

# MAINE STATE LEGISLATURE

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L.D. 2392

(Filing No. S-487 )

STATE OF MAINE  
SENATE  
113TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 916, L.D. 2392,  
Bill, "AN ACT to Provide for the Safety of Health Care  
Workers Involved with the Care and Treatment of AIDS  
Patients and Clarify the Ability of Hospitals to  
Recover Increased Costs Resulting from the Adoption of  
Recommended Treatment Protocols."

Amend the Bill by striking out all of the title  
and inserting in its place the following:

'AN ACT to Amend the Laws Relating to AIDS and  
Communicable Diseases.'

Further amend the Bill by striking out everything  
after the enacting clause and inserting in its place  
the following:

'Sec. 1. 5 MRSA §19201, sub-§4-A is enacted to  
read:

4-A. HIV test. "HIV test" means a test for the  
presence of an antibody to HIV or a test for an HIV  
antigen.

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repealed and replaced by PL 1987, c. 539, is amended  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

A. Based on an actual understanding by the person

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1 to be tested:

2 (1) That the test is being performed;

3 (2) Of the nature of the test;

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

6 (4) Of the purpose for which the test  
7 results may be used; and

8 (5) Of ~~all~~ any reasonably foreseeable  
9 risks and benefits resulting from the test;  
10 and

11 Sec. 3. 5 MRSA §19203, as repealed and replaced  
12 by PL 1987, c. 539, is repealed and the following  
13 enacted in its place:

14 §19203. Confidentiality of test

15 No person may disclose the results of an HIV test,  
16 except as follows:

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

18 2. Designated health care provider. To a health  
19 care provider designated by the subject of the test in  
20 writing. When a patient has authorized disclosure of  
21 HIV test results to a person or organization providing  
22 health care, the patient's physician may make these  
23 results available only to other health care providers  
24 working directly with the patient, and only for the  
25 purpose of providing direct patient care. Any  
26 physician who discloses HIV test results in good faith  
27 pursuant to this subsection shall be immune from any  
28 criminal or civil liability for the act of disclosing  
29 HIV test results to other health care providers;

30 3. Authorized person. To a person or persons to  
31 whom the test subject has authorized disclosure in  
32 writing, except that the disclosure may not be used to  
33 violate any other provisions of this chapter;

34 4. Certain health care providers. A health care

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1 provider who procures, processes, distributes or uses  
2 a human body part donated for a purpose may, without  
3 obtaining informed consent to the testing, perform an  
4 HIV test in order to assure medical acceptability of  
5 the gift for the purpose intended. Testing pursuant  
6 to this subsection does not require pretest and  
7 post-test counseling;

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

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

20       7. Other agencies. To employees of, or other  
21 persons designated by, the Department of Corrections,  
22 the Department of Human Services and the Department of  
23 Mental Health and Mental Retardation, to the extent  
24 that those employees or other persons are responsible  
25 for the treatment or care of subjects of the test.  
26 Those agencies shall promulgate rules, within 90 days  
27 of the effective date of this subsection, pursuant to  
28 the Maine Administrative Procedure Act, chapter 375,  
29 subchapter II, designating the persons or classes of  
30 persons to whom the test results may be disclosed;

31       8. Bureau of Health. To the Bureau of Health,  
32 which may disclose results to other persons only if  
33 that disclosure is necessary to carry out its duties  
34 as provided in Title 22, sections 3, 7 and 42 and  
35 chapter 251;

36       9. Medical records. As part of a medical record  
37 when release or disclosure of that record is  
38 authorized pursuant to section 19203-D; or

39       10. Court ordered disclosure. To a person  
40 authorized by section 19203-C to receive test results

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1 following an accidental exposure.

2 This section does not prohibit limited  
3 administrative disclosure in conjunction with a  
4 mandatory testing program of a military organization  
5 subject to Title 37-B.

6 Nothing in this section may be construed as  
7 prohibiting the entry of an HIV test result on the  
8 patient's medical record in accordance with this  
9 chapter.

10 Sec. 4. 5 MRSA §19203-A, sub-§§1 and 2, as  
11 repealed and replaced by PL 1987, c. 539, are amended  
12 to read:

13 1. Individual tested. Except as provided in this  
14 section and section 19203, subsections 4 and 5, no  
15 person may test for the presence of antibodies to  
16 perform an HIV test without first obtaining the  
17 written informed consent of the person to be tested.  
18 Anonymous test sites under section 19203-B, are exempt  
19 from the requirement that the informed consent be in  
20 writing.

21 2. Insurers. Persons required to take the an  
22 HIV antibody test by an insurer, nonprofit hospital  
23 or medical service organization or nonprofit health  
24 care plan must provide their written informed consent  
25 on forms approved by the Superintendent of Insurance.  
26 Pretest and post-test counseling must be provided by  
27 the person or organization requesting the test. The  
28 superintendent Superintendent of Insurance may  
29 promulgate rules to define language requirements of  
30 the form.

31 Sec. 5. 5 MRSA §19203-A, sub-§§3 and 4 are  
32 enacted to read:

33 3. Access to medical care. No health care  
34 provider may deny any person medical treatment or care  
35 solely for refusal to give consent for an HIV test.  
36 No health care provider may request a person's written  
37 consent to an HIV test as a precondition to the  
38 provision of health care. All written consent to  
39 testing shall be in accordance with section 19201,

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1 subsection 5-A. Nothing in this section may prohibit  
2 a health care provider from recommending an HIV test  
3 for diagnostic or treatment purposes. No physician or  
4 other health care provider may be civilly liable for  
5 failing to have an HIV test performed for diagnostic  
6 or treatment purposes if the test was recommended and  
7 refused in writing by the patient.

8 4. Accidental exposure in health care facility.  
9 Consent need not be obtained when a health care  
10 provider, an employee of a health care facility or a  
11 patient in a health care facility is exposed to the  
12 blood or body fluids of another and the exposure  
13 creates a significant risk of infection provided that  
14 a court order has been obtained under section  
15 19203-C. The fact that an HIV test was given as a  
16 result of an accidental exposure in a health care  
17 facility and the results of that test shall not appear  
18 in a patient's medical record. Counseling on risk  
19 reduction must be offered, but the patient may choose  
20 not to be informed about the result of the test.

21 Sec. 6. 5 MRSA §§19203-C and 19203-D are  
22 enacted to read:

23 §19203-C. Judicial consent to HIV test

24 1. Petition. A health care provider or an  
25 employee or patient of a health care facility who has  
26 been accidentally exposed to blood or body fluid of a  
27 patient in a health care facility may petition the  
28 District Court with jurisdiction over the health care  
29 facility where the patient was being treated at the  
30 time of the accidental exposure to require the patient  
31 to submit to an HIV test provided that the following  
32 conditions have been met:

33 A. The exposure to blood or body fluids creates a  
34 significant risk of HIV infection, as defined by  
35 the Bureau of Health through the promulgation of  
36 rules in accordance with the Maine Administrative  
37 Procedure Act, chapter 375;

38 B. The authorized representative of the health  
39 care facility has informed the patient of the  
40 accidental exposure and has sought to obtain

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1 written informed consent from the patient; and

2 C. Written informed consent was not given by the  
3 patient and the patient has stated in writing the  
4 refusal to be tested.

5 2. Prehearing duties of the court. Upon receipt  
6 by the District Court of the petition, the court shall:

7 A. Schedule a hearing to be held as soon as  
8 practicable;

9 B. Cause a written notice of the petition and  
10 hearing to be given, in accordance with the Maine  
11 Rules of Civil Procedure, to the patient who is  
12 the subject of the proceeding;

13 C. Appoint counsel, if requested, for any  
14 indigent client not already represented; and

15 D. Furnish counsel with copies of the petition.

16 3. Hearing. The hearing shall be governed as  
17 follows.

18 A. The hearing shall be conducted in accordance  
19 with the Maine Rules of Evidence and in an  
20 informal manner consistent with orderly procedure.

21 B. The hearing shall be confidential and be  
22 electronically or stenographically recorded.

23 C. The report of the hearing proceedings shall be  
24 sealed. No report of the hearing proceedings may  
25 be released to the public, except by permission of  
26 the patient or the patient's counsel and with the  
27 approval of the court.

28 D. The court may order a public hearing at the  
29 request of the patient or the patient's counsel.

30 4. Determination. The court may require the  
31 patient to obtain an HIV test only if the petitioner  
32 proves, by a preponderance of the evidence that:

33 A. The exposure to blood or body fluids of the

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1           patient created a significant risk of HIV  
2           infection as defined by the Bureau of Health  
3           through the promulgation of rules in accordance  
4           with the Maine Administrative Procedure Act,  
5           chapter 375;

6           B. An authorized representative of the health  
7           care facility has informed the patient of the  
8           accidental exposure and has sought to obtain  
9           written informed consent from the patient; and

10           C. Written informed consent was not given by the  
11           patient and the patient has stated in writing the  
12           refusal to be tested.

13           5. Consent. The court may not order a patient to  
14           obtain an HIV test unless the health care worker  
15           accidentally exposed to the blood or body fluids of  
16           that patient has consented to and obtained an HIV test  
17           immediately following that documented exposure.

18           6. Costs. The health care facility shall be  
19           responsible for the petitioner's reasonable costs  
20           related to obtaining the results of an HIV test  
21           pursuant to this section, including the payment of the  
22           petitioner's attorneys' fees.

23           7. Appeals. A patient required to undergo an HIV  
24           test may appeal the order to Superior Court. The  
25           appeal is limited to questions of law. Any findings  
26           of fact of the District Court may not be set aside  
27           unless clearly erroneous.

28           8. Reporting to bureau and counseling. The  
29           health care facility where the accidental exposure  
30           took place shall report to the Bureau of Health any  
31           case in which a person is tested pursuant to this  
32           section. All tests conducted pursuant to this section  
33           shall be accompanied by pretest and post-test  
34           counseling as defined in section 19204-A.

35           9. Subsequent testing of the patient. Subsequent  
36           testing arising out of the same incident of accidental  
37           exposure shall be conducted in accordance with this  
38           section.



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1 §19203-D. Records

2 When a medical record entry is made concerning  
3 information of a patient's HIV infection status,  
4 including the results of an HIV test, the following  
5 shall apply to the release of that information as a  
6 part of the medical record.

7 1. Authorized release. The patient, at or near  
8 the time the entry is made in the medical record,  
9 shall elect, in writing, whether to authorize the  
10 release of that portion of the medical record  
11 containing the HIV infection status information when  
12 the patient's medical record has been requested. A  
13 new election may be made when a change in the  
14 patient's HIV infection status occurs or whenever the  
15 patient makes a new election. The release form shall  
16 clearly state whether or not the patient has  
17 authorized the release of that information. The  
18 patient shall be advised of the potential implications  
19 of authorizing the release of that information.

20 A. When release has been authorized, the  
21 custodian of the medical record may release, upon  
22 request, the patient's medical record, including  
23 any HIV infection status information contained in  
24 the medical record. Release of HIV infection  
25 status information pursuant to this paragraph  
26 shall not be a violation of any of the  
27 confidentiality provisions of this chapter.

28 B. When release has not been authorized, the  
29 custodian of the medical record may, upon request,  
30 release that portion of the medical record which  
31 does not contain the HIV infection status  
32 information. Except as otherwise provided in this  
33 section, HIV infection status information may only  
34 be released if the patient has specifically  
35 authorized a separate release of that  
36 information. A general release form is  
37 insufficient.

38 2. Authorized disclosure. No medical record  
39 containing results of an HIV test may be disclosed,  
40 discoverable or compelled to be produced in any civil,  
41 criminal, administrative or other proceedings without

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- 1 the patient's consent, except in the following cases:
- 2 A. Proceedings held pursuant to the communicable  
3 disease laws, Title 22, chapter 251;
- 4 B. Proceedings held pursuant to the Adult  
5 Protective Services Act, Title 22, chapter 958-A;
- 6 C. Proceedings held pursuant to the child  
7 protection laws, Title 22, chapter 1071;
- 8 D. Proceedings held pursuant to the mental health  
9 laws, Title 34-B, chapter 3, subchapter IV,  
10 article III; and
- 11 E. Pursuant to a court order upon a showing of  
12 good cause, provided that the court order limits  
13 the use and disclosure of records and provides  
14 sanctions for misuse of records or sets forth  
15 other methods for assuring confidentiality.
- 16 3. Utilization review; research. Nothing in this  
17 section may be interpreted to prohibit reviews of  
18 medical records for utilization review purposes by  
19 duly authorized utilization review committees or peer  
20 review organizations. Qualified personnel conducting  
21 scientific research, management audits, financial  
22 audits or program evaluation with the use of medical  
23 records may not identify, directly or indirectly, any  
24 individual patient in any report of such research,  
25 audit, evaluation or otherwise disclose patient  
26 identities in any manner.
- 27 4. Access by health care providers. Nothing in  
28 this section may prohibit access to medical records by  
29 the patient's designated health care provider in  
30 accordance with section 19203, subsection 2.
- 31 5. Confidentiality policy. Health care providers  
32 with patient records containing HIV infection status  
33 information shall have a written policy providing for  
34 confidentiality of all patient information consistent  
35 with this chapter. That policy shall require, at a  
36 minimum, termination of employment for violations of  
37 the confidentiality policy.

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1           Sec. 7. 5 MRSA §19204, as repealed and replaced  
2 by PL 1987, c. 539, is amended to read:

3   §19204. Restrictions upon revealing HIV test results

4           No insurer, nonprofit hospital or medical services  
5 organization or nonprofit health care plan may request  
6 any person to reveal whether the person has obtained  
7 a test for the presence of antibodies to HIV, a test  
8 to measure the virus an HIV test or the results of  
9 such tests taken prior to an application for insurance  
10 coverage.

11           This section is repealed on October 1, 1988  
12 1990.

13           Sec. 8. 5 MRSA §19204-A, as repealed and  
14 replaced by PL 1987, c. 539, is repealed and the  
15 following enacted in its place:

16   §19204-A. Counseling

17           Except as otherwise provided by this chapter,  
18 persons who obtain an HIV test shall be offered  
19 pretest and post-test counseling. Persons who are  
20 authorized by section 19203-C to receive test results  
21 after accidental exposure shall be offered counseling  
22 regarding the nature, reliability and significance of  
23 the HIV test and the confidential nature of the test.

24           1. Pretest counseling. "Pretest counseling"  
25 means:

26           A. Personal counseling that includes, at a  
27 minimum, a discussion of:

28                   (1) The nature and reliability of the test  
29                   being proposed;

30                   (2) The person to whom the results of the  
31                   test may be disclosed;

32                   (3) The purpose for which the test results  
33                   may be used; and

34                   (4) Any reasonably foreseeable risks and

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1                   benefits resulting from the test; and  
2                   B. A written memorandum summarizing the contents  
3                   of the discussion given to the person being  
4                   counseled. A written informed consent form may be  
5                   used to satisfy the requirement for a written  
6                   memorandum in this paragraph if it contains all  
7                   the required information. A written consent form  
8                   does not satisfy the requirement for personal  
9                   counseling in paragraph A.

10                   2. Post-test counseling. "Post-test counseling"  
11                   means:

12                   A. Personal counseling that includes, at a  
13                   minimum, a discussion of:

14                   (1) The test results and the reliability and  
15                   significance of the test results;

16                   (2) The social and emotional consequences of  
17                   the information;

18                   (3) Information on good preventive practices  
19                   and risk reduction plans; and

20                   (4) Referrals for medical care and other  
21                   support services as needed; and

22                   B. A written memorandum summarizing the contents  
23                   of the discussion given to the person being  
24                   counseled.

25                   Sec. 9. 5 MRSA §19204-B is enacted to read:

26                   §19204-B. Restrictions on requiring tests or results  
27                   of tests

28                   1. Employee testing. No health care facility may  
29                   require that any employee or applicant for employment  
30                   submit to an HIV test or reveal whether the employee  
31                   or applicant for employment has obtained an HIV test  
32                   as a condition of employment or to maintain  
33                   employment, except when based on a bona fide  
34                   occupational qualification. Enforcement of this  
35                   subsection is assigned to the Maine Human Rights

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1 Commission.

2 This subsection is repealed October 1, 1989.

3 2. Employee rights. The employment status of any  
4 employee of a health care facility shall not be  
5 affected or changed:

6 A. If the employee declines to be tested pursuant  
7 to section 19203-A;

8 B. If the employee testifies or assists in any  
9 proceeding under this chapter;

10 C. If the employee asserts any other rights  
11 exercised in good faith pursuant to this chapter;  
12 or

13 D. Because of the result of any test taken  
14 pursuant to this chapter.

15 Sec. 10. 5 MRSA §19206, first ¶, as repealed  
16 and replaced by PL 1987, c. 539, is amended to read:

17 Any person violating sections 19203 and 19204  
18 this chapter is liable to the subject of the test for  
19 actual damages and costs plus a civil penalty of up to  
20 \$1,000 for a negligent violation and up to \$5,000 for  
21 an intentional violation, subject to Title 14, chapter  
22 741.

23 Sec. 11. 5 MRSA 19208 is enacted to read:

24 §19208. Proceedings

25 All proceedings brought pursuant to this chapter  
26 shall be closed to the public, unless the court orders  
27 otherwise with the consent of all parties.

28 Sec. 12. 22 MRSA §396-D, sub-§9, ¶B, as enacted  
29 by PL 1983, c. 579, §10, is amended to read:

30 B. In determining payment year financial  
31 requirements, the commission shall include an  
32 adjustment for the reasonable impact on a  
33 hospital's costs of events, including events

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1 affecting all or a group of hospitals, which were  
2 reasonably unforeseen by the hospital and which  
3 were beyond the control of the hospital. This  
4 adjustment may be made subsequent to the  
5 commencement of a fiscal year. This adjustment  
6 shall include all reasonable costs incurred by a  
7 hospital resulting from conformance with the  
8 United States Department of Health and Human  
9 Services Public Health Service Centers for Disease  
10 Control guidelines; requirements of the Joint  
11 Commission on Accreditation of Health Care  
12 Organizations; Occupational Safety and Health  
13 Administration standards; and federal, state and  
14 local laws, rules and regulations relating to the  
15 disease of AIDS. Nothing in this paragraph may be  
16 construed to preclude other adjustments under this  
17 paragraph for costs of events relating to the  
18 disease of AIDS, consistent with the standards set  
19 forth in this paragraph. A hospital may apply for  
20 this adjustment at any time during the course of a  
21 payment year.

22 Sec. 13. 22 MRSA §1011, sub-§2, as enacted by  
23 PL 1977, c. 304, §2, is repealed and the following  
24 enacted in its place:

25 2. Communicable disease. "Communicable disease"  
26 means a disease or condition that may cause serious  
27 illness, serious disability or death, the infectious  
28 agent of which may pass or be carried, directly or  
29 indirectly, from the body of one person to the body of  
30 another. This subsection is repealed effective  
31 October 1, 1989.

32 Sec. 14. 22 MRSA §1011, sub-§2-A is enacted to  
33 read:

34 2-A. Communicable disease. "Communicable  
35 disease" means an illness due or suspected to be due  
36 to a specific infectious agent or its toxic products  
37 which results from transmission of that agent or its  
38 products to a susceptible host, directly or  
39 indirectly. This subsection shall take effect October  
40 1, 1989.

41 Sec. 15. 22 MRSA §1011, sub-§3 as enacted by PL

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1 1977, c. 304, §2, is amended to read:

2 3. Dangerous communicable disease. "Dangerous  
3 communicable disease" means a communicable disease  
4 which is so designated by the department pursuant to  
5 section 1012, subsection 1, paragraph A, because of  
6 serious threat to the public health and shall include  
7 at least tuberculosis, and venereal disease and HIV  
8 infection as defined by Title 5, section 19201,  
9 subsection 5. This subsection is repealed effective  
10 October 1, 1989.

11 Sec. 16. 22 MRSA §1011, sub-§3-A is enacted to  
12 read:

13 3-A. Dangerous communicable disease. "Dangerous  
14 communicable disease" means a communicable disease  
15 which is so designated by the department pursuant to  
16 section 1012, subsection 1, paragraph A, because of  
17 serious threat to the public health and shall include  
18 at least tuberculosis, venereal disease and HIV  
19 infection. This subsection shall take effect October  
20 1, 1989.

21 Sec. 17. 22 MRSA §1011, sub-§§5 and 7 as  
22 enacted by PL 1977, c. 304, §2, are amended to read:

23 5. Infected person. "Infected person" means a  
24 person who is diagnosed or believed to have as  
25 having a communicable disease or dangerous  
26 communicable disease and who, after appropriate  
27 medical evaluation or testing, is determined to be a  
28 potential source of infection to others, given  
29 conditions necessary for transmission of the disease.

30 7. Notifiable disease. "Notifiable disease"  
31 means any communicable disease or, dangerous  
32 communicable disease or occupational disease, the  
33 occurrence or suspected occurrence of which is  
34 required to be reported to the department pursuant to  
35 sections 1029 to 1034 or section 1493.

36 Sec. 18. 22 MRSA §1022, sub-§§4, 5 and 6, as  
37 enacted by PL 1977, c. 304, §2, are repealed and the  
38 following enacted in their place:

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1           4. Hearings. Hearings under this section shall  
2 be governed by the Maine Rules of Civil Procedure and  
3 the Maine Rules of Evidence.

4           A. The individual, the petitioner and all other  
5 persons to whom notice is required to be sent  
6 shall be afforded an opportunity to appear at the  
7 hearing to testify and to present and  
8 cross-examine witnesses.

9           B. The court may, in its discretion, receive the  
10 testimony of any other person and may subpoena any  
11 witness.

12           C. The individual shall be afforded an  
13 opportunity to be represented by counsel, and, if  
14 that individual is indigent and requests counsel,  
15 the court shall appoint counsel for the individual.

16           D. An electronic recording shall be made of the  
17 proceedings and all hearings under this section.  
18 The record and all notes, exhibits and other  
19 evidence shall be confidential.

20           E. The hearing shall be confidential and no  
21 report of the proceedings may be released to the  
22 public, except by permission of the person or that  
23 person's counsel and with the approval of the  
24 presiding District Court Judge, except that the  
25 court may order a public hearing on the request of  
26 the person or that person's counsel.

27           5. Examination ordered. If, upon hearing, it  
28 appears that there are reasonable grounds to believe  
29 that an individual has a dangerous communicable  
30 disease, the District Court shall order the  
31 examination of the individual if requested by the  
32 petitioner.

33           6. Commitment or treatment ordered. If, upon  
34 hearing, it appears the individual has a dangerous  
35 communicable disease and is a source of danger to  
36 other individuals, the District Court shall order the  
37 individual committed to a hospital, to submit to  
38 treatment or to take such reasonable precautions as  
39 may be necessary to not expose other individuals to



1 the danger of infection.

2 Sec. 19. 22 MRSA §1022, sub-§7 is enacted to  
3 read:

4 7. District Court order. The District Court  
5 order shall provide that the department may change the  
6 place of confinement or care for reasonable cause. If  
7 the infected person applies for review within 30 days  
8 of the change, the District Court making the order  
9 shall review the change. If the court orders an  
10 individual committed to a hospital, the order shall  
11 specify a period of time, not to exceed 30 days,  
12 during which the order of commitment shall remain in  
13 effect. At the end of that period, the court shall  
14 hold a hearing in accordance with this section, and  
15 make such additional orders as it deems necessary,  
16 provided that no order of commitment exceeds 90 days  
17 without further review by the court.

18 Sec. 20. 22 MRSA §2842-A is enacted to read:

19 §2842-A. Identification of dead human bodies with  
20 communicable diseases

21 The department shall promulgate rules providing  
22 for notification to funeral directors or other  
23 authorized agents in charge of the disposition of dead  
24 human bodies in cases when the body has been diagnosed  
25 as having a communicable disease.

26 Notification pursuant to this section is not a  
27 violation of this Title or Title 5, chapter 501.

28 Sec. 21. Appropriation. The following funds  
29 are appropriated from the General Fund to carry out  
30 the purposes of this Act.

31 1988-89

32 HUMAN SERVICES, DEPARTMENT OF

33 Medical Care - Payments to Providers

34 All Other \$199,320

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1 Provides funds for the  
2 State's share of  
3 Medicaid's portion of  
4 additional hospital  
5 cost to implement this  
6 Act.

7 **Sec. 22. Allocation.** The following funds are  
8 allocated from Federal Expenditure funds to carry out  
9 the purposes of this Act.

10 1988-89

11 HUMAN SERVICES, DEPARTMENT OF

12 Medical Care - Payments to Providers

13 All Other \$400,680

14 Allocates federal  
15 matching funds.

16 FISCAL NOTE

17 Medicaid's share of total statewide hospital costs  
18 is 12% or \$600,000 in fiscal year 1988-89.'

19 STATEMENT OF FACT

20 This amendment replaces the bill, revises the  
21 title, and incorporates issues from other legislation  
22 which was before the committee concerning AIDS. The  
23 other bills have been withdrawn. This amendment makes  
24 the following changes to the laws concerning AIDS.

25 1. In anticipation of a test for the HIV antigen,  
26 the provisions of the law concerning a test for the  
27 presence of the HIV antibody have been expanded to  
28 include an HIV antigen test also.

29 2. Informed consent is required of all persons  
30 obtaining the HIV test. The amendment makes a  
31 basically technical change in the scope of the risks

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1 and benefits information offered to the person  
2 obtaining the test.

3 3. The current law states the circumstances under  
4 which HIV test results may be disclosed. The  
5 amendment broadens the law to allow the patient's  
6 physician to make the test results available to health  
7 care providers working directly with the patient and  
8 providing direct patient care, including those  
9 treating the patient for a condition other than AIDS.  
10 The amendment also establishes immunity for physicians  
11 disclosing test results under this subsection.

12 The amendment specifically includes the Department  
13 of Human Services as an agency authorized to receive  
14 test results and further defines and designates which  
15 employees or other designees of the Department of  
16 Corrections, the Department of Human Services and the  
17 Department of Mental Health and Mental Retardation may  
18 have access to HIV test results by limiting access to  
19 those who are responsible for the treatment or care of  
20 the person obtaining the test. The departments must  
21 designate positions or classes of persons who will  
22 have access to the test results and under what  
23 circumstances.

24 This amendment also allows the Bureau of Health to  
25 disclose HIV test results to other people when  
26 necessary to carry out its duties in preventing or  
27 diminishing the effect of communicable diseases.

28 Disclosure is also allowed as part of a medical  
29 record release if authorized under special provisions  
30 and in cases of accidental disclosure if specific  
31 conditions are met.

32 4. The amendment prohibits denial of health care  
33 for refusal to give consent to an HIV test.

34 5. The amendment establishes a procedure to  
35 obtain an HIV test result in cases where:

36 A. A health care provider or an employee or  
37 patient of a health care facility is exposed to  
38 blood or body fluids of another;

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1 B. The exposure creates a significant risk of  
2 infection;

3 C. The patient has been informed of the  
4 accidental exposure; and

5 D. The patient has refused to give informed  
6 consent after being requested to do so.

7 A court order is required before the test may be  
8 given. Subsequent testing arising out of the same  
9 incident must follow the same established procedures.

10 6. A new section on medical records is enacted  
11 providing details on when HIV infection status  
12 information may be released.

13 7. The amendment amends the law concerning  
14 counseling, specifying when counseling is required.  
15 Both pretest and post-test counseling require personal  
16 discussion and written memorandums. It specifically  
17 states that pretest and post-test counseling are  
18 required by insurers if they require a test. It also  
19 requires information concerning the reliability of the  
20 test to be made a part of the counseling.

21 8. It extends the prohibition on insurers which  
22 prevents them from asking a potential client if the  
23 client has ever had an HIV test or for the results of  
24 such a test to October 1, 1990.

25 9. The amendment establishes certain rights for  
26 employees or prospective employees in hiring or  
27 retention situations.

28 10. It broadens the penalty provisions to include  
29 violations of any section in the chapter, while making  
30 it clear that the penalty provisions do not preempt the  
31 Maine Tort Claims Act. It also closes any hearings  
32 related to the AIDS chapter, keeping that information  
33 confidential unless release is authorized.

34 11. It establishes special language to provide  
35 for the recovery of hospital costs incurred because of  
36 the requirement to conform with the United States  
37 Department of Health and Human Services Public Health

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1 Service Centers for Disease Control guidelines,  
2 requirements of the Joint Commission on Accreditation  
3 of Health Care Organizations, Occupational Safety and  
4 Health Administration standards, and other federal or  
5 state laws or rules relating to the disease of AIDS.

6 12. It amends the communicable disease laws to  
7 broaden the scope to include persons with an  
8 infectious condition who may not be diagnosed with an  
9 illness, specifically includes HIV infection as a  
10 dangerous communicable disease, makes the definition  
11 of infected person more specific, establishes more  
12 detailed procedural safeguards for persons who are  
13 suspected of having a dangerous communicable disease  
14 and corrects an omission in the law not related to HIV  
15 infection.

16 13. The amendment requires the Department of  
17 Human Services to promulgate rules concerning  
18 notification of funeral directors or other authorized  
19 agents in charge of the disposition of dead human  
20 bodies in cases when the body has been diagnosed as  
21 having a communicable disease.

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