

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2075

H.P. 1334

House of Representatives, December 22, 2023

An Act to Protect Health Care Workers from HIV

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 20, 2023. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PERRY of Calais.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** health care workers who are exposed to bodily fluids from patients are at
4 high risk of infection; and

5 **Whereas,** it is imperative that appropriate treatment following exposure be started as
6 soon as possible, which requires knowledge of the pathogen to which the health care worker
7 may have been exposed; and

8 **Whereas,** this legislation allows for a more rapid determination of whether a patient
9 may be positive for HIV and is necessary as quickly as possible to protect the health care
10 workers in the State; and

11 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
12 the meaning of the Constitution of Maine and require the following legislation as
13 immediately necessary for the preservation of the public peace, health and safety; now,
14 therefore,

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

16 **Sec. 1. 5 MRSA §19203-A, sub-§4-A,** as enacted by PL 1999, c. 429, §3, is
17 amended to read:

18 **4-A. Occupational exposure in health care setting.** When a bona fide occupational
19 exposure occurs in a health care setting, a legal representative or administrator of that health
20 care setting shall seek authorization to test the source patient for HIV ~~must be obtained~~
21 from that patient if the patient is present or can be contacted at the time of exposure and is
22 capable of providing consent. At the time of exposure, if the source patient is not present
23 and ~~can not~~ cannot be contacted or is incapacitated, then any ~~reasonably available~~
24 reasonable member of the following classes of individuals who is present, in descending order of priority, may
25 authorize an HIV test on a blood or tissue sample from the source patient:

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

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

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

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

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

7 **Sec. 2. 5 MRSA §19203-A, sub-§4-B** is enacted to read:

8 **4-B. Test without consent.** An HIV test may be administered without consent or
9 authorization if consent has not been obtained following a good faith effort to obtain
10 consent and at least 8 hours have passed since exposure because:

11 A. The source patient is incapacitated or is determined by that patient's attending health
12 care provider to lack the mental capacity to provide such consent;

13 B. The source patient is not expected to recover in time for the person who is exposed
14 to receive appropriate medical treatment; and

15 C. There is not a person immediately available who has legal authority to consent in
16 time for the person who is exposed to receive appropriate medical treatment.

17 All other provisions of subsection 4-A regarding the administration of the HIV test and the
18 results and documentation of the HIV testing apply to an HIV test conducted pursuant to
19 this subsection.

20 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
21 takes effect when approved.

22 SUMMARY

23 Under current law, if a person, while in the course of employment in a health care
24 setting or as an emergency services worker, is exposed to potentially infectious blood or
25 other bodily fluids of a patient in the course of employment, consent is required of the
26 patient before a test for HIV may be performed. Consent may be provided by certain other
27 individuals if the patient is not present and cannot be contacted or is incapacitated.

28 This bill clarifies that the consent must be sought by a legal representative or
29 administrator of the health care setting and that another individual who can authorize
30 consent must be present. This bill also allows an HIV test to be conducted without consent
31 if, despite a good faith effort to obtain consent, at least 8 hours have passed since exposure
32 and:

33 1. The patient is incapacitated or is determined by that patient's attending health care
34 provider to lack the mental capacity to provide such consent;

35 2. The patient is not expected to recover in time for the person who is exposed to
36 receive appropriate medical treatment; and

37 3. There is not a person immediately available who has legal authority to consent in
38 time for the person who is exposed to receive appropriate medical treatment.