithstanding any other provision of law, if the source
15 patient or authorized legal representative of a source patient
16 refuses to be informed of the results of the test, the test results
17 regarding communicable diseases of that source patient shall
18 only be provided to the exposed individual in accordance with
19 the then applicable regulations established by the Division of
20 Occupational Safety and Health.

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

23 (e) If an exposed individual is informed of the status of a
24 source patient with regard to a communicable disease pursuant to
25 this section, the exposed individual shall be informed that he or
26 she is subject to existing confidentiality protections for any
27 identifying information about the communicable disease test
28 results, and that medical information regarding the
29 communicable disease status of the source patient shall be kept
30 confidential and may not be further disclosed, except as
31 otherwise authorized by law. The exposed individual shall be
32 informed of the penalties for which he or she would be
33 personally liable for violation of Section 120980.

34 (f) The costs for the test and counseling for communicable
35 diseases of the exposed individual, or the source patient, or both,
36 shall be borne by the employer of the exposed individual, if any.
37 An employer who directs and controls the exposed individual
38 shall provide the postexposure evaluation and followup required
39 by the California Division of Occupational Safety and Health as
40 well as the testing and counseling for source patients required

1 under this chapter. If an exposed individual is a volunteer or a
2 student, then the health care provider or first responder that
3 assigned a task to the volunteer or student may pay for the costs
4 of testing and counseling as if that volunteer or student were an
5 employee. If an exposed individual, who is not an employee of a
6 health facility or of another health care provider, chooses to
7 obtain postexposure evaluation or followup counseling, or both,
8 or treatment, he or she shall be financially responsible for the
9 costs thereof and shall be responsible for the costs of the testing
10 and counseling for the source patient.

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

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

16 (i) The provisions of this section are cumulative only and shall
17 not preclude testing of source patients for a communicable
18 disease, as authorized by any other provision of law.

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