S T A T E O F N E W Y O R K

3006

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. PERRY -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to HIV-related testing without subject person's consent and disclosure of confidential HIV-related information under certain circumstances

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 6 of section 2781 of the public health law, as amended by chapter 308 of the laws of 2010, is amended to read as follows:

6. The provisions of this section shall not apply to the performance of an [HIV related] HIV-RELATED test:

(a) by a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical research or therapy, or for transplantation to individuals provided, however, that where the test results are communicated to the subject, post-test counseling, as described in subdivision five of this section, shall nonetheless be required; or

(b) for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or

(c) on a deceased person, when such test is conducted to determine the cause of death or for epidemiological purposes; or

(d) conducted pursuant to section twenty-five hundred-f of this chapter; or

(e) BY A HEALTH CARE PROVIDER AUTHORIZED BY LAW TO ADMINISTER SUCH TEST WHERE THE TEST SUBJECT IS COMATOSE OR OTHERWISE UNABLE TO GIVE CONSENT AS PROVIDED IN THIS SECTION AND THE PERSON SEEKING THE TEST IS AN ENDANGERED WORKER WHO HAS REASONABLE EVIDENCE THAT AN EXCHANGE OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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BODILY FLUIDS HAS INADVERTENTLY OCCURRED WHILE ACTING WITHIN THE SCOPE OF HIS OR HER WORK. FOR THE PURPOSES OF THIS PARAGRAPH, THE DEFINITIONS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION FOUR-A OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-TWO OF THIS ARTICLE SHALL APPLY; OR

(F) in situations involving occupational exposures which create a significant risk of contracting or transmitting HIV infection, as defined in regulations of the department and pursuant to protocols adopted by the department,

(i) provided that:

(A) the person who is the source of the occupational exposure is deceased, comatose or is determined by his or her attending health care professional to lack mental capacity to consent to an HIV related test and is not reasonably expected to recover in time for the exposed person to receive appropriate medical treatment, as determined by the exposed person's attending health care professional who would order or provide such treatment;

(B) there is no person available or reasonably likely to become available who has the legal authority to consent to the HIV related test on behalf of the source person in time for the exposed person to receive appropriate medical treatment; and

(C) the exposed person will benefit medically by knowing the source person's HIV test results, as determined by the exposed person's health care professional and documented in the exposed person's medical record;

(ii) in which case

(A) a provider shall order an anonymous HIV test of the source person; and

(B) the results of such anonymous test, but not the identity of the source person, shall be disclosed only to the attending health care professional of the exposed person solely for the purpose of assisting the exposed person in making appropriate decisions regarding post-exposure medical treatment; and

(C) the results of the test shall not be disclosed to the source person or placed in the source person's medical record.

S 2. Subdivision 1 of section 2782 of the public health law is amended by adding a new paragraph (r) and such section is amended by adding a new subdivision 4-a to read as follows:

(R) A PHYSICIAN OR OTHER PERSON PURSUANT TO SUBDIVISION FOUR-A OF THIS SECTION.

4-A. (A) SOLELY IN EITHER INSTANCES ARISING FROM AN HIV-RELATED TEST PERFORMED PURSUANT TO PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE OF THIS ARTICLE OR IN INSTANCES IN WHICH CONFIDENTIAL HIV-RELATED INFORMATION PERTAINING TO A PERSON WHO IS SUBJECT TO THE PERFORMANCE OF AN HIV-RELATED TEST PURSUANT TO PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE OF THIS ARTICLE IS CONTAINED WITHIN THE MEDICAL RECORDS OF A HEALTH FACILITY, AND NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, A PHYSICIAN MAY DISCLOSE CONFIDENTIAL HIV-RELATED INFORMATION TO AN ENDANGERED WORKER. IN FURTHERANCE OF SUCH A DISCLOSURE AND NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION, A HEALTH FACILITY MAY DISCLOSE CONFIDENTIAL HIV-RELATED INFORMATION TO A PHYSICIAN DESIGNATED BY AN ENDANGERED WORKER.

(B) FOR THE PURPOSES OF THIS SUBDIVISION AND FOR THE PURPOSES OF PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "ENDANGERED WORKER" MEANS A WORKER WHO MAY HAVE BEEN EXPOSED, WITHIN THE COURSE AND SCOPE OF SUCH PERSON'S WORK, TO HIV UNDER CIRCUM-

STANCES THAT PRESENT A RISK OF TRANSMISSION OF HIV TO SUCH WORKER FROM A PERSON WHO IS SUBJECT TO THE PERFORMANCE OF AN HIV-RELATED TEST, OR ON WHOM SUCH A TEST HAS BEEN PERFORMED, PURSUANT TO PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE OF THIS ARTICLE.

(2) "PHYSICIAN" MEANS A PHYSICIAN WHO IS TREATING OR HAS BEEN CONSULTED BY AN ENDANGERED WORKER.

(3) "WORKER" INCLUDES A HEALTH CARE PROVIDER, A NATURAL PERSON EMPLOYED BY A HEALTH FACILITY, OR ANY OTHER NATURAL PERSON WHO MAY HAVE BEEN EXPOSED, WITHIN THE COURSE AND SCOPE OF SUCH PERSON'S WORK, TO HIV UNDER CIRCUMSTANCES THAT PRESENT A RISK OF TRANSMISSION OF HIV TO SUCH PERSON FROM A PERSON WHO IS SUBJECT TO THE PERFORMANCE OF AN HIV-RELATED TEST, OR ON WHOM SUCH A TEST HAS BEEN PERFORMED, PURSUANT TO PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-ONE OF THIS ARTICLE.

S 3. This act shall take effect immediately. The commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on an emergency basis.