

H. B. 2749

(By Delegates Perdue, Perry, Campbell, Ellington,
C. Miller, Moye, Pasdon, Staggers and Storch)

(By Request of the Department of Health
and Human Resources)

[Introduced February 27, 2013; referred to the
Committee on Health and Human Resources then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §16-3C-2 of the Code of West Virginia,
1931, as amended; and to amend and reenact §16-4-19 of said
code, all relating to removing the limitations on billing
patients for HIV and sexually transmitted disease testing done
by state or local public health agencies; and clarifying
provisions relating to performing HIV or STD tests on persons
accused of a sexual offense.

Be it enacted by the Legislature of West Virginia:

That §16-3C-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §16-4-19 of said code be amended
and reenacted, all to read as follows:

**ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS
CONFIDENTIALITY ACT.**

§16-3C-2. Testing.

(a) HIV-related testing ~~on a voluntary basis~~ should be

1 recommended by ~~any healthcare provider in a health facility~~
2 providers as part of a routine screening for treatable conditions
3 and as part of routine prenatal and perinatal care. A physician,
4 dentist, nurse practitioner, nurse midwife, physician assistant or
5 the commissioner may ~~also~~ request targeted testing for any of the
6 following:

7 (1) When there is cause to believe that the test could be
8 positive. Persons who engage in high risk behavior should be
9 encouraged to be screened for HIV at least annually;

10 (2) When there is cause to believe that the test could provide
11 information important in the care of the patient; or

12 (3) When there is cause to believe that the results of HIV-
13 testing of samples of blood or body fluids from a source patient
14 could provide information important in the care of medical or
15 emergency responders or other persons identified in regulations
16 proposed by the department for approval by the Legislature in
17 accordance with the provisions of article three, chapter twenty-
18 nine-a of this code: *Provided*, That the source patient whose blood
19 or body fluids is being tested pursuant to this section must have
20 come into contact with a medical or emergency responder or other
21 person in such a way that a significant exposure has occurred;

22 (4) When there is no record of any HIV-related testing during
23 pregnancy and the woman presents for labor and delivery.

24 (b) All patients who seek an HIV test shall be responsible for

1 paying the costs of the testing, whether they are tested by a
2 private healthcare provider, the bureau or at a local health
3 department. Local health departments may charge in accordance with
4 their existing fee schedules and may charge patients on a sliding
5 fee scale.

6 ~~(b)~~ (c) A patient ~~voluntarily~~ consents to the test as follows:

7 (1) The patient is informed either orally or in writing that
8 HIV-related testing will be performed as part of his or her routine
9 care, that HIV-related testing is voluntary and that the patient may
10 decline HIV-related testing (opt-out); or

11 (2) The patient is informed that the patient's general consent
12 for medical care includes consent for HIV-related testing.

13 ~~(c)~~ (d) A patient refuses to consent to the test if a patient
14 opts-out of HIV-related testing, the patient is informed when the
15 health care provider in the provider's professional opinion believes
16 HIV-related testing is recommended, and that HIV-related testing may
17 be obtained anonymously at a local or county health department.

18 ~~(d)~~ (e) Any person seeking an HIV-related test in a local or
19 county health department or other HIV test setting provided by the
20 commissioner who wishes to remain anonymous has the right to do so,
21 and to be provided written informed consent through use of a coded
22 system with no linking of individual identity to the test request
23 or results. Such persons may arrange to pay the costs of the HIV-
24 related testing.

1 ~~(e)~~ (f) No option to opt-out of HIV-related testing is required
2 and the provisions of subsection (a) and (b) of this section do not
3 apply for the following:

4 (1) A health care provider or health facility performing an
5 HIV-related test on the donor or recipient when the health care
6 provider or health facility procures, processes, distributes or uses
7 a human body part (including tissue and blood or blood products)
8 donated for a purpose specified under the uniform anatomical gift
9 act, or for transplant recipients, or semen provided for the purpose
10 of artificial insemination and such test is necessary to assure
11 medical acceptability of a recipient ~~or~~ of such gift or semen for
12 the purposes intended;

13 (2) The performance of an HIV-related test in documented bona
14 fide medical emergencies, as determined by a treating physician
15 taking into account the nature and extent of the exposure to another
16 person, when the subject of the test is unable or unwilling to grant
17 or withhold consent, and the test results are necessary for medical
18 diagnostic purposes to provide appropriate emergency care or
19 treatment to a medical or emergency responder, or any other person
20 who has come into contact with a source patient in such a way that
21 a significant exposure necessitates HIV-testing or to a source
22 patient who is unable to consent in accordance with rules proposed
23 by the department for approval by the Legislature in accordance with
24 article three, chapter twenty-nine-a of this code: *Provided, That*

1 necessary treatment may not be withheld pending HIV test results:
2 *Provided, however,* That all sampling and HIV-testing of samples of
3 blood and body fluids, without the opportunity for the source
4 patient or patient's representative to opt-out of the testing, shall
5 be through the use of a pseudonym and in accordance with rules
6 proposed by the department for approval by the Legislature in
7 accordance with article three, chapter twenty-nine-a of this code;
8 or

9 (3) The performance of an HIV-related test for the purpose of
10 research if the testing is performed in a manner by which the
11 identity of the test subject is not known and may not be retrieved
12 by the researcher.

13 ~~(f)~~ (g) Mandated testing:

14 (1) The performance of any HIV-related testing that is or
15 becomes mandatory by a magistrate or circuit court order or other
16 legal process described herein does not require consent of the
17 subject but ~~will~~ may include counseling.

18 (2) The arresting authorities or a magistrate or circuit court
19 ~~having jurisdiction of the criminal prosecution judge, upon the~~
20 request of the prosecutor in the case or upon the request of the
21 victim, shall ~~order that an HIV-related test be performed~~ cause the
22 accused to submit to one or more appropriate tests to determine if
23 the accused is infected with human immunodeficiency virus (HIV)
24 within forty-eight hours after the date on which the complaint,

1 information or indictment is filed or within forty-eight hours after
2 the date on which the complaint, information, or indictment is
3 served on the accused, whichever date is later, ~~on~~ for any persons
4 charged with any person accused of the following crimes or offenses:

5 (i) Prostitution; or

6 (ii) Sexual abuse, sexual assault, incest or sexual
7 molestation.

8 (3) HIV-related tests performed on persons ~~charged with~~ accused
9 of prostitution, sexual abuse, sexual assault, incest or sexual
10 molestation shall be confidentially administered by a designee of
11 the bureau or the local or county health department having proper
12 jurisdiction. The commissioner may designate health care providers
13 in regional jail or other correctional facilities to administer HIV-
14 related tests on such persons if he or she determines it necessary
15 and expedient. Nothing in this section may be construed to prevent
16 the court from ordering at any time during which the complaint,
17 information or indictment is pending, that the accused submit to one
18 or more appropriate tests to determine if the accused is suffering
19 from a sexually transmitted disease (STD) or from the human
20 immunodeficiency virus (HIV). The cost of testing and treatment may
21 be charged to and paid by the accused.

22 (4) When the Commissioner of the Bureau of Public Health knows
23 or has reason to believe, because of medical or epidemiological
24 information, that a person, including, but not limited to, a person

1 such as an IV drug abuser, or a person who may have a sexually
2 transmitted disease, or a person who has sexually molested, abused
3 or assaulted another, has HIV infection and is or may be a danger
4 to the public health, he or she may issue an order to:

5 (i) Require a person to be examined and tested to determine
6 whether the person has HIV infection;

7 (ii) Require a person with HIV infection to report to a
8 qualified physician or health worker for counseling; ~~and~~

9 (iii) Direct a person with HIV infection to cease and desist
10 from specified conduct which endangers the health of others; and

11 (iv) Bill that person for the necessary laboratory and
12 associated costs for testing either directly or by billing the
13 person's medical insurance provider.

14 (5) If any person violates a cease and desist order issued
15 pursuant to this section and, by virtue of that violation, the
16 person presents a danger to the health of others, the commissioner
17 shall apply to the circuit court of Kanawha County to enforce the
18 cease and desist order by imposing any restrictions upon the person
19 that are necessary to prevent the specific conduct that endangers
20 the health of others.

21 (6) A person convicted of the offenses described in this
22 section shall be required to undergo HIV-related testing and
23 counseling immediately upon conviction and the court having
24 jurisdiction of the criminal prosecution may not release the

1 convicted person from custody and shall revoke any order admitting
2 the defendant to bail until HIV-related testing and counseling have
3 been performed and the result is known. The HIV-related test result
4 obtained from the convicted person is to be transmitted to the court
5 and, after the convicted person is sentenced, made part of the court
6 record. If the convicted person is placed in the custody of the
7 Division of Corrections, the court shall transmit a copy of the
8 convicted person's HIV-related test results to the Division of
9 Corrections. The HIV-related test results shall be closed and
10 confidential and disclosed by the court and the bureau only in
11 accordance with the provisions of section three of this article.

12 (7) The prosecuting attorney shall inform the victim, or parent
13 or guardian of the victim, at the earliest stage of the proceedings
14 of the availability of voluntary HIV-related testing and counseling
15 conducted by the bureau and that his or her best health interest
16 would be served by submitting to HIV-related testing and counseling.
17 HIV-related testing for the victim shall be administered at his or
18 her request on a confidential basis and shall be administered in
19 accordance with the Centers for Disease Control and Prevention
20 guidelines of the United States Public Health Service in effect at
21 the time of such request. The victim who obtains an HIV-related test
22 shall be provided with pre and post-test counseling regarding the
23 nature, reliability and significance of the HIV-related test and the
24 confidential nature of the test. HIV-related testing and counseling

1 conducted pursuant to this subsection shall be performed by the
2 designee of the commissioner of the bureau or by any local or county
3 health department having proper jurisdiction.

4 (8) If a person receives counseling or is tested under this
5 subsection and is found to be HIV infected and the person is not
6 incarcerated, the person shall be referred by the health care
7 provider performing the counseling or testing for appropriate
8 medical care and support services. The local or county health
9 departments or any other agency under this subsection may not be
10 held financially responsible for medical care and support services.

11 (9) The commissioner of the bureau or his or her designees may
12 require an HIV test for the protection of a person who was possibly
13 exposed to HIV infected blood or other body fluids as a result of
14 receiving or rendering emergency medical aid or who possibly
15 received such exposure as a funeral director. Results of such a test
16 of the person causing exposure may be used by the requesting
17 physician for the purpose of determining appropriate therapy,
18 counseling and psychological support for the person rendering
19 emergency medical aid including good Samaritans, as well as for the
20 patient, or individual receiving the emergency medical aid.

21 (10) If an HIV-related test required on persons accused of or
22 convicted of prostitution, sexual abuse, sexual assault, incest or
23 sexual molestation results in a negative reaction, upon motion of
24 the state, the court having jurisdiction over the criminal

1 prosecution may require the subject of the test to submit to further
2 HIV- related tests performed under the direction of the bureau in
3 accordance with the Centers for Disease Control and Prevention
4 guidelines of the United States Public Health Service in effect at
5 the time of the motion of the state.

6 (11) The costs of mandated testing and counseling provided
7 under this subsection and pre and post-conviction HIV-related
8 testing and counseling provided the victim under the direction of
9 the bureau pursuant to this subsection shall be paid by ~~the bureau~~
10 the individual to be tested or his or her medical insurance
11 provider, if possible.

12 (12) The court having jurisdiction of the criminal prosecution
13 shall order a person convicted of prostitution, sexual abuse, sexual
14 assault, incest or sexual molestation to pay restitution to the
15 state for the costs of any HIV-related testing and counseling
16 provided the convicted person and the victim, unless the court has
17 determined the convicted person to be indigent.

18 (13) Any funds recovered by the state as a result of an award
19 of restitution under this subsection shall be paid into the State
20 Treasury to the credit of a special revenue fund to be known as the
21 "HIV-testing fund" which is hereby created. The moneys so credited
22 to the fund may be used solely by the bureau for the purposes of
23 facilitating the performance of HIV-related testing and counseling
24 under the provisions of this article.

1 ~~(g) Nothing in this section is applicable to any insurer~~
 2 ~~regulated under chapter thirty-three of this code: Provided, That~~
 3 ~~the commissioner of insurance shall develop standards regarding~~
 4 ~~consent for use by insurers which test for the presence of the HIV~~
 5 ~~antibody.~~

6 (h) Whenever consent of the subject to the performance of HIV-
 7 related testing is required under this article, any such consent
 8 obtained, whether orally or in writing, shall be considered to be
 9 a valid and informed consent if it is given after compliance with
 10 the provisions of subsection (b) of this section.

11 **ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

12 **§16-4-19. Voluntary submission to examination and treatment;**
 13 **charges; disposition of money collected.**

14 (a) Any resident of the state may at any time report to any
 15 municipal or county health officer ~~having jurisdiction of the case,~~
 16 and voluntarily submit himself or herself to all tests and
 17 examination ~~as are~~ necessary to ascertain whether ~~in fact~~ the person
 18 ~~submitting himself for examination~~ is infected with a ~~venereal~~
 19 sexually transmitted disease. ~~and said~~ The health officer to whom
 20 any party has applied as above for tests and examination shall
 21 ~~provide for making all such~~ conduct and administer all necessary
 22 tests and examinations ~~as are necessary~~ to ascertain whether ~~in fact~~
 23 ~~said party so applying~~ be so infected with a venereal the person has
 24 any sexually transmitted disease.

1 (b) If such tests and examinations show ~~said party so applying~~
2 ~~to be so infected~~ the person to have a sexually transmitted disease,
3 then ~~said party~~ the person shall elect whether he or she will take
4 treatment ~~of~~ from a private physician, or whether he or she will
5 take treatment ~~to be provided by~~ from the local health officer
6 ~~through a clinic or otherwise~~ department, and if he or she elects
7 to take treatment through the local health officer's ~~arrangement~~
8 department, he or she may be required to pay for such treatment at
9 a charge which shall in no case exceed the sum of five dollars for
10 each dose of "neo" or arsphenamine administered for syphilis, and
11 at a nominal cost for other medicines used; but if the patient is
12 unable to pay anything, he shall be treated free of charge under the
13 direction of the local health officer, at a clinic or otherwise
14 either directly or by the local health department billing the
15 person's health insurance provider.

16 (c) All proper charges for such examination and treatment ~~as~~
17 that may be necessary hereunder shall be ~~a proper charge against the~~
18 ~~municipality or county~~ paid by the individual or by that persons
19 health insurance provider. ~~as the case may be, whether said party~~
20 ~~so taking treatment lived in or out of a municipal corporation. And~~
21 ~~whether said person proposing to take treatment as provided~~
22 ~~hereunder elect to take from a private physician or elect to take~~
23 ~~treatment under the direction of the local health officer, he shall~~
24 ~~first sign the agreement required to be signed by persons about to~~

1 ~~be released from detention or quarantine, and shall observe all its~~
2 ~~provisions, and so long as such person so signing shall so observe~~
3 ~~these provisions he need not be detained or quarantined pending~~
4 ~~treatment, except that no person who is known as a prostitute, or~~
5 ~~as a person associating with such, or as a person who resides in any~~
6 ~~house having the reputation of being a house of prostitution, or who~~
7 ~~frequents the same, shall be allowed at liberty if infected with a~~
8 ~~venereal disease in an infectious stage, even though he does~~
9 ~~voluntarily submit for examination and treatment and does take~~
10 ~~treatment under the provisions of this section.~~

11 (d) All money collected under this section shall be paid ~~into~~
12 ~~a clinic fund, if one is provided, and if not then into the county~~
13 ~~or city treasury, as the case may be, to the local health department~~
14 ~~doing the testing and the local health officer ~~having jurisdiction~~~~
15 shall collect and account for such funds collected hereunder.

NOTE: The purpose of this bill is to remove the prohibition on billing persons for HIV testing or testing for sexually transmitted diseases conducted by the State Bureau for Public Health or county or local health departments. The bill allows public health agencies to charge patients or their medical insurance providers for the reasonable costs for testing. It also clarifies the procedures for testing persons accused of a sexual offense for HIV or STDs.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.