

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 4398

(SENATE AUTHORS: HOFFMAN)

DATE
02/29/2024

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Introduction and first reading
Referred to Human Services

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human services; expanding application of bloodborne pathogen testing
1.3 to nonsecure direct care and treatment programming; correcting priority admissions
1.4 task force member name; amending Minnesota Statutes 2022, sections 246.71,
1.5 subdivisions 3, 4, 5; 246.711; 246.712, subdivisions 1, 2; 246.713; 246.714;
1.6 246.715, subdivisions 1, 2, 3; 246.716, subdivisions 1, 2; 246.717; 246.72; 246.721;
1.7 246.722; Laws 2023, chapter 61, article 8, section 13, subdivision 2.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2022, section 246.71, subdivision 3, is amended to read:

1.10 Subd. 3. **Patient.** "Patient" means any person who is receiving treatment from or
1.11 committed to a ~~secure~~ state-operated treatment facility program, including the Minnesota
1.12 Sex Offender Program.

1.13 Sec. 2. Minnesota Statutes 2022, section 246.71, subdivision 4, is amended to read:

1.14 Subd. 4. **Employee of a ~~secure treatment facility~~ state-operated treatment program**
1.15 **or employee.** "Employee of a ~~secure treatment facility~~ state-operated treatment program"
1.16 or "employee" means an employee of ~~the Minnesota Security Hospital or a secure treatment~~
1.17 ~~facility operated by the Minnesota Sex Offender Program~~ any state-operated treatment
1.18 program.

1.19 Sec. 3. Minnesota Statutes 2022, section 246.71, subdivision 5, is amended to read:

1.20 Subd. 5. **~~Secure treatment facility~~ State-operated treatment program.** "~~Secure~~
1.21 ~~treatment facility~~ State-operated treatment program" means ~~the Minnesota Security Hospital~~
1.22 ~~and the Minnesota Sex Offender Program facility in Moose Lake and any portion of the~~

2.1 ~~Minnesota Sex Offender Program operated by the Minnesota Sex Offender Program at the~~
 2.2 ~~Minnesota Security Hospital~~ any state-operated treatment program under the jurisdiction
 2.3 of the executive board, including the Minnesota Sex Offender Program, community
 2.4 behavioral health hospitals, crisis centers, residential facilities, outpatient services, and other
 2.5 community-based services under the executive board's control.

2.6 Sec. 4. Minnesota Statutes 2022, section 246.711, is amended to read:

2.7 **246.711 CONDITIONS FOR APPLICABILITY OF PROCEDURES.**

2.8 Subdivision 1. **Request for procedures.** An employee of a ~~secure treatment facility~~
 2.9 state-operated treatment program may request that the procedures of sections 246.71 to
 2.10 246.722 be followed when the employee may have experienced a significant exposure to a
 2.11 patient.

2.12 Subd. 2. **Conditions.** The ~~secure treatment facility~~ state-operated treatment program
 2.13 shall follow the procedures in sections 246.71 to 246.722 when all of the following conditions
 2.14 are met:

2.15 (1) a licensed physician, advanced practice registered nurse, or physician assistant
 2.16 determines that a significant exposure has occurred following the protocol under section
 2.17 246.721;

2.18 (2) the licensed physician, advanced practice registered nurse, or physician assistant for
 2.19 the employee needs the patient's blood-borne pathogens test results to begin, continue,
 2.20 modify, or discontinue treatment in accordance with the most current guidelines of the
 2.21 United States Public Health Service, because of possible exposure to a blood-borne pathogen;
 2.22 and

2.23 (3) the employee consents to providing a blood sample for testing for a blood-borne
 2.24 pathogen.

2.25 Sec. 5. Minnesota Statutes 2022, section 246.712, subdivision 1, is amended to read:

2.26 Subdivision 1. **Information to patient.** (a) Before seeking any consent required by the
 2.27 procedures under sections 246.71 to 246.722, a ~~secure treatment facility~~ state-operated
 2.28 treatment program shall inform the patient that the patient's blood-borne pathogen test
 2.29 results, without the patient's name or other uniquely identifying information, shall be reported
 2.30 to the employee if requested and that test results collected under sections 246.71 to 246.722
 2.31 are for medical purposes as set forth in section 246.718 and may not be used as evidence

3.1 in any criminal proceedings or civil proceedings, except for procedures under sections
3.2 144.4171 to 144.4186.

3.3 (b) The ~~secure treatment facility~~ state-operated treatment program shall inform the patient
3.4 of the insurance protections in section 72A.20, subdivision 29.

3.5 (c) The ~~secure treatment facility~~ state-operated treatment program shall inform the patient
3.6 that the patient may refuse to provide a blood sample and that the patient's refusal may result
3.7 in a request for a court order to require the patient to provide a blood sample.

3.8 (d) The ~~secure treatment facility~~ state-operated treatment program shall inform the patient
3.9 that the ~~secure treatment facility~~ state-operated treatment program will advise the employee
3.10 of a ~~secure treatment facility~~ state-operated treatment program of the confidentiality
3.11 requirements and penalties before the employee's health care provider discloses any test
3.12 results.

3.13 Sec. 6. Minnesota Statutes 2022, section 246.712, subdivision 2, is amended to read:

3.14 Subd. 2. **Information to ~~secure treatment facility~~ state-operated treatment program**
3.15 **employee.** (a) Before disclosing any information about the patient, the ~~secure treatment~~
3.16 ~~facility~~ state-operated treatment program shall inform the employee of a ~~secure treatment~~
3.17 ~~facility~~ state-operated treatment program of the confidentiality requirements of section
3.18 246.719 and that the person may be subject to penalties for unauthorized release of test
3.19 results about the patient under section 246.72.

3.20 (b) The ~~secure treatment facility~~ state-operated treatment program shall inform the
3.21 employee of the insurance protections in section 72A.20, subdivision 29.

3.22 Sec. 7. Minnesota Statutes 2022, section 246.713, is amended to read:

3.23 **246.713 DISCLOSURE OF POSITIVE BLOOD-BORNE PATHOGEN TEST**
3.24 **RESULTS.**

3.25 If the conditions of sections 246.711 and 246.712 are met, the ~~secure treatment facility~~
3.26 state-operated treatment program shall ask the patient if the patient has ever had a positive
3.27 test for a blood-borne pathogen. The ~~secure treatment facility~~ state-operated treatment
3.28 program must attempt to get existing test results under this section before taking any steps
3.29 to obtain a blood sample or to test for blood-borne pathogens. The ~~secure treatment facility~~
3.30 state-operated treatment program shall disclose the patient's blood-borne pathogen test
3.31 results to the employee without the patient's name or other uniquely identifying information.

4.1 Sec. 8. Minnesota Statutes 2022, section 246.714, is amended to read:

4.2 **246.714 CONSENT PROCEDURES GENERALLY.**

4.3 (a) For purposes of sections 246.71 to 246.722, whenever the ~~secure treatment facility~~
4.4 state-operated treatment program is required to seek consent, the ~~secure treatment facility~~
4.5 state-operated treatment program shall obtain consent from a patient or a patient's
4.6 representative consistent with other law applicable to consent.

4.7 (b) Consent is not required if the ~~secure treatment facility~~ state-operated treatment
4.8 program has made reasonable efforts to obtain the representative's consent and consent
4.9 cannot be obtained within 24 hours of a significant exposure.

4.10 (c) If testing of available blood occurs without consent because the patient is unconscious
4.11 or unable to provide consent, and a representative cannot be located, the ~~secure treatment~~
4.12 ~~facility~~ state-operated treatment program shall provide the information required in section
4.13 246.712 to the patient or representative whenever it is possible to do so.

4.14 (d) If a patient dies before an opportunity to consent to blood collection or testing under
4.15 sections 246.71 to 246.722, the ~~secure treatment facility~~ state-operated treatment program
4.16 does not need consent of the patient's representative for purposes of sections 246.71 to
4.17 246.722.

4.18 Sec. 9. Minnesota Statutes 2022, section 246.715, subdivision 1, is amended to read:

4.19 Subdivision 1. **Procedures with consent.** If a sample of the patient's blood is available,
4.20 the ~~secure treatment facility~~ state-operated treatment program shall ensure that blood is
4.21 tested for blood-borne pathogens with the consent of the patient, provided the conditions
4.22 in sections 246.711 and 246.712 are met.

4.23 Sec. 10. Minnesota Statutes 2022, section 246.715, subdivision 2, is amended to read:

4.24 Subd. 2. **Procedures without consent.** If the patient has provided a blood sample, but
4.25 does not consent to blood-borne pathogens testing, the ~~secure treatment facility~~ state-operated
4.26 treatment program shall ensure that the blood is tested for blood-borne pathogens if the
4.27 employee requests the test, provided all of the following criteria are met:

4.28 (1) the employee and ~~secure treatment facility~~ state-operated treatment program have
4.29 documented exposure to blood or body fluids during performance of the employee's work
4.30 duties;

5.1 (2) a licensed physician, advanced practice registered nurse, or physician assistant has
5.2 determined that a significant exposure has occurred under section 246.711 and has
5.3 documented that blood-borne pathogen test results are needed for beginning, modifying,
5.4 continuing, or discontinuing medical treatment for the employee as recommended by the
5.5 most current guidelines of the United States Public Health Service;

5.6 (3) the employee provides a blood sample for testing for blood-borne pathogens as soon
5.7 as feasible;

5.8 (4) the ~~secure treatment facility~~ state-operated treatment program asks the patient to
5.9 consent to a test for blood-borne pathogens and the patient does not consent;

5.10 (5) the ~~secure treatment facility~~ state-operated treatment program has provided the patient
5.11 and the employee with all of the information required by section 246.712; and

5.12 (6) the ~~secure treatment facility~~ state-operated treatment program has informed the
5.13 employee of the confidentiality requirements of section 246.719 and the penalties for
5.14 unauthorized release of patient information under section 246.72.

5.15 Sec. 11. Minnesota Statutes 2022, section 246.715, subdivision 3, is amended to read:

5.16 Subd. 3. **Follow-up.** The ~~secure treatment facility~~ state-operated treatment program shall
5.17 inform the patient whose blood was tested of the results. The ~~secure treatment facility~~
5.18 state-operated treatment program shall inform the employee's health care provider of the
5.19 patient's test results without the patient's name or other uniquely identifying information.

5.20 Sec. 12. Minnesota Statutes 2022, section 246.716, subdivision 1, is amended to read:

5.21 Subdivision 1. **Procedures with consent.** (a) If a blood sample is not otherwise available,
5.22 the ~~secure treatment facility~~ state-operated treatment program shall obtain consent from the
5.23 patient before collecting a blood sample for testing for blood-borne pathogens. The consent
5.24 process shall include informing the patient that the patient may refuse to provide a blood
5.25 sample and that the patient's refusal may result in a request for a court order under subdivision
5.26 2 to require the patient to provide a blood sample.

5.27 (b) If the patient consents to provide a blood sample, the ~~secure treatment facility~~
5.28 state-operated treatment program shall collect a blood sample and ensure that the sample
5.29 is tested for blood-borne pathogens.

5.30 (c) The ~~secure treatment facility~~ state-operated treatment program shall inform the
5.31 employee's health care provider about the patient's test results without the patient's name

6.1 or other uniquely identifying information. The ~~secure treatment facility~~ state-operated
6.2 treatment program shall inform the patient of the test results.

6.3 (d) If the patient refuses to provide a blood sample for testing, the ~~secure treatment~~
6.4 ~~facility~~ state-operated treatment program shall inform the employee of the patient's refusal.

6.5 Sec. 13. Minnesota Statutes 2022, section 246.716, subdivision 2, is amended to read:

6.6 Subd. 2. **Procedures without consent.** (a) A ~~secure treatment facility~~ state-operated
6.7 treatment program or an employee of a ~~secure treatment facility~~ state-operated treatment
6.8 program may bring a petition for a court order to require a patient to provide a blood sample
6.9 for testing for blood-borne pathogens. The petition shall be filed in the district court in the
6.10 county where the patient is receiving treatment from the ~~secure treatment facility~~
6.11 state-operated treatment program. The ~~secure treatment facility~~ state-operated treatment
6.12 program shall serve the petition on the patient three days before a hearing on the petition.
6.13 The petition shall include one or more affidavits attesting that:

6.14 (1) the ~~secure treatment facility~~ state-operated treatment program followed the procedures
6.15 in sections 246.71 to 246.722 and attempted to obtain blood-borne pathogen test results
6.16 according to those sections;

6.17 (2) a licensed physician, advanced practice registered nurse, or physician assistant
6.18 knowledgeable about the most current recommendations of the United States Public Health
6.19 Service has determined that a significant exposure has occurred to the employee of a ~~secure~~
6.20 ~~treatment facility~~ state-operated treatment program under section 246.721; and

6.21 (3) a physician, advanced practice registered nurse, or physician assistant has documented
6.22 that the employee has provided a blood sample and consented to testing for blood-borne
6.23 pathogens and blood-borne pathogen test results are needed for beginning, continuing,
6.24 modifying, or discontinuing medical treatment for the employee under section 246.721.

6.25 (b) Facilities shall cooperate with petitioners in providing any necessary affidavits to
6.26 the extent that facility staff can attest under oath to the facts in the affidavits.

6.27 (c) The court may order the patient to provide a blood sample for blood-borne pathogen
6.28 testing if:

6.29 (1) there is probable cause to believe the employee of a ~~secure treatment facility~~
6.30 state-operated treatment program has experienced a significant exposure to the patient;

7.1 (2) the court imposes appropriate safeguards against unauthorized disclosure that must
7.2 specify the persons who have access to the test results and the purposes for which the test
7.3 results may be used;

7.4 (3) a licensed physician, advanced practice registered nurse, or physician assistant for
7.5 the employee of a ~~secure treatment facility~~ state-operated treatment program needs the test
7.6 results for beginning, continuing, modifying, or discontinuing medical treatment for the
7.7 employee; and

7.8 (4) the court finds a compelling need for the test results. In assessing compelling need,
7.9 the court shall weigh the need for the court-ordered blood collection and test results against
7.10 the interests of the patient, including, but not limited to, privacy, health, safety, or economic
7.11 interests. The court shall also consider whether involuntary blood collection and testing
7.12 would serve the public interests.

7.13 (d) The court shall conduct the proceeding in camera unless the petitioner or the patient
7.14 requests a hearing in open court and the court determines that a public hearing is necessary
7.15 to the public interest and the proper administration of justice.

7.16 (e) The patient may arrange for counsel in any proceeding brought under this subdivision.

7.17 Sec. 14. Minnesota Statutes 2022, section 246.717, is amended to read:

7.18 **246.717 NO DISCRIMINATION.**

7.19 A ~~secure treatment facility~~ state-operated treatment program shall not withhold care or
7.20 treatment on the requirement that the patient consent to blood-borne pathogen testing under
7.21 sections 246.71 to 246.722.

7.22 Sec. 15. Minnesota Statutes 2022, section 246.72, is amended to read:

7.23 **246.72 PENALTY FOR UNAUTHORIZED RELEASE OF INFORMATION.**

7.24 Unauthorized release of the patient's name or other uniquely identifying information
7.25 under sections 246.71 to 246.722 is subject to the remedies and penalties under sections
7.26 13.08 and 13.09. This section does not preclude private causes of action against an individual,
7.27 state agency, statewide system, political subdivision, or person responsible for releasing
7.28 private data, or confidential or private information on the ~~inmate~~ patient.

8.1 Sec. 16. Minnesota Statutes 2022, section 246.721, is amended to read:

8.2 **246.721 PROTOCOL FOR EXPOSURE TO BLOOD-BORNE PATHOGENS.**

8.3 (a) A ~~secure treatment facility~~ state-operated treatment program shall follow applicable
8.4 Occupational Safety and Health Administration guidelines under Code of Federal
8.5 Regulations, title 29, part 1910.1030, for blood-borne pathogens.

8.6 (b) Every ~~secure treatment facility~~ state-operated treatment program shall adopt and
8.7 follow a postexposure protocol for employees at a ~~secure treatment facility~~ state-operated
8.8 treatment program who have experienced a significant exposure. The postexposure protocol
8.9 must adhere to the most current recommendations of the United States Public Health Service
8.10 and include, at a minimum, the following:

8.11 (1) a process for employees to report an exposure in a timely fashion;

8.12 (2) a process for an infectious disease specialist, or a licensed physician, advanced
8.13 practice registered nurse, or physician assistant who is knowledgeable about the most current
8.14 recommendations of the United States Public Health Service in consultation with an infectious
8.15 disease specialist, (i) to determine whether a significant exposure to one or more blood-borne
8.16 pathogens has occurred, and (ii) to provide, under the direction of a licensed physician,
8.17 advanced practice registered nurse, or physician assistant, a recommendation or
8.18 recommendations for follow-up treatment appropriate to the particular blood-borne pathogen
8.19 or pathogens for which a significant exposure has been determined;

8.20 (3) if there has been a significant exposure, a process to determine whether the patient
8.21 has a blood-borne pathogen through disclosure of test results, or through blood collection
8.22 and testing as required by sections 246.71 to 246.722;

8.23 (4) a process for providing appropriate counseling prior to and following testing for a
8.24 blood-borne pathogen regarding the likelihood of blood-borne pathogen transmission and
8.25 follow-up recommendations according to the most current recommendations of the United
8.26 States Public Health Service, recommendations for testing, and treatment;

8.27 (5) a process for providing appropriate counseling under clause (4) to the employee of
8.28 a ~~secure treatment facility~~ state-operated treatment program and to the patient; and

8.29 (6) compliance with applicable state and federal laws relating to data practices,
8.30 confidentiality, informed consent, and the patient bill of rights.

9.1 Sec. 17. Minnesota Statutes 2022, section 246.722, is amended to read:

9.2 **246.722 IMMUNITY.**

9.3 A ~~secure treatment facility~~ state-operated treatment program, licensed physician, advanced
 9.4 practice registered nurse, physician assistant, and designated health care personnel are
 9.5 immune from liability in any civil, administrative, or criminal action relating to the disclosure
 9.6 of test results of a patient to an employee of a ~~secure treatment facility~~ state-operated
 9.7 treatment program and the testing of a blood sample from the patient for blood-borne
 9.8 pathogens if a good faith effort has been made to comply with sections 246.71 to 246.722.

9.9 Sec. 18. Laws 2023, chapter 61, article 8, section 13, subdivision 2, is amended to read:

9.10 Subd. 2. **Membership.** (a) The task force shall consist of the following members,
 9.11 appointed as follows:

9.12 (1) a member appointed by the governor;

9.13 (2) the commissioner of human services, or a designee;

9.14 (3) a member representing Department of Human Services direct care and treatment
 9.15 services who has experience with civil commitments, appointed by the commissioner of
 9.16 human services;

9.17 (4) the ombudsman for mental health and developmental disabilities;

9.18 (5) a hospital representative, appointed by the Minnesota Hospital Association;

9.19 (6) a county representative, appointed by the Association of Minnesota Counties;

9.20 (7) a county social services representative, appointed by the Minnesota Association of
 9.21 County Social Service Administrators;

9.22 (8) a member appointed by the ~~Minnesota Civil Commitment Defense Panel~~ Hennepin
 9.23 County Commitment Defense Project;

9.24 (9) a county attorney, appointed by the Minnesota County Attorneys Association;

9.25 (10) a county sheriff, appointed by the Minnesota Sheriffs' Association;

9.26 (11) a member appointed by the Minnesota Psychiatric Society;

9.27 (12) a member appointed by the Minnesota Association of Community Mental Health
 9.28 Programs;

9.29 (13) a member appointed by the National Alliance on Mental Illness Minnesota;

9.30 (14) the Minnesota Attorney General;

10.1 (15) three individuals from organizations representing racial and ethnic groups that are
10.2 overrepresented in the criminal justice system, appointed by the commissioner of corrections;
10.3 and

10.4 (16) one member of the public with lived experience directly related to the task force's
10.5 purposes, appointed by the governor.

10.6 (b) Appointments must be made no later than July 15, 2023.

10.7 (c) Member compensation and reimbursement for expenses are governed by Minnesota
10.8 Statutes, section 15.059, subdivision 3.

10.9 (d) A member of the legislature may not serve as a member of the task force.