
SUBSTITUTE HOUSE BILL 2413

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Pennington, Carlson, Ogden, Thompson, Dunn and Backlund)

Read first time 01/29/98. Referred to Committee on .

1 AN ACT Relating to disclosure of sexually transmitted disease
2 information; amending RCW 70.24.340; and reenacting and amending RCW
3 70.24.105.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.24.105 and 1997 c 345 s 2 and 1997 c 196 s 6 are
6 each reenacted and amended to read as follows:

7 (1) No person may disclose or be compelled to disclose the identity
8 of any person who has investigated, considered, or requested a test or
9 treatment for a sexually transmitted disease, except as authorized by
10 this chapter.

11 (2) No person may disclose or be compelled to disclose the identity
12 of any person upon whom an HIV antibody test is performed, or the
13 results of such a test, nor may the result of a test for any other
14 sexually transmitted disease when it is positive be disclosed. This
15 protection against disclosure of test subject, diagnosis, or treatment
16 also applies to any information relating to diagnosis of or treatment
17 for HIV infection and for any other confirmed sexually transmitted
18 disease. The following persons, however, may receive such information:

1 (a) The subject of the test or the subject's legal representative
2 for health care decisions in accordance with RCW 7.70.065, with the
3 exception of such a representative of a minor child over fourteen years
4 of age and otherwise competent;

5 (b) Any person who secures a specific release of test results or
6 information relating to HIV or confirmed diagnosis of or treatment for
7 any other sexually transmitted disease executed by the subject or the
8 subject's legal representative for health care decisions in accordance
9 with RCW 7.70.065, with the exception of such a representative of a
10 minor child over fourteen years of age and otherwise competent;

11 (c) The state public health officer, a local public health officer,
12 or the centers for disease control of the United States public health
13 service in accordance with reporting requirements for a diagnosed case
14 of a sexually transmitted disease;

15 (d) A health facility or health care provider that procures,
16 processes, distributes, or uses: (i) A human body part, tissue, or
17 blood from a deceased person with respect to medical information
18 regarding that person; (ii) semen, including that provided prior to
19 March 23, 1988, for the purpose of artificial insemination; or (iii)
20 blood specimens;

21 (e) Any state or local public health officer conducting an
22 investigation pursuant to RCW 70.24.024, provided that such record was
23 obtained by means of court ordered HIV testing pursuant to RCW
24 70.24.340 or 70.24.024;

25 (f) A person allowed access to the record by a court order granted
26 after application showing good cause therefor. In assessing good
27 cause, the court shall weigh the public interest and the need for
28 disclosure against the injury to the patient, to the physician-patient
29 relationship, and to the treatment services. Upon the granting of the
30 order, the court, in determining the extent to which any disclosure of
31 all or any part of the record of any such test is necessary, shall
32 impose appropriate safeguards against unauthorized disclosure. An
33 order authorizing disclosure shall: (i) Limit disclosure to those
34 parts of the patient's record deemed essential to fulfill the objective
35 for which the order was granted; (ii) limit disclosure to those persons
36 whose need for information is the basis for the order; and (iii)
37 include any other appropriate measures to keep disclosure to a minimum
38 for the protection of the patient, the physician-patient relationship,

1 and the treatment services, including but not limited to the written
2 statement set forth in subsection (5) of this section;

3 (g) Local law enforcement agencies to the extent provided in RCW
4 70.24.034;

5 (h) Persons who, because of their behavioral interaction with the
6 infected individual, have been placed at risk for acquisition of a
7 sexually transmitted disease, as provided in RCW 70.24.022, if the
8 health officer or authorized representative believes that the exposed
9 person was unaware that a risk of disease exposure existed and that the
10 disclosure of the identity of the infected person is necessary;

11 (i) A law enforcement officer, fire fighter, health care provider,
12 health care facility staff person, department of correction's staff
13 person, jail staff person, a person rendering emergency care or
14 transportation, commonly known as a "good Samaritan," as described in
15 RCW 4.24.300 and 4.24.310, or other persons as defined by the board in
16 rule pursuant to RCW 70.24.340(4), who has requested a test of a person
17 whose bodily fluids he or she has been substantially exposed to,
18 pursuant to RCW 70.24.340(4), if a state or local public health officer
19 performs the test;

20 (j) Claims management personnel employed by or associated with an
21 insurer, health care service contractor, health maintenance
22 organization, self-funded health plan, state-administered health care
23 claims payer, or any other payer of health care claims where such
24 disclosure is to be used solely for the prompt and accurate evaluation
25 and payment of medical or related claims. Information released under
26 this subsection shall be confidential and shall not be released or
27 available to persons who are not involved in handling or determining
28 medical claims payment; and

29 (k) A department of social and health services worker, a child
30 placing agency worker, or a guardian ad litem who is responsible for
31 making or reviewing placement or case-planning decisions or
32 recommendations to the court regarding a child, who is less than
33 fourteen years of age, has a sexually transmitted disease, and is in
34 the custody of the department of social and health services or a
35 licensed child placing agency; this information may also be received by
36 a person responsible for providing residential care for such a child
37 when the department of social and health services or a licensed child
38 placing agency determines that it is necessary for the provision of
39 child care services.

1 (3) No person to whom the results of a test for a sexually
2 transmitted disease have been disclosed pursuant to subsection (2) of
3 this section may disclose the test results to another person except as
4 authorized by that subsection.

5 (4) The release of sexually transmitted disease information
6 regarding an offender or detained person, except as provided in
7 subsection (2)(e) of this section, shall be governed as follows:

8 (a) The sexually transmitted disease status of a department of
9 corrections offender who has had a mandatory test conducted pursuant to
10 RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by
11 department of corrections health care providers and local public health
12 officers to the department of corrections health care administrator or
13 infection control coordinator of the facility in which the offender is
14 housed. The information made available to the health care
15 administrator or the infection control coordinator under this
16 subsection (4)(a) shall be used only for disease prevention or control
17 and for protection of the safety and security of the staff, offenders,
18 and the public. The information may be submitted to transporting
19 officers and receiving facilities, including facilities that are not
20 under the department of corrections' jurisdiction according to the
21 provisions of (d) and (e) of this subsection.

22 (b) The sexually transmitted disease status of a person detained in
23 a jail who has had a mandatory test conducted pursuant to RCW
24 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the
25 local public health officer to a jail health care administrator or
26 infection control coordinator. The information made available to a
27 health care administrator under this subsection (4)(b) shall be used
28 only for disease prevention or control and for protection of the safety
29 and security of the staff, offenders, detainees, and the public. The
30 information may be submitted to transporting officers and receiving
31 facilities according to the provisions of (d) and (e) of this
32 subsection.

33 (c) Information regarding the sexually transmitted disease status
34 of an offender or detained person is confidential and may be disclosed
35 by a correctional health care administrator or infection control
36 coordinator or local jail health care administrator or infection
37 control coordinator only as necessary for disease prevention or control
38 and for protection of the safety and security of the staff, offenders,
39 and the public. Unauthorized disclosure of this information to any

1 person may result in disciplinary action, in addition to the penalties
2 prescribed in RCW 70.24.080 or any other penalties as may be prescribed
3 by law.

4 (d) Notwithstanding the limitations on disclosure contained in (a),
5 (b), and (c) of this subsection, whenever any member of a jail staff or
6 department of corrections staff has been substantially exposed to the
7 bodily fluids of an offender or detained person, then the results of
8 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or
9 70.24.370, shall be immediately disclosed to the staff person in
10 accordance with the Washington Administrative Code rules governing
11 employees' occupational exposure to bloodborne pathogens. Disclosure
12 must be accompanied by appropriate counseling for the staff member,
13 including information regarding follow-up testing and treatment.
14 Disclosure shall also include notice that subsequent disclosure of the
15 information in violation of this chapter or use of the information to
16 harass or discriminate against the offender or detainee may result in
17 disciplinary action, in addition to the penalties prescribed in RCW
18 70.24.080, and imposition of other penalties prescribed by law.

19 (e) The staff member shall also be informed whether the offender or
20 detained person had any other communicable disease, as defined in RCW
21 72.09.251(3), when the staff person was substantially exposed to the
22 offender's or detainee's bodily fluids.

23 (f) The test results of voluntary and anonymous HIV testing or HIV-
24 related condition may not be disclosed to a staff person except as
25 provided in subsection (2)(i) of this section and RCW 70.24.340(4). A
26 health care administrator or infection control coordinator may provide
27 the staff member with information about how to obtain the offender's or
28 detainee's test results under subsection (2)(i) of this section and RCW
29 70.24.340(4).

30 (5) Whenever disclosure is made pursuant to this section, except
31 for subsections (2)(a) and (6) of this section, it shall be accompanied
32 by a statement in writing which includes the following or substantially
33 similar language: "This information has been disclosed to you from
34 records whose confidentiality is protected by state law. State law
35 prohibits you from making any further disclosure of it without the
36 specific written consent of the person to whom it pertains, or as
37 otherwise permitted by state law. A general authorization for the
38 release of medical or other information is NOT sufficient for this

1 purpose." An oral disclosure shall be accompanied or followed by such
2 a notice within ten days.

3 (6) The requirements of this section shall not apply to the
4 customary methods utilized for the exchange of medical information
5 among health care providers in order to provide health care services to
6 the patient, nor shall they apply within health care facilities where
7 there is a need for access to confidential medical information to
8 fulfill professional duties.

9 (7) Upon request of the victim, disclosure of test results under
10 this section to victims of sexual offenses under chapter 9A.44 RCW
11 shall be made if the result is negative or positive. The county
12 prosecuting attorney shall notify the victim of the right to such
13 disclosure. Such disclosure shall be accompanied by appropriate
14 counseling, including information regarding follow-up testing.

15 **Sec. 2.** RCW 70.24.340 and 1997 c 345 s 3 are each amended to read
16 as follows:

17 (1) Local health departments authorized under this chapter shall
18 conduct or cause to be conducted pretest counseling, HIV testing, and
19 posttest counseling of all persons:

20 (a) Convicted of a sexual offense under chapter 9A.44 RCW;

21 (b) Convicted of prostitution or offenses relating to prostitution
22 under chapter 9A.88 RCW; or

23 (c) Convicted of drug offenses under chapter 69.50 RCW if the court
24 determines at the time of conviction that the related drug offense is
25 one associated with the use of hypodermic needles.

26 (2) Such testing shall be conducted as soon as possible after
27 sentencing and shall be so ordered by the sentencing judge.

28 (3) This section applies only to offenses committed after March 23,
29 1988.

30 (4) A law enforcement officer, fire fighter, health care provider,
31 health care facility staff person, department of corrections' staff
32 person, jail staff person, a person rendering emergency care or
33 transportation, commonly known as a "good samaritan," as described in
34 RCW 4.24.300 and 4.24.310, or other categories of employment determined
35 by the board in rule to be at risk of substantial exposure to HIV, who
36 has experienced a substantial exposure to another person's bodily
37 fluids in the course of his or her employment, may request a state or
38 local public health officer to order pretest counseling, HIV testing,

1 and posttest counseling for the person whose bodily fluids he or she
2 has been exposed to. If the state or local public health officer
3 refuses to order counseling and testing under this subsection, the
4 person who made the request may petition the superior court for a
5 hearing to determine whether an order shall be issued. The hearing on
6 the petition shall be held within seventy-two hours of filing the
7 petition, exclusive of Saturdays, Sundays, and holidays. The standard
8 of review to determine whether the public health officer shall be
9 required to issue the order is whether substantial exposure occurred
10 and whether that exposure presents a possible risk of transmission of
11 the HIV virus as defined by the board by rule. Upon conclusion of the
12 hearing, the court shall issue the appropriate order.

13 The person who is subject to the state or local public health
14 officer's order to receive counseling and testing shall be given
15 written notice of the order promptly, personally, and confidentially,
16 stating the grounds and provisions of the order, including the factual
17 basis therefor. If the person who is subject to the order refuses to
18 comply, the state or local public health officer may petition the
19 superior court for a hearing. The hearing on the petition shall be
20 held within seventy-two hours of filing the petition, exclusive of
21 Saturdays, Sundays, and holidays. The standard of review for the order
22 is whether substantial exposure occurred and whether that exposure
23 presents a possible risk of transmission of the HIV virus as defined by
24 the board by rule. Upon conclusion of the hearing, the court shall
25 issue the appropriate order.

26 The state or local public health officer shall perform counseling
27 and testing under this subsection if he or she finds that the exposure
28 was substantial and presents a possible risk as defined by the board of
29 health by rule or if he or she is ordered to do so by a court.

30 The counseling and testing required under this subsection shall be
31 completed as soon as possible after the substantial exposure or after
32 an order is issued by a court, but shall begin not later than seventy-
33 two hours after the substantial exposure or an order is issued by the
34 court.

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