

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 exposed individual acting within the scope of his employment;

(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 viral hepatitis; and

(3) "source individual" means a person identified as at-risk for or believed to have viral hepatitis, 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 viral hepatitis, its antigens or antibodies 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 on a voluntary basis, 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 twenty-four 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 twenty-four hours after the order for testing is entered.

E. Pursuant to rules adopted by the department of HJC/HB 335
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health, the results of the test shall be disclosed only to the source individual, to the exposed individual or, in the case of a minor, to the exposed individual's parent or guardian and to the infectious disease bureau of the public health division of the department of health.

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

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

B. any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

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

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

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

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

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

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

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

F. health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, so long as any identity remains confidential;

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

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

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

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