

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

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The fact that an HIV test was given as a result of an ~~accidental occupational exposure in a health care facility~~ and the results of that test ~~shall~~ may not appear in a ~~patient's medical record~~ any records of the person whose blood or body fluid is the source of the exposure. ~~Counseling on risk reduction~~ Pretest and post-test counseling must be offered, ~~but the patient~~. The subject of the test may choose not to be informed about the result of the test.

Sec. 7. 5 MRSA §19203-C, sub-§1, as amended by PL 1989, c. 219, §1, is further amended to read:

1. Petition. Any person ~~described in subsection 1-A who has been accidentally exposed to blood or body fluid of a patient in a health care facility who experiences a bona fide occupational exposure~~ may petition the District Court with jurisdiction over the ~~health care facility or other place where the patient was being treated at the time of the accidental exposure occurred~~ to require the patient person whose blood or body fluid is the source of the exposure 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~~ adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

B. The authorized representative of the ~~health care facility employer~~ of the person exposed has informed the patient person whose blood or body fluid is the source of the accidental occupational exposure and has sought to obtain written informed consent from the patient person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the patient person whose blood or body fluid is the source of the exposure and ~~the patient that person~~ has stated in writing the refusal refused to be tested.

Sec. 8. 5 MRSA §19203-C, sub-§1-A, as enacted by PL 1989, c. 219, §2, is repealed.

Sec. 9. 5 MRSA §19203-C, sub-§3, ¶¶C and D, as enacted by PL 1987, c. 811, §6, are amended to read:

C. The report of the hearing proceedings ~~shall~~ must be sealed. No report of the hearing proceedings may be released to the public, except by permission of the ~~patient or the patient's person~~ whose blood or body fluid is the source of the exposure or that person'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 person~~ whose blood or body fluid is the source of the exposure or that person's counsel.

Sec. 10. 5 MRSA §19203-C, sub-§§4 to 7, as enacted by PL 1987, c. 811, §6, are amended to read:

4. Determination. The court may require the ~~patient person whose blood or body fluid is the source of the exposure~~ 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 person~~ created a significant risk of HIV infection as defined by the Bureau of Health through the ~~promulgation~~ adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

B. An authorized representative of the ~~health care facility employer~~ of the person exposed has informed the patient of the ~~accidental occupational exposure~~ and has sought to obtain written informed consent from the patient person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the patient person whose blood or body fluid is the source of the exposure and ~~the patient that person~~ has stated in writing the refusal refused to be tested.

In determining whether to order the test, the court shall consider the balance of benefit and harm to both individuals if the test is ordered.

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

6. Costs. The ~~health care facility~~ shall be employer of the person exposed is 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 person~~ 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.

Sec. 11. 5 MRSA §19203-C, sub-§8, as enacted by PL 1987, c. 811, §6, is repealed.

Sec. 12. 5 MRSA §19203-C, sub-§9, as enacted by PL 1987, c. 811, §6, is amended to read:

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

Sec. 13. 5 MRSA §19203-C, sub-§10 is enacted to read:

10. Bureau of Health report. The Bureau of Health shall report on an annual basis to the Maine HIV Advisory Committee the following information:

A. The number of incidents in which the Bureau of Health is requested to determine under subsection 1, paragraph A whether a bona fide occupational exposure has occurred; and

B. With regard to the incidents reported in paragraph A, the occupations represented, the nature or a description of the incidents and the number of incidents determined to be and not to be bona fide occupational exposures.

Sec. 14. 5 MRSA §19203-D, as enacted by PL 1987, c. 811, §6, is amended to read:

§19203-D. Records

When a medical record entry is made concerning information of a ~~patient's~~ person'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~~ person who is the subject of an HIV test, 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 that person's~~ the person's medical record has been requested. A new election may be made when a change in the ~~patient's~~ person's HIV infection status occurs or whenever the ~~patient~~ person makes a new election. The release form ~~shall~~ must clearly state whether or not the ~~patient~~ person has authorized the release of that information. The ~~patient~~ person ~~shall~~ must 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~~ person'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~~ is 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 that~~ does not contain the HIV infection status information. Except as otherwise provided in this section, HIV infection status information may ~~only~~ be released only if the ~~patient~~ person has specifically authorized a separate release of that information. A general release form is insufficient.

2. Authorized disclosure. ~~No~~ A medical record containing results of an HIV test may not be disclosed, discoverable or compelled to be produced in any civil, criminal, administrative or other proceedings without the ~~patient's~~ consent of the person who is the subject of an HIV test, 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~~ ensuring 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~~ the identities of ~~persons tested~~ 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 of the person who is the subject of an HIV test in accordance with section 19203, subsection 2.

5. Confidentiality policy. Health care providers and others with ~~patient~~ access to medical 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~~ must require, at a minimum, ~~termination of employment action consistent with disciplinary procedures~~ for violations of the confidentiality policy.

Sec. 15. 5 MRSA §19204-A, as amended by PL 1991, c. 803, §4, is further amended to read:

§19204-A. Counseling

Except as otherwise provided by this chapter, persons who ~~obtain an~~ are the subjects of HIV test tests must be offered pretest and post-test counseling. Persons who are authorized by section 19203-C or 19203-E to receive test results after exposure must be offered counseling regarding the nature, reliability and significance of the HIV test and the confidential nature of the test. Persons offered counseling under this section may decline the offer by signing a waiver stating that counseling has been offered and is being declined.

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

A. ~~Personal~~ Face-to-face 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
- (5) Information on good HIV preventive practices and HIV risk reduction plans; and

B. A written memorandum summarizing the contents of the discussion concerning at least the topics listed in paragraph A, subparagraphs (1) to (5) 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.

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

2. Post-test counseling. "Post-test counseling" ~~means~~ must include:

A. Personal counseling that includes, at a minimum, a discussion 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 in-~~ formation and referrals for support services, including social, emotional support and legal services, as needed; and

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

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

Sec. 16. 5 MRSA §19204-B, as amended by PL 1989, c. 161, is further amended to read:

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

1. Employee testing. ~~No health care facility may require that any~~ An employee or applicant for employment ~~may not be required to 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~~ The Maine Human Rights Commission shall enforce this subsection.

2. Employee rights. The employment status of any employee ~~of a health care facility shall~~ may 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. 17. 5 MRSA §19204-C, as enacted by PL 1991, c. 3, §1, is amended to read:

§19204-C. Restrictions upon revealing HIV antibody test results

~~No~~ An insurer, nonprofit hospital or medical services organization ~~or~~, nonprofit health care plan ~~or~~ health maintenance organization may ~~not~~ request any person to reveal whether the person has obtained a test for the presence of antibodies to HIV or a test to measure the virus or to reveal the results of such tests taken prior to an application for insurance coverage.

Sec. 18. 5 MRSA §19205, sub-§1, as amended by PL 1989, c. 700, Pt. A, §28, is further amended to read:

1. Policy; services. It ~~shall be~~ is the policy of the State to provide to persons who test positive for HIV or have been diagnosed as having AIDS ~~or~~ AIDS-Related-Complex the services of departments and agencies, including, but not limited to, the Department of Education, the Department of Mental Health and Mental Retardation, the Department of Human Services and the Department of Corrections.

Sec. 19. 5 MRSA §19205, sub-§2, as amended by PL 1989, c. 502, Pt. A, §22, is further amended to read:

2. Coordination of services. A person designated by the Commissioner of Human Services shall ~~insure~~ ensure coordination of new and existing services so as to meet the needs of persons with ~~AIDS, AIDS-Related-Complex and viral positivity~~ HIV or AIDS and identify gaps in programs.

The committee established in section 12004-I, subsection 42, shall work with the person designated in this chapter to ~~insure~~ ensure the coordination of services to meet the needs of persons with ~~AIDS, AIDS-Related-Complex and viral positivity~~ HIV or AIDS.

See title page for effective date.

CHAPTER 405

H.P. 808 - L.D. 1125

An Act to Implement the Recommendations Resulting from the Study Concerning Parental Rights and Responsibilities When Domestic Abuse is Involved

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

Sec. 1. 17-A MRSA §1204, sub-§2-A, ¶D, as enacted by PL 1975, c. 740, §110-A, is amended to read:

D. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition ~~shall be~~ is considered only as a violation of probation and ~~shall~~ may not, in itself, authorize involuntary treatment or hospitalization. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19, section 770-C;

Sec. 2. 19 MRSA §214, sub-§6, as amended by PL 1995, c. 172, §1, is further amended to read:

6. Order. The order of the court must award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. When the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons.

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19, section 770-C.

Every final order issued under this section must contain:

A. A provision for child support or a statement of the reasons for not ordering child support;

B. A statement that each parent must have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access; and