CHAPTER 23-07.5
BLOODBORNE PATHOGEN TESTING

23-07.5-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a micro-organism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, laboratory personnel, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, bodily fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other bodily fluids that are potentially infectious as determined under guidelines of the United States public health service.
4. "Health care" means any services included in the furnishing to an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
5. "Health care provider" means an individual licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or any commercial or research laboratory that handles blood, bodily fluid, or tissues.
6. "Informed consent for testing" means that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.
7. "Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.
8. "Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.

23-07.5-02. Informed consent for testing - Exception.

1. Except when testing is otherwise permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject an individual who is the source of an exposure to a test for bloodborne pathogens unless the subject of the test or the subject's personal representative if the subject is a minor or is incapacitated first provides informed consent for testing.
2. If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of bloodborne pathogens, without that individual's consent, if a physician or other qualified health care provider based on available information determines and certifies in writing that the individual had an exposure and before testing the test subject is informed that the test subject's blood may be tested for the presence of bloodborne pathogens; that the test results may not be disclosed without the test subject's authorization, except to the exposed individual, the individual's health care provider, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the

identity of the test subject except for the purpose of having the test performed; and that a record of the test results may be kept in the exposed individual's medical record only if the record does not reveal the test subject's identity. Each exposed individual who had an exposure and to whom test results are disclosed must first be given a document indicating the exposed individual's understanding that the exposed individual may not disclose the test subject's identity and that disclosing this information constitutes a class C felony.

3. If an individual who is the subject of an exposure is incapable of giving informed consent for testing under this section, that consent may be obtained from the individual's personal representative. If an individual who is the subject of an exposure dies without an opportunity to consent to testing, collection of appropriate specimens and testing for the presence of bloodborne pathogens must be conducted as soon as reasonably possible. Results of these tests must be provided to the physician providing care for the individual who experienced the exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the deceased individual which are in the facility's control as soon as reasonably possible. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the deceased individual shall attempt to obtain testing results of bloodborne pathogens of the deceased individual as soon as reasonably possible from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the exposure.
4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3 must be conducted in a reasonably expedient manner. The district court in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing the individual who was the source of an exposure to have blood drawn to be tested for bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court shall issue an order requiring testing under this subsection if:
    a. The court finds probable cause to believe that the individual petitioning for the testing had an exposure with the test subject;
    b. The petition substitutes a pseudonym for the true name of the test subject;
    c. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
    d. The proceedings are conducted in camera; and
    e. The court imposes appropriate safeguards against unauthorized disclosure which must specify the individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.
6. A health care provider who subjects an individual to an exposure must notify the individual of the exposure. A health care provider witnessing an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the

provider may be subject. The knowing failure to inform an individual of an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing unless otherwise provided by subdivision b of subsection 10 of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

23-07.5-03. Written consent to disclosure.

Repealed by S.L. 2003, ch. 211, § 27.

23-07.5-04. Record maintenance.

A health care provider who collects a specimen of body fluids or tissues for the purpose of testing for the presence of bloodborne pathogens caused by an exposure shall obtain from the test subject or the test subject's personal representative if the subject is a minor or is incapacitated, informed consent for testing unless testing is otherwise authorized by law. In addition, the health care provider shall maintain a record of the test results obtained.

23-07.5-05. Confidentiality of test results.

Repealed by S.L. 2003, ch. 211, § 27.

23-07.5-06. Expanded disclosure of test results prohibited.

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. An exposed individual to whom the results of a test for bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as permitted under subsection 3, or as otherwise authorized by law.
3. If the test results are disclosed under this chapter to a law enforcement officer who was exposed to a bloodborne pathogen, the officer may disclose the test results to any other law enforcement officer who has direct physical contact with the test subject, if in the professional judgment of the officer the disclosure is necessary for the health and safety of the other officer and the disclosure is limited to the minimum amount of information needed to protect the health and safety of that officer.

23-07.5-07. Civil liability.

An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

23-07.5-08. Penalty.

A person who knowingly discloses the results of a blood test in violation of this chapter is guilty of a class C felony, if the offense is committed with intent to disclose the identity of the individual who was tested.