

MAINE STATE LEGISLATURE

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No. 429

H.P. 345

House of Representatives, January 29, 2007

An Act To Improve Access to HIV Testing in Health Care Settings

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLER of Somerville.

Cosponsored by Representatives: CAIN of Orono, MILLS of Farmington, WALKER of Lincolnville, Senators: BARTLETT of Cumberland, DAMON of Hancock, MARRACHÉ of Kennebec, STRIMLING of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §19203-A**, as amended by PL 1999, c. 429, §3, is further
3 amended to read:

4 **§19203-A. Voluntary informed consent required**

5 **1. Individual tested.** Except as provided in this section and section 19203,
6 subsections 4 and 5, ~~no person may perform an HIV test without first obtaining the~~
7 ~~written informed consent of the person to be tested~~ an HIV test must be voluntary and
8 undertaken only with a patient's knowledge and understanding that an HIV test is
9 planned. A patient must be informed orally or in writing that an HIV test will be
10 performed unless the patient declines. Oral or written information required to be given to
11 a patient under this subsection must include an explanation of what an HIV infection
12 involves and the meaning of positive and negative test results. Informed consent is not
13 required for repeated HIV testing by health care providers to monitor the course of
14 established infection. ~~Anonymous test sites under section 19203-B are exempt from the~~
15 ~~requirement that the informed consent be in writing.~~

16 **2. Insurers.** Persons required to take an HIV test by an insurer, nonprofit hospital or
17 medical service organization or nonprofit health care plan must provide their written
18 informed consent on forms approved by the Superintendent of Insurance. ~~Pretest and~~
19 ~~post-test~~ If the test is positive, post-test counseling must be provided by the person or
20 organization requesting the test. The Superintendent of Insurance may ~~promulgate~~ adopt
21 rules to define language requirements of the form.

22 **3. Access to medical care.** ~~No~~ A health care provider may not deny any person
23 medical treatment or care solely for refusal to give consent for an HIV test. ~~No~~ A health
24 care provider may not request a person's written consent to an HIV test as a precondition
25 to the provision of health care. All written consent to testing ~~shall~~ must be in accordance
26 with section 19201, subsection 5-A. ~~Nothing in this~~ This section may does not prohibit a
27 health care provider from recommending an HIV test for diagnostic or treatment
28 purposes. ~~No~~ A physician or other health care provider ~~may be~~ is not civilly liable for
29 failing to have an HIV test performed for diagnostic or treatment purposes if the test was
30 recommended and refused in writing by the patient.

31 **4. Occupational exposure.** Consent need not be obtained when a bona fide
32 occupational exposure creates a significant risk of infection ~~provided that~~ if a court order
33 has been obtained under section 19203-C. The fact that an HIV test was given as a result
34 of an occupational exposure and the results of that test may not appear in any records of
35 the person whose blood or body fluid is the source of the exposure. ~~Pretest and post-test~~
36 If the test is positive, post-test counseling must be offered. The subject of the test may
37 choose not to be informed about the result of the test.

38 **4-A. Occupational exposure in health care setting.** When a bona fide
39 occupational exposure occurs in a health care setting, authorization to test the source
40 patient for HIV must be obtained from that patient if the patient is present or can be
41 contacted at the time of exposure and is capable of providing consent. At the time of

1 exposure, if the source patient is not present and can not be contacted or is incapacitated,
2 then any reasonably available member of the following classes of individuals, in
3 descending order of priority, may authorize an HIV test on a blood or tissue sample from
4 the source patient:

- 5 A. The patient's legal guardian;
- 6 B. An individual known to have power of attorney for health care for the patient;
- 7 C. An adult relative, by blood, marriage or adoption;
- 8 D. An adult with whom the patient has a meaningful social and emotional
9 relationship; and
- 10 E. A physician who is familiar with occupational exposures to HIV.

11 The individual authorizing the HIV test must be informed of the nature, reliability and
12 significance of the HIV test and the confidential nature of the test.

13 If the person contacted for authorization refuses to authorize the test, the test may not be
14 conducted unless consent is obtained from the source patient or from the court pursuant to
15 section 19203-C.

16 This subsection does not authorize a person described in paragraphs A to D to receive the
17 test result. Test results must be given to the exposed person, to a personal physician if
18 designated by the exposed person and to either the physician who authorizes the test or
19 the health care provider who manages the occupational exposure.

20 The patient may choose not to be informed about the result of the HIV test. Without
21 express patient authorization, the results of the HIV test and the fact that an HIV test was
22 done as a result of an occupational exposure in a health care setting may not appear in the
23 patient's health care records. The exposed individual's occupational health care record
24 may include documentation of the occupational exposure and, if the record does not
25 reveal the source patient's identity, the results of the source patient's HIV test.

26 **5. Exposure from sexual crime.** Consent need not be obtained when a court order
27 has been issued under section 19203-F. The fact that an HIV test was given as a result of
28 the exposure and the results of that test may not appear in a convicted offender's medical
29 record. Counseling on risk reduction must be offered, but the convicted offender may
30 choose not to be informed about the result of the test unless the court has ordered that the
31 convicted offender be informed of the result.

32 **Sec. 2. 5 MRSA §19204-A**, as amended by PL 2001, c. 647, §§1 to 3, is further
33 amended to read:

34 **§19204-A. Counseling new HIV cases**

35 Except as otherwise provided by this chapter, persons who ~~are the subjects of test~~
36 positive for HIV tests infection must be offered ~~pretest and~~ post-test counseling. Persons
37 who are authorized by section 19203-C or 19203-F to receive test results after exposure
38 must be offered counseling regarding the nature, reliability and significance of the HIV
39 test and the confidential nature of the test. Persons offered counseling under this section

1 may decline the offer by signing a waiver stating that counseling has been offered and is
2 being declined.

3 ~~1. Pretest counseling. "Pretest counseling" must include:~~

4 ~~A. Face-to-face counseling that includes, at a minimum, a discussion of:~~

5 ~~(1) The nature and reliability of the test being proposed;~~

6 ~~(2) The person to whom the results of the test may be disclosed;~~

7 ~~(3) The purpose for which the test results may be used;~~

8 ~~(4) Any reasonably foreseeable risks and benefits resulting from the test; and~~

9 ~~(5) Information on good HIV preventive practices and HIV risk reduction plans;~~
10 ~~and~~

11 ~~B. An entry in the medical record of the person being counseled summarizing the~~
12 ~~contents of the discussion concerning at least the topics listed in paragraph A,~~
13 ~~subparagraphs (1) to (5). A written informed consent form may be used to satisfy the~~
14 ~~requirement in this paragraph if it contains all the required information. A written~~
15 ~~consent form does not satisfy the requirement for personal counseling in paragraph A.~~

16 ~~The provider of an HIV test may offer group pretest counseling, but individual counseling~~
17 ~~must be provided if the subject of the test requests it.~~

18 **2. Post-test counseling. "Post-test counseling" must include:**

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

20 (1) The test results and the reliability and significance of the test results. The
21 test provider shall communicate the result confidentially and through personal
22 contact;

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

24 (4) Referrals for medical care and information and referrals for support services,
25 including social, emotional support and legal services, as needed;

26 B. An entry in the medical record of the person being counseled summarizing the
27 contents of the discussion; and

28 C. The offer of face-to-face counseling. If the subject of the test declines, the
29 provider of the test may provide an alternative means of providing the information
30 required by paragraph A.

31 **5. Written information to person being counseled.** ~~To comply with the~~
32 ~~requirements of this section regarding pretest counseling, in addition to meeting the~~
33 ~~requirements of subsection 1, the provider of an HIV test shall give to the person being~~
34 ~~counseled a written document containing information on the subjects described in~~
35 ~~subsection 1, paragraph A. To comply with the requirements of this section regarding~~
36 ~~post-test counseling, in addition to meeting the requirements of subsection 2, the provider~~
37 ~~of an HIV test shall give to the person being counseled a written document containing~~
38 ~~information on the subjects described in subsection 2, paragraph A. A written consent~~
39 ~~form or other document may be used to meet one or both of the requirements for~~

1 ~~information pursuant to this subsection if the form or document contains all the~~
2 ~~information required for the type of counseling being offered.~~

3

SUMMARY

4 This bill amends HIV testing law by replacing the requirement for obtaining a
5 patient's written informed consent before an HIV test to requiring a test be undertaken
6 only with a patient's knowledge and understanding that an HIV test is planned, by
7 removing the requirement for pretest counseling and by requiring that a positive test
8 result must be confidentially given through personal contact.