

House Research Act Summary

CHAPTER: 422

SESSION: 2000 Regular Session

TOPIC: Occupational Exposure to Bloodborne Pathogens for EMS personnel, corrections employees and Secure Treatment Facility employees

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Overview

This act establishes procedures regarding obtaining consent for testing procedures, obtaining and testing blood samples for bloodborne pathogens, and informing individuals of blood test results, when:

An emergency medical services (EMS) person has a significant exposure to a bloodborne pathogen from a source individual in the course of carrying out the EMS person's job (Sections 5 to 18)

A corrections employee has a significant exposure to a bloodborne pathogen from an inmate (Sections 27 to 39)

A secure treatment facility employee has a significant exposure to a bloodborne pathogen from a patient (Sections 40 to 52)

Sections 1 to 3 of the act specify how blood test results are classified under the Data Practices Act and treated for health insurance purposes. Section 4 modifies notification requirements that apply when an EMS person is exposed to a person with active tuberculosis. Sections 19 to 26 expand the HIV and Hepatitis B (HBV) prevention program for health professionals to cover Hepatitis C (HCV). Other sections in the act make conforming changes.

- 1 **Health test results.** Amends § 13.99, subd. 38. Amends a cross-reference in the Data Practices Act, from a section that is being repealed to new sections being created in the act.
- 2 **Blood test results.** Adds subd. 65f to § 13.99. Adds, to a section of the Data Practices Act, a cross-reference to a section classifying as private data blood test results obtained after a

corrections employee may have been exposed to a bloodborne pathogen from an inmate or a secure treatment facility employee may have been exposed to a bloodborne pathogen from a patient.

3 **HIV tests; crime victims and emergency medical services personnel.** Amends § 72A.20, subd. 29. Changes a cross-reference in a provision on insurance trade practices, from a section that is being repealed to new sections being created in the act. (The effect of this change is to extend the prohibition against an insurer using the results of a bloodborne pathogen test for insurance coverage decisions to individuals tested for bloodborne pathogens under the procedures in this act.) Replaces a reference to HIV with a reference to bloodborne pathogens. Makes other conforming changes.

4 **Tuberculosis notification.** Adds subd. 8 to § 144.4804. In a section establishing notification requirements related to people with tuberculosis, requires that if an emergency medical services person is exposed to a person with active TB, the treatment facility must notify the EMS agency and must provide the EMS person with screening and follow-up information.

5 **Definitions.** Adds § 144.7601. Defines the following terms, for a series of sections establishing procedures to follow when an EMS person experiences a significant exposure to

a person with a bloodborne pathogen: bloodborne pathogens, emergency medical services agency, emergency medical services person, source individual, significant exposure, and facility.

6 **Conditions for applicability of procedures.** Adds § 144.7602. Specifies conditions under which procedures for responding to an EMS person who may have had a significant exposure to a bloodborne pathogen apply. Establishes procedures for locating source individuals of bloodborne pathogens.

Subd. 1. Request for procedures. Allows an EMS person or EMS agency to request that a facility follow the act's significant exposure procedures when an EMS person may have experienced a significant exposure to a bloodborne pathogen.

Subd. 2. Conditions. Requires facilities to follow these procedures when the facility determines that a significant exposure has occurred, the source individual's blood test results are needed to determine a course of treatment, and the exposed EMS person consents to provide a blood sample for testing for bloodborne pathogens.

Subd. 3. Locating source individual. Requires the EMS agency and the facility to make reasonable efforts to locate or contact the source individual to follow the protocols for significant exposure, and allows the agency and facility to exchange private data about the source individual as necessary.

7 **Information required to be given to individuals.** Adds § 144.7603. Before seeking any consent from a source individual to obtain a blood sample, test a blood sample, or obtain existing blood test results, requires a facility to inform the source individual that the individual's test results will be reported to the exposed EMS person if the EMS person so requests, and that the test results are for medical purposes.

Also requires the facility to inform the source individual: of the insurance protections in section 3 of the act; that the individual may refuse to provide a blood sample and a refusal may result in a court order for the sample; and that the facility will tell the EMS person about the confidentiality requirements and penalties for unauthorized releases before disclosing any test information.

Before disclosing any information about a source individual to an EMS person, requires the facility to inform the EMS person about the confidentiality requirements and penalties for unauthorized release, and about the insurance protections in section 3 of the act.

8 **Disclosure of positive bloodborne pathogen test results.** Adds § 144.7604. Requires a facility to: (1) ask the source individual and the EMS person if either of them has ever had a positive test for a bloodborne pathogen; (2) try to get existing test results before trying to obtain blood samples or perform new tests; and (3) disclose the source individual's test results to the exposed EMS person without any identifying information about the source individual.

9 **Consent procedures generally.** Adds § 144.7605. Specifies that the facility must follow

its usual procedures for obtaining consent when it needs to obtain consent for a procedure from a source individual or EMS person. Provides that consent from a source individual or representative to test an existing blood sample is not required if (1) the facility has made reasonable efforts to obtain the representative's consent, but that consent cannot be obtained within 24 hours of the exposure, or (2) the source individual dies before able to give consent to blood collection or testing. If testing occurs without consent, requires the facility to give the source individual certain required information whenever it is possible to do so.

10 **Testing of available blood.** Adds § 144.7606. Establishes procedures by which a facility can test an available sample of a source individual's blood, with the source individual's consent or without the source individual's consent.

Subd. 1. Procedures with consent. Provides that if the source individual is or was under the care of the facility and a sample of the source individual's blood is available with the individual's consent, the facility must test the blood sample with the individual's consent.

Subd. 2. Procedures without consent. Establishes criteria under which an available blood sample may be tested for bloodborne pathogens without the source individual's consent, if the EMS person or the EMS agency requests the test. (One of these criteria is that the EMS person was exposed to blood or body fluids while performing their job, acting as a good Samaritan, or making a citizen's arrest.)

Subd. 3. Follow-up. Requires the facility to tell the source individual and the exposed EMS person their own test results. Also requires the facility to tell the EMS person of the source individual's test results without any identifying information about the source individual.

11 **Blood sample collection for testing.** Adds § 144.7607. Establishes procedures by which

a facility can obtain and test a blood sample from a source individual with or without the individual's consent.

Subd. 1. Procedures with consent. Establishes procedures for collecting and testing blood samples and making the test results available when the source individual consents to give a blood sample and when one is not otherwise available. If the source individual refuses to consent, requires the facility to so inform the EMS person.

Subd. 2. Procedures without consent. Allows an EMS agency or an EMS person to petition for a court order to require a source individual to provide a blood sample for testing for bloodborne pathogens. Requires facilities to provide any information needed by petitioners. Specifies the circumstances under which a court may order a source individual to provide a blood sample. Requires court proceedings

to be held in camera, unless the petitioner or the source individual requests an open court hearing and the court agrees that an open hearing is necessary. Also gives the source individual the right to counsel.

12 **No discrimination.** Adds § 144.7608. Prohibits facilities from conditioning decisions about admitting a source individual to a facility or providing care or treatment on any requirement that the source individual consent to a blood test for bloodborne pathogens.

- 13 **Use of test results.** Adds § 144.7609. Specifies that test results of a source individual can be used only for diagnostic and treatment purposes, and prohibits them from being used as evidence in criminal or civil proceedings, except for actions under the health threat procedures statute.
- 14 **Test information confidentiality.** Adds § 144.7611. Classifies information on test results for bloodborne pathogens as private data for public facilities, and prohibits private facilities from disclosing data without consent as required by a section governing access to health records. Prohibits facilities, individuals, and employers from disclosing any identifying information about a source individual to an EMS person without a written release from the source individual.
- 15 **Penalty for unauthorized release of information.** Adds § 144.7612. Makes the unauthorized release of information subject to the remedies and penalties in the Data Practices Act. Specifies that private causes of action may also be pursued against any person responsible for releasing private data or information protected from disclosure.
- 16 **Responsibility for testing and treatment; costs.** Adds § 144.7613. Requires the facility to ensure that tests for bloodborne pathogens are performed if requested by an EMS person or an EMS agency, provided the conditions established in this act are met. Specifies that the EMS agency that employs the EMS person who requests the test must pay for, or arrange for the payment of, the costs of testing and treating the EMS person and the costs of testing the source individual. Requires the facility to have a protocol on whether the facility will pay the costs of testing and treatment of a person acting as a good Samaritan or making a citizen's arrest.
- 17 **Protocols for exposure to bloodborne pathogens.** Adds § 144.7614. Requires EMS agencies and facilities to have post-exposure protocols to follow when an EMS person experiences a significant exposure.
- Subd. 1. EMS agency requirements.** Requires the EMS agency to have procedures for an EMS person to notify a facility that the person may have experienced a significant exposure, and procedures to locate the source individual if necessary.
- Subd. 2. Facility protocol requirements.** Requires facilities to adopt a post-exposure protocol for EMS persons who have experienced a significant exposure. Requires the post-exposure protocol to follow the current recommendations of the U.S. Public Health Service, and lists the minimum criteria that must be met.
- 18 **Penalties and immunity.** Adds § 144.7615. Establishes penalties and immunity for certain individuals.
- Subd. 1. Penalties.** Makes it a misdemeanor to willfully violate any of the sections concerning the exposure of EMS persons to bloodborne pathogens.
- Subd. 2. Immunity.** Extends immunity to facilities, physicians, and designated health care personnel who have made a good faith effort to comply with these sections.
- 19 **HCV.** Adds subd. 3a to § 214.18. Adds a definition to HCV (hepatitis C virus) to the definitions section of the HIV/HBV prevention program for health professionals, in the chapter on licensing boards.
- 20 **Regulated person.** Amends § 214.18, subd. 5. Amends the definition of regulated person for purposes of the HIV/HBV prevention program, to clarify that the nurses included in the term are nurses who are currently registered as registered nurses or licensed practical nurses.
- 21-26 Amend language governing the operation of the HIV/HBV prevention program, by adding references to HCV (hepatitis C virus) throughout the statutes where there are references to HIV and HBV.
- 27 **Definitions.** Adds new § 241.33. Defines the following terms, for a series of sections establishing procedures to follow when a corrections employee experiences a significant exposure to an inmate with a bloodborne pathogen: bloodborne pathogens, inmate, correctional

facility, corrections employee, and significant exposure. (The definitions of "bloodborne pathogens" and "significant exposure" are the same definitions given in the EMS and secure treatment facility provisions of the act.)

- 28 **Conditions for applicability of procedures.** Adds new § 241.331. Specifies conditions under which procedures for responding to a corrections employee who may have experienced a significant exposure to a bloodborne pathogen via an inmate apply. Requires the correctional facility to follow the procedures in the act if the following conditions are met:
- (1) a licensed physician determines that a significant exposure has occurred, following the protocol established in section 38;
 - (2) the physician needs the inmate's bloodborne pathogens test results to begin, continue, modify, or stop treatment in accordance with the most recent U.S. Public Health guidelines, because of possible exposure to a bloodborne pathogen; and
 - (3) the employee consents to provide a blood sample for testing.
- 29 **Information required to be given to individuals.** Adds new § 241.332. Before seeking any consent from an inmate to obtain a blood sample, test a blood sample, or obtain existing blood test results, requires a facility to inform the inmate that the inmate's test results will be reported to the corrections employee if the employee so requests, and that the test results are for medical purposes.
- Also requires the facility to inform the inmate: of the insurance protections in section 3 of the act; that the inmate may refuse to provide a blood sample and a refusal may result in a court order for the sample; and that the facility will tell the corrections employee about the confidentiality requirements and penalties for unauthorized releases before disclosing any test information.
- Before disclosing any information about an inmate to the corrections employee, requires the facility to inform the employee about the confidentiality requirements and penalties for unauthorized release, and about the insurance protections in section 3 of the act.
- 30 **Disclosure of positive bloodborne pathogen test results.** Adds § 241.333. If the conditions of sections 28 and 29 are met, the facility must ask the inmate if the inmate ever had a positive test for a bloodborne pathogen. The facility must attempt to get existing test results before getting a blood sample or testing for bloodborne pathogens. Requires the facility to give the employee the inmate's test results without identifying information.
- 31 **Consent procedures generally.** Adds § 241.334. Requires a facility to seek inmate consent in a manner that is consistent with other law generally applicable to consent. Provides that consent is not required if the facility makes reasonable efforts to get it but cannot get it within 24 hours of a significant exposure. If testing occurs without consent because an inmate is unconscious or unable to consent and a representative cannot be located, the facility will provide the information in section 29 to the inmate or representative whenever possible. If an inmate dies before giving consent, the facility does not need the consent of the inmate's representative.
- 32 **Testing of available blood.** Adds § 241.335. Establishes procedures by which the correctional facility can test an available blood sample from an inmate, with or without the inmate's consent.
- Subd. 1. Procedures with consent.** Provides for testing an inmate's blood sample with inmate consent if sections 28 and 29 are met.
- Subd. 2. Procedures without consent.** Establishes criteria that will allow testing of an inmate's blood if an inmate provides a blood sample but does not consent to testing and if the corrections

employee requests the test.

Subd. 3. Follow up. Requires the facility to tell the inmate of the test results. Requires it to also give the results, without identifying information on the inmate, to the employee's health care provider.

33 **Blood sample collection for testing.** Adds § 241.336. Establishes procedures by which a correctional facility can obtain and test a blood sample from an inmate with or without the inmate's consent.

Subd. 1. Procedures with consent. If a blood sample is not otherwise available, the facility must obtain inmate consent to collect one. If the inmate consents to give a sample, the facility must have it tested and give results to the employee's health care provider without identifying the inmate. The inmate must be told he or she can refuse, and that refusal may result in a court order to require a blood sample. If the inmate refuses consent, the facility must so inform the employee.

Subd. 2. Procedures without consent. Authorizes a facility or employee to seek a court order to require an inmate to give a blood sample. Requires the facility to serve the petition on the inmate three days before a hearing on the petition. Specifies what the petition must include.

Specifies that in order to require a blood sample the court must (1) find probable cause to believe the employee experienced a significant exposure, (2) impose safeguards against unauthorized disclosure or use of test results, (3) find that a physician needs the test in connection with treatment of the employee, and (4) find a compelling need for the test.

To determine compelling need the court must (1) weigh the need for compelled blood collection against the inmate's privacy interests and (2) consider whether involuntary blood collection and testing serve the public interest.

Provides for a closed hearing unless either party requests an open hearing and the court determines an open hearing is necessary to the public interest and administration of justice.

Allows the inmate to arrange for counsel in a proceeding under this subdivision.

34 **No discrimination.** Adds § 241.337. Prohibits the facility from withholding care or treatment from an inmate who refuses to consent to testing

35 **Use of test results.** Adds § 241.338. Provides for using blood tests under the act for diagnostic purposes and to determine need for treatment. Prohibits using test results in a criminal or civil proceeding, except for actions under the health threat procedures statute.

36 **Test information confidentiality.** Adds § 241.339. Makes test results obtained under the act private data (accessible only to the subject of the data and the entity that creates, collects, or maintains it), except that the results will be disclosed as provided by the act.

37 **Penalty for unauthorized release of information.** Adds § 241.34. Makes unauthorized release of an inmate's identity under the act subject to the remedies and penalties in the Data Practices Act. Specifies that private causes of action may also be pursued against any person responsible for releasing private data or information protected from disclosure.

38 **Protocol for exposure to bloodborne pathogens.** Adds § 241.341. Requires correctional facilities to follow Occupational Safety and Health Administration (OSHA) guidelines for bloodborne pathogens. Correctional facilities must adopt and follow a post-exposure protocol for corrections employees who have experienced a significant exposure. This section also specifies what the post-exposure protocol must include.

39 **Immunity.** Adds § 241.342. Makes a correctional facility, physician, and designated health care personnel immune from civil, criminal, or administrative action about the disclosure of inmate

test results to a corrections employee and the testing of an inmate blood sample, if a good faith effort has been made to comply with sections 27 to 39.

40 **Definitions.** Adds new § 246.80. Defines the following terms, for a series of sections establishing procedures to follow when an employee of a secure treatment facility experiences a significant exposure to a patient with a bloodborne pathogen: bloodborne pathogens, patient, employee of a secure treatment facility, secure treatment facility, and significant exposure. (The definitions of "bloodborne pathogens" and "significant exposure" are the same definitions given in the EMS and corrections provisions of the act.)

41 **Conditions for applicability of procedures.** Adds new § 246.81. Specifies conditions under which procedures for responding to an employee of a secure treatment facility who may have experienced a significant exposure to a bloodborne pathogen via a patient apply. Requires the facility to follow the procedures in the act if the following conditions are met:

- (1) a licensed physician determines that a significant exposure has occurred, following the protocol established in section 51;
- (2) the physician needs the patient's bloodborne pathogens test results to begin, continue, modify, or stop treatment in accordance with the most recent U.S. Public Health guidelines, because of possible exposure to a bloodborne pathogen; and
- (3) the employee consents to provide a blood sample for testing.

42 **Information required to be given to individuals.** Adds new § 246.811. Before seeking any consent from a patient to obtain a blood sample, test a blood sample, or obtain existing blood test results, requires a facility to inform the patient that the patient's test results will be reported to the secure treatment facility employee if the employee so requests, and that the test results are for medical purposes.

Also requires the facility to inform the patient: of the insurance protections in section 3 of the act; that the patient may refuse to provide a blood sample and a refusal may result in a court order for the sample; and that the facility will tell the employee about the confidentiality requirements and penalties for unauthorized releases before disclosing any test information.

Before disclosing any information about a patient to the employee, requires the facility to inform the employee about the confidentiality requirements and penalties for unauthorized release, and about the insurance protections in section 3 of the act.

43 **Disclosure of positive bloodborne pathogen test results.** Adds § 246.812. If the conditions of sections 41 and 42 are met, the secure treatment facility must ask the patient if the patient ever had a positive test for a bloodborne pathogen. The facility must attempt to get existing test results before getting a blood sample or testing for bloodborne pathogens. Requires the facility to give the employee the patient's test results without identifying information.

44 **Consent procedures generally.** Adds § 246.813. Requires a secure treatment facility to seek patient consent in a manner that is consistent with other law generally applicable to consent. Provides that consent is not required if the facility makes reasonable efforts to get it but cannot get it within 24 hours of a significant exposure. If testing occurs without consent because a patient is unconscious or unable to consent and a representative cannot be located, the facility will provide the information in section 42 to the patient or representative whenever possible. If a patient dies before giving consent, the facility does not need the consent of the patient's representative.

45 **Testing of available blood.** Adds § 246.814. Establishes procedures by which the secure

treatment facility can test an available blood sample from a patient, with or without the patient's consent.

Subd. 1. Procedures with consent. Provides for testing a patient's blood sample with patient consent if sections 41 and 42 are met.

Subd. 2. Procedures without consent. Establishes criteria that will allow testing of a patient's blood if a patient provides a blood sample but does not consent to testing and if the employee requests the test.

Subd. 3. Follow up. Requires the facility to tell the patient of the test results. Requires it to also give the results, without identifying information on the patient, to the employee's health care provider.

46 **Blood sample collection for testing.** Adds § 246.815. Establishes procedures by which a secure treatment facility can obtain and test a blood sample from a patient with or without the patient's consent.

Subd. 1. Procedures with consent. If a blood sample is not otherwise available, the facility must obtain patient consent to collect one. If the patient consents to give a sample, the facility must have it tested and give results to the employee's health care provider without identifying the patient. The patient must be told he or she can refuse, and that refusal may result in a court order to require a blood sample. If the patient refuses consent, the facility must so inform the employee.

Subd. 2. Procedures without consent. Authorizes a facility or employee to seek a court order to require a patient to give a blood sample. Requires the facility to serve the petition on the patient three days before a hearing on the petition. Specifies what the petition must include.

Specifies that in order to require a blood sample the court must (1) find probable cause to believe the employee experienced a significant exposure, (2) impose safeguards against unauthorized disclosure or use of test results, (3) find that a physician needs the test in connection with treatment of the employee, and (4) find a compelling need for the test.

To determine compelling need the court must (1) weigh the need for compelled blood collection against the patient's privacy interests and (2) consider whether involuntary blood collection and testing serve the public interest.

Provides for a closed hearing unless either party requests an open hearing and the court determines an open hearing is necessary to the public interest and administration of justice.

Allows the patient to arrange for counsel in a proceeding under this subdivision.

47 **No discrimination.** Adds § 246.816. Prohibits the secure treatment facility from withholding care or treatment from a patient who refuses to consent to testing.

48 **Use of test results.** Adds § 246.817. Provides for using blood tests under the bill for diagnostic purposes and to determine need for treatment. Prohibits using test results in a criminal or civil proceeding, except for actions under the health threat procedures statute.

49 **Test information confidentiality.** Adds § 246.818. Makes test results obtained under the bill private data (accessible only to the subject of the data and the entity that creates, collects, or maintains it), except that the results will be disclosed as provided by the act.

50 **Penalty for unauthorized release of information.** Adds § 246.819. Makes unauthorized release of a patient's identity under the act subject to the remedies and penalties in the Data Practices Act. Specifies that private causes of action may also be pursued against any person responsible for releasing private data or information protected from disclosure.

51 **Protocol for exposure to bloodborne pathogens.** Adds § 246.82. Requires secure treatment

facilities to follow Occupational Safety and Health Administration (OSHA) guidelines for bloodborne pathogens. The facilities must adopt and follow a post-exposure protocol for employees who have experienced a significant exposure. This section also specifies what the post-exposure protocol must include.

- 52 **Immunity.** Adds § 246.821. Makes a secure treatment facility, physician, and designated health care personnel immune from civil, criminal, or administrative action about the disclosure of patient test results to a secure treatment facility employee and the testing of a patient blood sample, if a good faith effort has been made to comply with sections 40 to 52.
- 53 **Testing on request of victim.** Amends § 611A.19, subd. 1. In a subdivision establishing procedures by which victims of certain crimes can seek court orders for offenders to be tested for HIV, strikes language that requires the testing to be performed by a health professional trained in HIV counseling (the section describing the counseling that must be provided is repealed).
- 54 **Disclosure of test results.** Amends § 611A.19, subd. 2. In a subdivision establishing rules for the disclosure to victims of the results of HIV tests on offenders, strikes language that requires the results to be given to the victim by a health professional trained in HIV counseling (the section describing the counseling that must be provided is being repealed).
- 55 **Repealer.** Repeals sections 144.761 to 144.7691, relating to protocols for significant exposure to HIV and HBV by EMS personnel (Note: the definition of "EMS personnel" that is being repealed in these sections also includes corrections employees and secure treatment facility employees).