

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2392

S.P. 916 In Senate, March 1, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.
Reference to the Committee on Human Resources suggested
and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator GILL of Cumberland.

Cosponsored by Senator BRANNIGAN of Cumberland,
Representative DIAMOND of Bangor, Representative DELLERT of
Gardiner.

STATE OF MAINE

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

1 AN ACT to Provide for the Safety of Health Care
2 Workers Involved with the Care and
3 Treatment of AIDS Patients and Clarify the
4 Ability of Hospitals to Recover Increased
5 Costs Resulting from the Adoption of
6 Recommended Treatment Protocols.
7

8 Be it enacted by the People of the State of Maine as
9 follows:

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

3 2-A. Health care team. "Health care team" means
4 health care providers or other health care employees,
5 including physicians, nurses, emergency medical
6 technicians and providers of primarily administrative
7 services such as medical records technicians, who are
8 providing direct services to patients.

9 **Sec. 2.** 5 MRSA §19203, sub-§2, as repealed and
10 replaced by PL 1987, c. 539, is repealed and the
11 following enacted in its place:

12 2. Designated health care team. To any member of
13 the subject's designated health care team.

14 **Sec. 3.** 5 MRSA §19203-A, sub-§1, as repealed
15 and replaced by PL 1987, c. 539, is repealed and the
16 following enacted in its place:

17 1. Individual tested. No person may test for the
18 presence of antibodies to or antigen for HIV without
19 first obtaining the written informed consent of the
20 person to be tested, except that consent need not be
21 obtained:

22 A. When a member of a health care team, an
23 employee of a health care facility or a patient in
24 a health care facility is exposed to the blood or
25 body fluids of another and the exposure creates a
26 significant risk of infection, as defined by
27 appropriate medical standards.

28 **Sec. 4.** 5 MRSA §19203-A, sub-§3 is enacted to
29 read:

30 3. Procedures. Prior to performing a test
31 pursuant to subsection 1, the health care provider or
32 state agency shall document the circumstances
33 requiring this test and shall attempt to obtain the
34 person's informed consent. All tests conducted
35 pursuant to subsection 1 shall be accompanied by
36 post-test counseling, as defined in section 19204-A.

1 In the event that consent is refused, a health care
2 provider shall only test pursuant to a court order.

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

4 §19203-C. Records

5 No medical record containing results of a test for
6 the presence of an antibody to or an antigen for HIV
7 may be disclosed, discoverable or compelled to be
8 produced in any situation or in any civil, criminal,
9 administrative or other proceeding without consent,
10 except:

11 1. Communicable diseases. Under proceedings held
12 pursuant to Title 22, chapter 251, subchapter I-A;

13 2. Involuntary hospitalization. Under
14 proceedings held pursuant to Title 34-B, chapter 3,
15 subchapter IV, article III;

16 3. Child abuse or neglect. Under proceedings
17 held pursuant to Title 22, chapter 1071, subchapter II;

18 4. Adult protective services. Under proceedings
19 held pursuant to Title 22, chapter 958-A;

20 5. Court order. Pursuant to a court order upon a
21 showing of good cause, provided that the court order
22 may limit the use and disclosure of records and may
23 provide sanctions for misuse of records or set forth
24 other methods for assuring confidentiality;

25 6. Peer review. In reviews of medical records
26 for utilization review purposes by duly authorized
27 utilization review committees or peer review
28 organizations;

29 7. Designated health care team. To the patient's
30 designated health care team; and

31 8. Evaluation reports. To qualified personnel
32 for the purpose of conducting scientific research
33 management audits, financial audits or program
34 evaluation, but that personnel may not identify,

1 directly or indirectly, any individual patient in any
2 report of research, audit or evaluation, or otherwise
3 disclose patient identities in any manner.

4 **Sec. 6.** 22 MRSA §396-D, sub-§9, ¶B, as enacted
5 by PL 1983, c. 579, §10, is amended to read:

6 B. In determining payment year financial
7 requirements, the commission shall include an
8 adjustment for the reasonable impact on a
9 hospital's costs of events, including events
10 affecting all or a group of hospitals, which were
11 reasonably unforeseen by the hospital and which
12 were beyond the control of the hospital. This
13 adjustment may be made subsequent to the
14 commencement of a fiscal year. This adjustment
15 shall include all direct and indirect costs
16 incurred by a hospital resulting from conformance
17 with the United States Department of Health and
18 Human Services Public Health Service Centers for
19 Disease Control guidelines, requirements of the
20 Joint Commission on Accreditation of Hospitals,
21 Occupational Safety and Health Administration
22 standards, state, local and federal laws, rules
23 regulations and other factors relating to the
24 disease of AIDS. A hospital may apply for this
25 adjustment at any time during the course of a
26 payment year.

27 STATEMENT OF FACT

28 AIDS, Acquired Immunodeficiency Syndrome, has
29 become a national health emergency. Previous
30 legislation has caused certain problems with respect
31 to the safety of health care workers and practitioners
32 providing care to all their patients. This
33 legislation needs to be clarified to better assure
34 that good medical care can be offered without
35 unnecessary or inappropriate barriers to that care,
36 which relate to the need to know the medical condition
37 of patients consistent with good and necessary medical
38 care and the safety of the health care team. This
39 bill clarifies the law to provide for the ability to

1 test for the presence of an antibody to or antigen for
2 HIV and provides that a test may be accomplished or
3 required whenever it is medically indicated or
4 necessary to safeguard the health of a patient or a
5 health care worker.

6 This bill responds to the growing concerns of
7 health care workers for protection in cases of
8 accidental exposure to blood or bodily fluids which
9 carry a risk of infection with AIDS. In addition, the
10 bill provides some solutions to several other problems
11 faced by health care institutions treating AIDS
12 patients.

13 The bill provides that informed consent need not
14 be obtained for a test for HIV when a health care
15 worker, an employee of a health care facility or a
16 patient has been exposed to blood or bodily fluids of
17 another person where a significant risk of infection
18 exists.

19 The bill establishes a procedure for a health care
20 provider to seek informed consent for HIV testing,
21 documenting the circumstances requiring the test. If
22 informed consent is denied a health provider may test
23 only through a court order.

24 The bill establishes a provision for hospital
25 recovery of costs incurred because of the requirement
26 to conform with the United States Department of Health
27 and Human Services Public Health Service Centers for
28 Disease Control guidelines, requirements of the Joint
29 Commission on Accreditation of Hospitals, Occupational
30 Safety and Health Administration standards and other
31 factors relating to the treatment and prevention of
32 AIDS.

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