

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2259

H.P. 1651 House of Representatives, February 12, 1988
Submitted by the Department of Human Services pursuant to
Joint Rule 24.

Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MARSANO of Belfast.

Cosponsored by Senators MAYBURY of Penobscot, BERUBE of
Androscoggin and Representative MANNING of Portland.

STATE OF MAINE

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

AN ACT to Clarify the Law Relating to
AIDS.

1

2

3 Be it enacted by the People of the State of Maine as
4 follows:

5 Sec. 1. 5 MRSA §19201, sub-§2-A is enacted to
6 read:

7 2-A. Health care team. "Health care team" means
8 health care providers or other health care employees

1 who are providing direct services to the patient.

2 Sec. 2. 5 MRSA §19201, sub-§5-A, ¶A, as
3 repealed and replaced by PL 1987, c. 539, is amended
4 to read:

5 A. Based on an actual understanding by the person
6 to be tested:

7 (1) That the test is being performed;

8 (2) Of the nature of the test;

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

11 (4) Of the purpose for which the test
12 results may be used; and

13 (5) Of ~~all~~ any reasonably foreseeable
14 risks and benefits resulting from the test;
15 and

16 Sec. 3. 5 MRSA §19203, first paragraph, as
17 repealed and replaced by 1987, c. 539, is amended to
18 read:

19 No person may disclose the results of a test for
20 the presence of an antibody to or antigen for HIV ~~7~~
21 a test that measures the HIV antigen, except as
22 follows:

23 Sec. 4. 5 MRSA §19203, sub-§2, as repealed and
24 replaced by PL 1987, c. 539, is amended to read:

25 2. Designated health care team. To any member of
26 the subject's designated health care provider in the
27 treatment-of-AIDS team;

28 Sec. 5. 5 MRSA §19203, sub-§7, as repealed and
29 replaced by PL 1987, c. 539, is repealed and the
30 following enacted in its place:

1 7. Other agencies. To other agencies responsible
2 for the custodial care of individuals, such as the
3 Department of Corrections, the Department of Human
4 Services, the Department of Mental Health and Mental
5 Retardation and employees of or other persons
6 designated by those agencies as responsible for the
7 treatment or custodial care of subjects of the test.
8 Those agencies shall promulgate rules, within 90 days
9 of the effective date of this subsection, pursuant to
10 the Maine Administrative Procedure Act, chapter 375,
11 subchapter II, designating the persons or classes of
12 persons to whom the test results may be disclosed; or

13 Sec. 6. 5 MRSA §19203, sub-§8, as enacted by PL
14 1987, c. 539, is amended to read:

15 8. Bureau of Health. To the Bureau of Health,
16 which may disclose results to other persons only if
17 that disclosure is necessary to carry out its duties
18 as provided in Title 22, sections 3, 7 and 42 and
19 chapter 251.

20 Sec. 7. 5 MRSA §19203-C is enacted to read:

21 §19203-C. Records

22 No medical record containing results of a test for
23 the presence of an antibody to or an antigen for HIV
24 may be disclosed, discoverable or compelled to be
25 produced in any civil, criminal, administrative or
26 other proceedings, except in the following cases:

27 1. Communicable disease laws. Proceedings held
28 pursuant to Title 22, chapter 251;

29 2. Adult Protective Services Act. Proceedings
30 held pursuant to Title 22, chapter 958-A;

31 3. Child protection laws. Proceedings held
32 pursuant to Title 22, chapter 1071;

33 4. Mental health laws. Proceedings held pursuant
34 to Title 34-B, chapter 3, subchapter IV, article III;

1 5. Court order. Pursuant to a court order upon a
2 showing of good cause, provided that such court order
3 may limit the use and disclosure of records and may
4 provide sanctions for misuse of records or set forth
5 other methods for assuring confidentiality;

6 6. Utilization reviews. Reviews of medical
7 records for utilization review purposes by duly
8 authorized utilization review committees or peer
9 review organizations;

10 7. Health personnel. At the request of the
11 patient's designated health care team; and

12 8. Audits or evaluations. At the request of
13 qualified personnel for the purpose of conducting
14 scientific research management audits, financial
15 audits or program evaluation, except that such
16 personnel may not identify, directly or indirectly,
17 any individual patient in any report of such research,
18 audit, evaluation or otherwise disclose a patient's
19 identity in any manner.

20 Sec. 8. 5 MRSA §19206, first paragraph, as
21 repealed and replaced by PL 1987, c. 539, is amended
22 to read:

23 Any person violating sections 19203 and 19204
24 this chapter is liable to the subject of the test for
25 actual damages and costs plus a civil penalty of up to
26 \$1,000 for a negligent violation and up to \$5,000 for
27 an intentional violation, subject to Title 14, chapter
28 741.

29 STATEMENT OF FACT

30 Section 1 of the bill defines "health care team"
31 for purposes of clarifying which health care providers
32 may receive HIV test results under the Maine Revised
33 Statutes, Title 5, section 19203, subsection 2.
34 Section 2 is a technical correction of the informed
35 consent law. Section 3 deletes an erroneous statement
36 contained in Title 5, section 19203 and expands that

1 section to include HIV antigen tests which may become
2 commercially available.

3 Section 4 broadens the exception to the
4 confidentiality law to include health care providers
5 who may be treating an infected patient for a
6 condition other than AIDS. This bill recognizes the
7 importance of the HIV test as a diagnostic tool in the
8 treatment of the patient and also for the purpose of
9 alerting health care providers of the need to exercise
10 infection control measures. Section 5 specifically
11 includes the Department of Human Services as an agency
12 authorized to receive test results and clarifies the
13 extent to which these agencies may disseminate these
14 results for the purpose of providing custodial care to
15 individuals in their custody.

16 Section 6 provides a similar clarification of
17 3rd-party dissemination as it applies to the Bureau of
18 Health.

19 Section 7 provides specific protection for medical
20 records containing HIV test results.

21 Section 8 broadens the penalty provision to
22 include violations of any section in the chapter,
23 while making it clear that the penalty provisions do
24 not preempt the Maine Tort Claims Act.

25

4486020188