

MAINE STATE LEGISLATURE

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(EMERGENCY)
(After Deadline)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1878

H.P. 1379 House of Representatives, June 30, 1987
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Human Resources suggested
and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative RYDELL of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Make a Technical Correction in the
2 Chapter Dealing with AIDS.
3

4 Emergency preamble. Whereas, Acts of the Legis-
5 lature do not become effective until 90 days after
6 adjournment unless enacted as emergencies; and

7 Whereas, the Maine Revised Statutes, Title 5,
8 Part 22, Medical Conditions, was enacted by 2 sepa-
9 rate public laws; once in the errors bill to correct
10 an error and once in a separate bill to make substan-
11 tive changes; and

12 Whereas, these bills, both enacted as emergency
13 legislation, have inadvertently created a technical
14 inconsistency in the laws of Maine; and

1 Whereas, it is vitally necessary that this incon-
2 sistent uncertainty be resolved in order to prevent
3 any injustice or hardship to the citizens of Maine;
4 and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

11 Be it enacted by the People of the State of Maine as
12 follows:

13 5 MRSA Pt. 22, as enacted by PL 1987, c. 402, Pt.
14 A, §76 and c. 443, §2, is repealed and the following
15 enacted in its place:

16 PART 22

17 PUBLIC HEALTH

18 CHAPTER 501

19 MEDICAL CONDITIONS

20 §19201. Definitions

21 As used in this chapter, unless the context indi-
22 cates otherwise, the following terms have the follow-
23 ing meanings.

24 1. Antibody to HIV. "Antibody to HIV" means the
25 specific immunoglobulin produced by the body's immune
26 system in response to HIV.

27 2. Health care provider. "Health care provider"
28 means any appropriately licensed, certified or regis-
29 tered provider of mental or physical health care, ei-
30 ther in the public or private sector or any business
31 establishment providing health care services.

32 3. HIV. "HIV" means the human immunodeficiency
33 virus, identified as the causative agent of Acquired
34 Immune Deficiency Syndrome or AIDS.

1 4. HIV antigen. "HIV antigen" means the specific
2 immune-recognizable marker proteins of HIV.

3 5. HIV infection. "HIV infection" means the
4 state wherein HIV has invaded the body and is being
5 actively harbored by the body.

6 5-A. Informed consent. "Informed consent" means
7 consent that is:

8 A. Based on an actual understanding by the per-
9 son to be tested:

10 (1) That the test is being performed;

11 (2) Of the nature of the test;

12 (3) Of the persons to whom the results of
13 that test may be disclosed;

14 (4) Of the purpose for which the test re-
15 sults may be used; and

16 (5) Of all foreseeable risks and benefits
17 resulting from the test; and

18 B. Wholly voluntary and free from express or im-
19 plied coercion.

20 6. Person. "Person" means any natural person,
21 firm, corporation, partnership or other organization,
22 association or group, however organized.

23 7. Seropositivity. "Seropositivity" means the
24 presence of antibody to HIV as detected by appropri-
25 ate laboratory tests.

26 8. Viral positivity. "Viral positivity" means
27 demonstrated presence of HIV.

28 §19202. Committee to Advise the Department of Human
29 Services on AIDS

30 The Committee to Advise the Department of Human
31 Services on AIDS, as established by section 12004,
32 subsection 10, shall consist of not less than 26 mem-
33 bers nor more than 30 members to include representa-

1 tion of: One allopathic physician from nominees sub-
2 mitted by the Maine Medical Association; one
3 osteopathic physician from nominees submitted by the
4 Maine Osteopathic Association; one nursing home ad-
5 ministrator from nominees submitted by the Maine
6 Health Care Association; one funeral director from
7 nominees submitted by the Maine Funeral Directors As-
8 sociation; one social worker from nominees submitted
9 by the Maine Chapter of the National Association of
10 Social Workers; one public school administrator from
11 a local school district from nominees submitted by
12 the Maine Superintendents Association; one nurse from
13 nominees submitted by the Maine State Nurses Associa-
14 tion; one representative from nominees submitted by
15 the Maine Hospice Council; one teacher from nominees
16 submitted by the Maine Teachers Association; 2 mem-
17 bers of the high risk community; one insurance indus-
18 try representative; one employee of a community men-
19 tal health center; one dentist from nominees submit-
20 ted by the Maine Dental Association; one state em-
21 ployee from nominees submitted by the Maine State Em-
22 ployees Association; 2 members of the public, includ-
23 ing one parent of a school-age child; the Commission-
24 er of Human Services or his designee who shall serve
25 during the commissioners term of office; one psychol-
26 ogist from nominees submitted by the Maine Psycholog-
27 ical Association; one state employee from nominees
28 submitted by the American Federation of State, County
29 and Municipal Employees; one member representing hos-
30 pitals from nominees submitted by the Maine Hospital
31 Association; one member representing public health
32 professionals from nominees submitted by the Maine
33 Public Health Association; one representative of a
34 nonprofit hospital or medical service organization;
35 one substance abuse counselor; one member of the
36 clergy; and 2 Legislators, one representative ap-
37 pointed by the Speaker of the House and one Senator
38 appointed by the President of the Senate. The mem-
39 bers, except for those specifically designated in
40 this paragraph, shall be appointed by the Governor
41 for their competence and experience in connection
42 with these fields.

43 1. Membership. The term of office of each member
44 shall be 3 years; provided that of the members first
45 appointed, 1/3 shall be appointed for a term of one
46 year, 1/3 for terms of 2 years and 1/3 for terms of 3

1 years. The Governor shall designate a chairman and
2 vice-chairman to serve at the pleasure of the Govern-
3 or. The chairman shall be the presiding member of
4 the committee. All vacancies shall be filled for the
5 balance of the unexpired term in the same manner as
6 original appointments. The members of the committee
7 shall be compensated in accordance with chapter 379.

8 2. Duties. The committee shall advise the de-
9 partment on:

10 A. Content and dissemination of educational ma-
11 terials;

12 B. Crises that may develop;

13 C. Coordination of services to persons with
14 AIDS, AIDS Related Complex or viral positivity;

15 D. Coordination of services for family and other
16 persons providing care and support to persons
17 with AIDS, AIDS Related Complex or viral
18 positivity; and

19 E. AIDS related policy and proposed rules.

20 3. Meetings. The advisory committee shall meet
21 at least 4 times a year and more frequently if
22 needed to respond to the duties of this committee as
23 specified in subsection 2. Special meetings may be
24 called by the chairman and shall be called at the re-
25 quest of the State Epidemiologist, the Director of
26 the Bureau of Health, the Director of Disease Con-
27 trol, the Director of Sexually Transmitted Diseases
28 or by 3 or more members of the committee.

29 §19203. Confidentiality of test

30 No person may disclose the results of a test for
31 the presence of an antibody to HIV, a test that mea-
32 sures the HIV antigen, except as follows:

33 1. Subject of test. To the subject of the test;

34 2. Designated health care provider. To the
35 subject's designated health care provider in the
36 treatment of AIDS;

1 3. Authorized person. To a person or persons to
2 whom the test subject has authorized disclosure in
3 writing, except that the disclosure may not be used
4 to violate any other provision of this chapter;

5 4. Certain health care providers. A health care
6 provider who procures, processes, distributes or uses
7 a human body part donated for a purpose may, without
8 obtaining informed consent to the testing, test for
9 the presence of an antibody to HIV in order to assure
10 medical acceptability of the gift for the purpose in-
11 tended;

12 5. Research facility. The Department of Human
13 Services, a laboratory certified and approved by the
14 Department of Human Services pursuant to Title 22,
15 chapter 411, or a health care provider, blood bank,
16 blood center or plasma center may, for the purpose of
17 research and without first obtaining informed consent
18 to the testing, subject any body fluids or tissues to
19 a test for the presence of an antibody to HIV if the
20 testing is performed in a manner by which the identi-
21 ty of the test is subject is not known and may not be
22 retrieved by the researcher;

23 6. Anonymous testing sites. To an anonymous
24 testing site established pursuant to section 19203-B;

25 7. Other agencies. To other agencies responsi-
26 ble for the custodial care of individuals, such as
27 the Department of Corrections and the Department of
28 Mental Health and Mental Retardation; or

29 8. Bureau of Health. To the Bureau of Health,
30 to carry out its duties as provided in Title 22, sec-
31 tions 3, 7 and 42 and chapter 251.

32 This section does not prohibit limited adminis-
33 trative disclosure in conjunction with a mandatory
34 testing program of a military organization subject to
35 Title 37-B.

36 §19203-A. Informed consent required

37 1. Individual tested. Except as provided in
38 section 19203, subsections 4 and 5, no person may
39 test for the presence of antibodies to HIV without

1 first obtaining the written informed consent of the
2 person to be tested. Anonymous test sites under sec-
3 tion 19203-B, are exempt from the requirement that
4 the informed consent be in writing.

5 2. Insurers. Persons required to take the HIV
6 antibody test by an insurer, nonprofit hospital or
7 medical service organization or nonprofit health care
8 plan must provide their written informed consent on
9 forms approved by the Superintendent of Insurance.
10 The superintendent may promulgate rules to define
11 language requirements of the form.

12 §19203-B. Anonymous testing sites

13 The Department of Human Services may designate or
14 establish certification and approval standards for
15 and support anonymous testing sites where an individ-
16 ual may request an HIV test under conditions which
17 ensure anonymity.

18 §19204. Restrictions upon revealing HIV antibody
19 test results

20 No insurer, nonprofit hospital or medical ser-
21 vices organization or nonprofit health care plan may
22 request any person to reveal whether the person has
23 obtained a test for the presence of antibodies to
24 HIV, a test to measure the virus or the results of
25 such tests taken prior to an application for insur-
26 ance coverage.

27 This section is repealed on October 1, 1988.

28 §19204-A. Post-test counseling

29 Persons who are required to give their informed
30 consent to an HIV test shall be offered post-test
31 counseling. The counseling shall include:

32 1. Test result. The test results and the sig-
33 nificance of the test results;

34 2. Social and emotional consequences. The so-
35 cial and emotional consequences of the information;

36 3. Preventive practices. Information on good
37 preventive practices and risk reduction plans; and

1 4. Referrals. Referrals for medical care and
2 other support services as needed.

3 §19205. Coordination of services to persons with
4 AIDS, AIDS Related Complex and viral
5 positivity

6 1. Policy; services. It shall be the policy of
7 the State to provide to persons who test positive for
8 HIV or have been diagnosed as having AIDS or Aids Re-
9 lated Complex services of departments and agencies,
10 including, but not limited to, the Department of Edu-
11 cational and Cultural Services, the Department of
12 Mental Health and Retardation, the Department of Hu-
13 man Services and the Department of Corrections.

14 2. Coordination of services. A person designated
15 by the Commissioner of Human Services shall insure
16 coordination of new and existing services so as to
17 meet the needs of persons with AIDS, Aids Related
18 Complex and viral positivity and identify gaps in
19 programs.

20 The committee established in section 12004, subsec-
21 tion 10, shall work with the person designated in
22 this chapter to insure the coordination of services
23 to meet the needs of persons with AIDS, ARC and viral
24 positivity.

25 §19206. Civil liability

26 Any person violating sections 19203 and 19204 is
27 liable to the subject of the test for actual damages
28 and costs plus a civil penalty of up to \$1,000 for a
29 negligent violation and up to \$5,000 for an inten-
30 tional violation.

31 Any person may bring an action for injunctive re-
32 lief for a violation of sections 19203 and 19204 in
33 addition to or instead of the penalties provided in
34 this section. The applicant for injunctive relief
35 under this section shall not be required to give se-
36 curity as a condition upon the issuance of the in-
37 junction.

38 Emergency clause. In view of the emergency cited
39 in the preamble, this Act shall take effect when ap-
40 proved.

1 STATEMENT OF FACT

2 This bill makes a technical correction to the
3 Maine Revised Statutes, Title 5, Part 22, dealing
4 with AIDS legislation. Title 5, Part 22 was enacted
5 twice during the current legislative session. It was
6 enacted once in the errors bill. The errors bill
7 version merely made technical changes to the existing
8 AIDS legislation, that is, it changed the location of
9 the AIDS legislation in the law to avoid a conflict
10 with the Maine State Retirement System laws and
11 amended the medical reference to incorporate the ap-
12 propriate medical terminology.

13 The 2nd enactment of Title 5, Part 22, made sub-
14 stantive changes to the AIDS legislation. This con-
15 flict, created by 2 enactments of the same law with
16 similar, but not identical language, was unfortunate,
17 but unavoidable, since both pieces of legislation
18 were independently being enacted during the same week
19 and since it would have been inappropriate to include
20 substantive changes in the errors bill.

21 This bill repeals both of those public laws and
22 reenacts Title 5, Part 22, incorporating the provi-
23 sions of each into the new law. There are no substan-
24 tive changes being made in this bill. This correc-
25 tive legislation is necessary to avoid conflicts and
26 inconsistencies in the laws.

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