

Amendment to SB 59

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 New Subdivision; First Responder Exposure Blood Testing. Amend RSA 141-G by inserting  
4 after section 7 the following new subdivision:

5 First Responder and Healthcare Provider Exposure Blood Testing  
6 141-G:8 Definitions. As used in this subdivision:

7 I. "Advanced practice registered nurse" means a registered nurse licensed by the state of  
8 New Hampshire pursuant to RSA 326-B:18

9 II. "Applicant" means a person who applies for a testing order or on whose behalf an  
10 application for a testing order is made.

11 III. "Bloodborne pathogens" means pathogenic microorganisms that are present in human  
12 blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B  
13 virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

14 IV. "Court" means the superior court.

15 V. "Commissioner" means the commissioner of the department of health and human  
16 services.

17 VI. "Healthcare provider" means all persons working in a healthcare setting who have the  
18 potential for exposure to infectious materials, including, but not limited to, body substances.

19 VII. "Physician" means a medical practitioner licensed by the state of New Hampshire  
20 pursuant to RSA 329:12.

21 VIII. "Physician assistant" means a physician assistant licensed by the state of New  
22 Hampshire pursuant to RSA 328-D:2

23 IX. "Source individual" means any person whose blood, body fluids, tissue, or organs were  
24 specifically identified as the source of a bloodborne pathogen exposure to an applicant under this  
25 subdivision.

26 X. "Test results" means results of an analysis conducted for the purposes referred to in this  
27 subdivision.

28 XI. "Testing order" means an order under RSA 141-G:11, I.

29 XII. "Unprotected exposure" includes instances of commingling of blood or other potentially  
30 infectious material of a source individual and an applicant, which is capable of transmitting a  
31 bloodborne pathogen or any other such type of exposure that may be designated by the  
32 commissioner by rule adopted under RSA 141-G:19.

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1       141-G:9 Notice of Intention. A person who intends to apply under RSA 141-G:10, I for a testing  
2 order after an unprotected exposure to a source individual shall provide notice of that intention to  
3 the source individual in accordance with rules adopted under RSA 141-G:19.

4       141-G:10 Application for Testing Order.

5       I. Subject to RSA 141-G:9, a person may apply to the court for a testing order if such person  
6 has had an unprotected exposure to blood or body fluids from a source individual in any of the  
7 following circumstances:

8           (a) While providing emergency health services;

9           (b) While performing his or her duties as a firefighter, emergency medical technician,  
10 paramedic, or other emergency medical care provider, police officer, probation officer, peace officer,  
11 or a healthcare provider; or

12           (c) While being involved in activities defined in rules adopted under RSA 141-G:19.

13       II. If a person who had an unprotected exposure to blood or body fluids from a source  
14 individual in a circumstance referred to in paragraph I is unable to apply for a testing order under  
15 paragraph I, a representative of the person may apply on behalf of the person.

16       III. An application for a testing order shall:

17           (a) Include a medical evaluation by a physician, physician assistant, or advanced  
18 practice registered nurse confirming that the exposure to the source individual puts the applicant at  
19 reasonable risk for a possible exposure to a bloodborne pathogen;

20           (b) Be made within 20 days of the date of the exposure referred to in paragraph I;

21           (c) Be made in accordance with the rules adopted under this subdivision; and

22           (d) Be served on the source individual at least 4 days before the court hears the  
23 application.

24       IV. The court shall hear an application for a testing order as soon as practicable and may,  
25 on application or on the court's own motion, order that the public is excluded from all or part of a  
26 hearing.

27       V. If giving notice is impossible or impracticable, the court may hear ex parte an application  
28 made under paragraph I without notice to the source individual if the applicant satisfies the court  
29 by a preponderance of the evidence that complying with paragraph II or subparagraph III(d) within  
30 a reasonable time is impossible or impracticable and is necessary to decrease or eliminate the risk to  
31 the health of the applicant as a result of the exposure.

32       141-G:11 Testing Order.

33       I. On an application made under RSA 141-G:10, I, the court may issue an order requiring  
34 testing if the court, having considered the medical evaluation and any other evidence the court  
35 considers relevant, is satisfied of the following:

36           (a) The applicant has complied with RSA 141-G:9 and RSA 141-G:10;

37           (b) The applicant has had an unprotected exposure to blood or bodily fluids from the

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1 source individual in one of the circumstances set out in RSA 141-G:10, I;

2 (c) There are reasonable grounds to believe that the applicant may have been exposed,  
3 as a result of the exposure, to a bloodborne pathogen that causes a communicable disease;

4 (d) An analysis of the applicant's bodily fluids would not determine, in a timely manner,  
5 whether the applicant has been infected by a bloodborne pathogen;

6 (e) Taking a blood sample from the source individual would not endanger the source  
7 individual's life or health;

8 (f) The information to be obtained under the testing order cannot reasonably be  
9 obtained in any other manner; and

10 (g) The testing order is necessary to decrease or eliminate the risk to the health of the  
11 applicant as a result of the exposure.

12 II. A testing order:

13 (a) Shall require the source individual, within the time specified in the order, to attend  
14 the health facility identified in the order so that a blood sample may be taken from the source  
15 individual for the purpose of determining whether the source individual is infected with a  
16 bloodborne pathogen that causes a communicable disease listed in rules adopted under RSA 141-  
17 G:19.

18 (b) Shall require the health facility identified in the order to ensure that a blood sample  
19 from the source individual is taken.

20 (c) Shall require the applicant to have the testing order served and any other  
21 information required by rules, within the time specified in the order, on the source individual and  
22 the health facility identified in the order.

23 III. If the source individual named in a testing order is a minor or an incapacitated adult,  
24 the testing order shall require the guardian of the minor or the person responsible for the  
25 incapacitated adult under rules adopted by the commissioner under RSA 141-G:19 to take all  
26 reasonable steps to ensure that the source individual complies with the testing order.

27 IV. A decision of the court under paragraph I may be appealed to the supreme court.

28 141-G:12 Obligations of Person Who Takes Sample. A person at a health facility who, pursuant  
29 to a testing order, takes from the source individual a blood sample shall:

30 (a) Deliver the sample, a copy of the testing order, and any other required information  
31 to a laboratory licensed under RSA 151 for the purpose of having the sample analyzed; and

32 (b) Not use the sample for any purpose or test the sample for any organisms or  
33 substances other than those stated in the order.

34 141-G:13 Test Results.

35 I. Test results shall be promptly provided by the licensed laboratory in a written report to  
36 the applicant's physician, physician assistant, or advanced practice registered nurse and the source  
37 individual's physician, physician assistant, or advanced practice registered nurse.

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1           II. The applicant's physician, physician assistant, or advanced practice registered nurse  
2 shall notify the applicant of the test results.

3           III. The source individual's physician, physician assistant, or advanced practice registered  
4 nurse shall notify the source individual of the test results.

5           141-G:14 Confidentiality.

6           I. No person shall use or disclose any information concerning an applicant or a source  
7 individual if that information becomes known to the person in the course of carrying out his or her  
8 responsibilities under this subdivision or as a result of obtaining a testing order.

9           II. Paragraph I shall not apply to disclosure in the following circumstances:

10           (a) In the course of carrying out a duty imposed or exercising a power conferred under  
11 this subdivision.

12           (b) As required by law.

13           (c) With the consent of the person who is the subject of the information.

14           (d) In the course of a consultation between qualified health professionals.

15           (e) In the case of information about a minor to a guardian of that minor.

16           (f) As provided in rules adopted under RSA 141-G:19.

17           III. No person who is subpoenaed or otherwise compelled to give evidence in a legal  
18 proceeding, other than a proceeding for the purposes of RSA 141-G:11, I or an appeal under RSA  
19 141-G:11, IV, shall disclose information described in paragraph I, unless the court first examines  
20 the information, with the public excluded, and determines that the information may be disclosed.  
21 The court shall consider:

22           (a) The probative value of the information;

23           (b) The relevance of the information to the proceeding, and

24           (c) The effect of the disclosure on the privacy of the person who is the subject of the  
25 information.

26           141-G:15 Costs. Subject to rules adopted by the commissioner under RSA 141-G:19, an  
27 applicant's workers' compensation insurance carrier shall be responsible for paying the costs  
28 relating to a testing order.

29           141-G:16 Immunity. No legal proceeding for damages may be commenced or maintained  
30 against a person who in good faith engages in any act or omission:

31           I. In the exercise or intended exercise of any power under this subdivision;

32           II. In the performance or intended performance of any duty under this subdivision; or

33           III. In the taking, under a testing order, of a sample from a source individual.

34           141-G:17 Notice and Service.

35           I. All documents or notifications required to be given to or served on a person shall be given  
36 or served in accordance with the rules adopted by the commissioner, in collaboration with the  
37 judicial branch, under RSA 141-G:19.

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1           II. If a person is required under this subdivision to provide a notice to or serve a document  
2 on another person, notice or service may be made on an authorized representative of the source  
3 individual.

4           141-G:18 Penalties.

5           I. Any source individual who knowingly contravenes a testing order shall be guilty of a  
6 misdemeanor.

7           II. Any person who violates the provisions of RSA 141-G:14, shall be guilty of a  
8 misdemeanor.

9           III. If an offense under this subdivision continues for more than one day, separate fines,  
10 each not exceeding the maximum fine for that offense, may be imposed for each day the offense  
11 continues.

12           IV. A prosecution for an offense under this subdivision shall be commenced within 2 years  
13 after the date on which the act or omission that is alleged to constitute the offense occurred.

14           141-G:19 Rules.

15           I. The commissioner shall be responsible for the statewide supervision of first responder  
16 and healthcare provider exposure blood testing.

17           II. The commissioner shall adopt rules under RSA 541-A, relative to:

18               (a) Defining diseases or conditions as bloodborne pathogens for the purposes of this  
19 subdivision.

20               (b) Providing the notice required under RSA 141-G:9, including developing forms for  
21 that purpose.

22               (c) Identifying circumstances and activities eligible for a blood testing order under RSA  
23 141-G:10, I.

24               (d) Developing applications for testing orders, including forms for that purpose.

25               (e) Medical evaluation reports pursuant to RSA 141-G:10, III(a).

26               (f) The taking and analysis of blood samples under the authority of a testing order.

27               (g) Identifying eligible health facilities.

28               (h) Information required for completing a testing order.

29               (i) The reporting procedures for test results if the source individual's physician,  
30 physician assistant, or advanced practice registered nurse is not known or the source individual  
31 does not have one.

32               (j) Circumstances when confidential information under this subdivision may be  
33 disclosed.

34               (k) Circumstances in which the government may be responsible for paying the costs  
35 referred to in RSA 141-G:15.

36               (l) Notice and service, including identifying authorized persons who may be notified or  
37 served instead of the source individual of the notice or service.

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1        2 Effective Date. This act shall take effect 60 days after its passage.