LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

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in section 346, but ~~such~~ the person may apply to the board for a hearing on ~~such~~ the order, which hearing shall be held by the board within 48 hours after receipt of application therefor. Within 7 days after ~~such~~ the hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

Sec. 8. 38 MRSA §347, sub-§6, as enacted by PL 1983, c. 300, §9, is amended to read:

6. Enforcement orders. All orders of the board and the commissioner shall be enforced by the Attorney General. If any order of the board or the commissioner is not complied with within the time period specified, the board or the commissioner, respectively, shall immediately notify the Attorney General of this fact.

Sec. 9. 38 MRSA §482, sub-§5, ¶G, as enacted by PL 1985, c. 654, is amended to read:

G. Lots of 40 or more acres but not more than 500 acres shall not be counted as lots; ~~or~~ except where:

(1) The proposed subdivision is located wholly or partly within the shoreland area as defined in Title 38, section 435;

Sec. 10. 38 MRSA §482, sub-§5, ¶G-1 is enacted to read:

G-1. Lots of more than 500 acres in size shall not be counted as lots; or

Sec. 11. Transition. This Act applies to any division of land occurring after the date of enactment of this Act. Notwithstanding Title 1, section 302, this Act applies to any application for subdivision approval submitted after the date of enactment of this Act.

This Act shall not apply to the parcel of land of approximately 343.6 acres in the northwest portion in Township 9 SD which shall not be divided into more than 8 lots and which is subject to a conservation easement to the State, as described in the Agreement between the State and Prentiss & Carlisle Company, Inc., dated April 1, 1988, if that Agreement is enacted into law.

Effective August 4, 1988.

CHAPTER 811

S.P. 916 — L.D. 2392

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

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

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 to be tested:

(1) That the test is being performed;

(2) Of the nature of the test;

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

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

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

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

§19203. Confidentiality of test

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

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

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

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

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

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

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

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

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

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

10. Court ordered disclosure. To a person authorized by section 19203-C to receive test results following an accidental exposure.

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

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

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

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

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

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

3. Access to medical care. No health care provider may deny any person medical treatment or care solely for refusal to give consent for an HIV test. No health care provider may request a person's written consent to an HIV test as a precondition to the provision of health care. All written consent to testing shall be in accordance with section 19201, subsection 5-A. Nothing in this section may prohibit a health care provider from recommending an HIV test for diagnostic or treatment purposes. No physician or other health care provider may be civilly liable for failing to have an HIV test performed for diagnostic or treatment purposes if the test was recommended and refused in writing by the patient.

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

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

§19203-C. Judicial consent to HIV test

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

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

B. The authorized representative of the health care facility has informed the patient of the accidental exposure and has sought to obtain written informed consent from the patient; and

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

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

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

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

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

D. Furnish counsel with copies of the petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§19203-D. Records

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

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

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

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

2. Authorized disclosure. No medical record con-

taining results of an HIV test may be disclosed, discoverable or compelled to be produced in any civil, criminal, administrative or other proceedings without the patient's consent, except in the following cases:

A. Proceedings held pursuant to the communicable disease laws, Title 22, chapter 251;

B. Proceedings held pursuant to the Adult Protective Services Act, Title 22, chapter 958-A;

C. Proceedings held pursuant to the child protection laws, Title 22, chapter 1071;

D. Proceedings held pursuant to the mental health laws, Title 34-B, chapter 3, subchapter IV, article III; and

E. Pursuant to a court order upon a showing of good cause, provided that the court order limits the use and disclosure of records and provides sanctions for misuse of records or sets forth other methods for assuring confidentiality.

3. Utilization review; research. Nothing in this section may be interpreted to prohibit reviews of medical records for utilization review purposes by duly authorized utilization review committees or peer review organizations. Qualified personnel conducting scientific research, management audits, financial audits or program evaluation with the use of medical records may not identify, directly or indirectly, any individual patient in any report of such research, audit, evaluation or otherwise disclose patient identities in any manner.

4. Access by health care providers. Nothing in this section may prohibit access to medical records by the patient's designated health care provider in accordance with section 19203, subsection 2.

5. Confidentiality policy. Health care providers with patient records containing HIV infection status information shall have a written policy providing for confidentiality of all patient information consistent with this chapter. That policy shall require, at a minimum, termination of employment for violations of the confidentiality policy.

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

§19204. Restrictions upon revealing HIV test results

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

This section is repealed on October 1, ~~1988~~ 1990.

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

§19204-A. Counseling

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

1. Pretest counseling. "Pretest counseling" means:

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

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

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

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

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

B. A written memorandum summarizing the contents of the discussion given to the person being counseled. A written informed consent form may be used to satisfy the requirement for a written memorandum in this paragraph if it contains all the required information. A written consent form does not satisfy the requirement for personal counseling in paragraph A.

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

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

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

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

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

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

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

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

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

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

This subsection is repealed October 1, 1989.

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

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

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

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

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

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

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

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

§19208. Proceedings

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

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

B. In determining payment year financial requirements, the commission shall include an adjustment for the reasonable impact on a hospital's costs of events, including events affecting all or a group of hospitals, which were reasonably unforeseen by the hospital and which were beyond the control of the hospital. This adjustment may be made subsequent to the commencement of a fiscal year. This adjustment shall include all reasonable costs incurred by a hospital resulting from conformance with the United States Department of Health and Human Services Public Health Service Centers for Disease Control guidelines; requirements of the Joint Commission on Accreditation of Health Care Organizations; Occupational Safety and Health Administration standards; and federal, state and local laws, rules and regulations relating to the disease of AIDS. Nothing in this paragraph may be construed to preclude other adjustments under this paragraph for costs of events relating to the disease of AIDS, consistent with the standards set forth in this paragraph. A hospital may apply for this adjustment at any time during the course of a payment year.

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

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

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

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

Sec. 15. 22 MRSA §1011, sub-§3 as enacted by PL 1977, c. 304, §2, is amended to read:

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

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

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

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

5. Infected person. "Infected person" means a person who is diagnosed ~~or believed to have~~ as having a communicable disease or dangerous communicable disease and who, after appropriate medical evaluation or test-

ing, is determined to be a potential source of infection to others, given conditions necessary for transmission of the disease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	1988-89
HUMAN SERVICES, DEPARTMENT OF	
Medical Care — Payments to Providers	
All Other	$199,320

Provides funds for the State's share of Medicaid's portion of additional hospital cost to implement this Act.

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

	1988-89
HUMAN SERVICES, DEPARTMENT OF	
Medical Care — Payments to Providers	
All Other	$400,680

Allocates federal matching funds.

Effective August 4, 1988.

CHAPTER 812

S.P. 846 — L.D. 2202