LEGISLATIVE BILL 819

Approved by the Governor March 30, 1994

Introduced by Health and Human Services Committee: Wesely, 26, Chairperson; Byars, 30; Day, 19; Dierks, 40; Horgan, 4; Vrtiska, 1

AN ACT relating to public health and welfare; to amend sections 71-501.02 and 71-506, Reissue Revised Statutes of Nebraska, 1943, and sections 71-502.04 and 71-503.01, Revised Statutes Supplement, 1992; to change provisions relating to services provided under the statewide acquired immunodeficiency syndrome program; to change reporting requirements regarding disease, illness, or poisoning; to provide for confidentiality of investigations; to provide a penalty; to require informed consent for certain tests; to provide powers and duties for the Department of Health; to state intent; to define terms; to provide for testing of certain patients for infectious disease; to provide for confidentiality of test results; to provide duties for certain health care provider agencies; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-501.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-501.02. The Department of Health may establish and administer a statewide acquired immunodeficiency syndrome program for the purpose of providing education, prevention, detection, and counseling services to protect the public health. In order to implement the program, the department may:

(1) Apply for, receive, and administer federal and other public and private funds and contract for services, equipment, and property as necessary to use such funds for the purposes specified in section 71-501.01 and this section;

(2) Provide education and training regarding acquired immunodeficiency syndrome and its related diseases and conditions to the general public and to health care providers. The department may charge fees based on administrative costs for such services. Any fees collected shall be deposited in the state treasury and shall be credited to the Department of Health Cash Fund;

(3) Provide resource referrals for medical care and social services to persons affected by acquired immunodeficiency syndrome and its related diseases and conditions;

(4) Contract or provide for voluntary, anonymous or confidential screening, testing, and counseling services. All sites providing such services pursuant to a contract with the department shall provide services on an anonymous basis if so requested by the individual seeking such services. ~~Such services shall be provided to the public without charge~~ The department may charge and permit its contractors to charge an administrative fee or may request donations to defer the cost of the services but shall not deny the services for failure to pay any administrative fee or for failure to make a donation;

(5) Cooperate with the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor for the purposes of research into and investigation of acquired immunodeficiency syndrome and its related diseases and conditions; and

(6) To the extent funds are available, offer services that are culturally and language specific upon request to persons identified as having tested positive for the human immunodeficiency virus infection. Such services shall include, but not be limited to, posttest counseling, partner notification, and such early intervention services as case management, behavior modification and support services, laboratory quantification of lymphocyte subsets, immunizations, Mantoux testing for tuberculosis, prophylactic treatment, and referral for other medical and social services. ~~Adopt and promulgate rules and regulations which prescribe standards for determining the eligibility of an individual to receive federal or state funds for medical or institutional care if such funds are disbursed by the department, for determining the eligibility of researchers to have access to epidemiologic data of the department, for laboratories for acquired immunodeficiency syndrome tests and test methods and techniques, and for the operation of counseling and testing sites.~~

Sec. 2. That section 71-502.04, Revised Statutes Supplement, 1992,

be amended to read as follows:

71-502.04. Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopical, cultural, immunological, serological, or other evidence of disease, illness, or poisoning as the Department of Health may from time to time specify shall promptly notify the official local health department or the Department of Health of such findings. ~~For purposes of this section, disease, illness, or poisoning shall not be interpreted to include human immunodeficiency virus antibody or antigen testing results, except that such person shall report statistical summaries of total human immunodeficiency virus tests conducted and the results of such tests. The department shall adopt and promulgate rules and regulations setting the methods, manner, and procedure for such reporting.~~

Each notification shall give the date and result of the test performed, the name and, when available, the age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. A legible copy of the laboratory report shall be deemed satisfactory notification.

All laboratory notifications required by this section shall be confidential and shall not be open to public inspection, except that the Director of Health, the director of the official local health department, or some person appointed by either director may discuss the notification with the attending physician.

Sec. 3. That section 71-503.01, Revised Statutes Supplement, 1992, be amended to read as follows:

71-503.01. Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health or any county or city board of health, local health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character.

In order to further the protection of public health, such reports and notifications may be disclosed by the Department of Health, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained. To further protect the public health, the Department of Health, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

The appropriate board, health department, agency, or official may: (1) Publish analyses of such reports and information for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (2) discuss the report or notification with the attending physician; and (3) make such investigation as deemed necessary.

Any medical practitioner, official health department, or other person making such reports or notifications shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications.

Sec. 4. That section 71-506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-506. Any person violating any of the provisions of sections 71-501 to 71-505 or sections 71-507 to 71-513 or section 5 of this act or sections 7 to 11 of this act shall be guilty of a Class V misdemeanor for each offense, except that any person who willfully or maliciously discloses, except as provided by law, the content of any reports, notifications, or resulting investigations made under section 71-502 and subject to the confidentiality provisions of section 71-503.01 shall be guilty of a Class III misdemeanor. The Attorney General or the county attorney may, in accordance with the laws

of the state governing injunctions and other process, maintain an action in the name of the state against any person or any private or public entity for violating ~~such~~ sections 71-501 to 71-505 or sections 71-507 to 71-513 or section 5 of this act or sections 7 to 11 of this act and the rules and regulations adopted and promulgated under such sections.

Sec. 5. (1) No person may be tested for the presence of the human immunodeficiency virus infection unless he or she has given written informed consent for the performance of such test. A parent of a minor child or a judicially appointed guardian may give such consent.

(2) The written informed consent shall provide:

(a) An explanation of the test, including the test's purposes, potential uses, and limitations, and the meaning of both positive and negative results;

(b) An explanation of the nature of the human immunodeficiency virus and acquired immunodeficiency syndrome, including the relationship between the test results and the diseases which are part of the syndrome;

(c) An explanation of the procedures to be followed, including the fact that the test is entirely voluntary; and

(d) Information concerning behavioral patterns known to expose a person to the possibility of contracting the human immunodeficiency virus and the methods for minimizing the risk of exposure.

(3) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. A health care provider shall confidentially refer such person to a site which provides anonymous testing.

(4) This section shall not apply to:

(a) The performance by a health care provider or a health facility of a human immunodeficiency virus test when the health care provider or health facility procures, processes, distributes, or uses a human body part for a purpose specified under the Uniform Anatomical Gift Act and such test is necessary to assure medical acceptability of such gift for the purposes intended;

(b) The performance by a health care provider or a health facility of a human immunodeficiency virus test when such test is performed with the consent and written authorization of the person being tested and such test is for insurance underwriting purposes, written information about the human immunodeficiency virus is provided, including, but not limited to, the identification and reduction of risks, the person is informed of the result of such test, and when the result is positive, the person is referred for posttest counseling;

(c) The performance of a human immunodeficiency virus test by licensed medical personnel of the Department of Correctional Services when the subject of the test is committed to such department. Posttest counseling shall be required for the subject if the test is positive. A person committed to the Department of Correctional Services shall be informed by the department (i) if he or she is being tested for the human immunodeficiency virus, (ii) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (iii) of the test result and the meaning of such result; or

(d) The performance of a human immunodeficiency virus test performed pursuant to section 29-2290, sections 71-507 to 71-513, or sections 7 to 11 of this act.

Sec. 6. The Department of Health shall adopt and promulgate rules and regulations which make the human immunodeficiency virus infection reportable by name in the same manner as communicable diseases under section 71-502.

Sec. 7. The Legislature hereby finds that health care providers are at risk of significant exposure to the blood and other body fluids of patients as a result of their work. The testing of such body fluids for the presence of infectious disease is necessary to provide postexposure risk-reduction methods and treatment, if necessary, for health care providers when there is a significant exposure to the body fluid of a patient and there are unresolved issues of consent by the patient to the testing of such fluids.

Sec. 8. For purposes of sections 7 to 11 of this act:

(1) Health care provider shall mean a person who provides care to a patient which is designed to improve the status of his or her health whether this care is rendered in the hospital or community setting and whether the provider is paid or voluntary. Health care provider shall not mean an emergency medical services provider as defined in section 71-507;

(2) Infectious disease or condition shall mean hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the Department of Health

may from time to time specify;

(3) Patient shall mean an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(4) Provider agency shall mean any health care facility or agency which is in the business of providing health care services; and

(5) Significant exposure to blood or other body fluid shall mean a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other materials known to transmit infectious diseases that results from providing care.

Sec. 9. (1) If a health care provider has a significant exposure to the blood or body fluid of a patient as determined and documented by a designated representative of the provider agency according to a written protocol:

(a) The patient shall be informed that he or she has the right to consent to the diagnostic testing of his or her body fluid for presence of an infectious disease or condition and that if the patient refuses to grant consent, such refusal shall be communicated to the health care provider;

(b) If the patient is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's next of kin or legal guardian;

(c) If the patient or patient's next of kin or legal guardian refuses to grant consent for such testing and a sample of the patient's blood or other body fluid is available, the sample shall be tested for the presence of infectious disease or condition. If an available sample of blood or other body fluid is tested without consent, the patient or patient's next of kin or legal guardian shall be notified that the available sample is being tested and informed of the purpose of the test and test results. If the human immunodeficiency virus test result is positive, the health care provider or provider agency shall refer the patient for posttest counseling. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood or other body fluid is not available, the health care provider or provider agency may petition the district court for an order mandating that the testing be performed; or

(d) If a patient dies without the opportunity to consent to such testing, testing for the presence of an infectious disease or condition shall be conducted.

(2) The provider agency shall be responsible for the cost of such diagnostic testing.

(3) Routine drawing of a sample of blood or other body fluid for the purpose of testing for infectious disease or conditions without obtaining consent shall be prohibited.

Sec. 10. (1) Information concerning any patient or test results obtained under section 9 of this act shall be maintained as confidential by the health care facility that received or tested the patient, the patient's attending physician, the health care provider, and the provider agency except as provided by section 71-503.01 and the rules and regulations adopted and promulgated pursuant to such section. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such section.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

Sec. 11. Provider agencies shall adopt written procedures regarding infectious diseases or conditions which address pre-exposure safeguards and postexposure risk-reduction methods. All records regarding any tests made as a result of a significant exposure of a health care provider to blood or other body fluid shall be kept only for the purpose of medical surveillance of an occupational risk of the health care provider.

Sec. 12. Sections 3, 12, and 13 of this act shall become operative on their effective date. The other sections of this act shall become operative on January 1, 1995.

Sec. 13. That original section 71-503.01, Revised Statutes Supplement, 1992, is repealed.

Sec. 14. That original sections 71-501.02 and 71-506, Reissue Revised Statutes of Nebraska, 1943, and section 71-502.04, Revised Statutes Supplement, 1992, are repealed.