

SENATE, No. 763

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Senator CONNORS

1 AN ACT concerning health care workers and supplementing chapter
2 5C of Title 26 of the Revised Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. The Legislature finds and declares that:

8 a. There is widespread public concern about the possibility of
9 accidental HIV transmission occurring as a result of a medical, surgical
10 or dental procedure, which was highlighted by the documented case of
11 a dentist practicing in Florida who was determined to have infected
12 five patients with HIV.

13 b. Because AIDS is deadly and contagious, a patient should be
14 informed if a health care worker is HIV infected, rather than relying
15 for safety on the worker's use of universal precautions recommended
16 by the federal Centers for Disease Control, or CDC, against HIV
17 infection. It is arguable that it is unrealistic to expect health care
18 workers to maintain the highest level of vigilance continuously by
19 always using universal precautions; surveys indicate that many health
20 care workers do not because the precautions take extra time and some
21 may feel that they interfere with the provision of efficient medical care.
22 In addition, there have been reports that surgeons and dentists tear a
23 glove in about one of every four cases and generally sustain a
24 significant injury in one of every 40 cases. Also, with the progression
25 of HIV infection and the onset of AIDS, a health care worker's
26 physical or mental competence could in some cases interfere with the
27 ability to provide quality care.

28 c. According to a policy statement adopted by the American
29 Medical Association in 1991: "Physicians who are HIV positive have
30 an ethical obligation not to engage in any professional activity which
31 has an identifiable risk of transmission of the infection to the
32 patient. . . . In cases of uncertainty about the risks to patient health,
33 the medical profession, as a matter of medical ethics, should err on the
34 side of protecting patients."

35 d. The CDC adopted guidelines in July 1991 on preventing the
36 transmission of HIV and HBV, the hepatitis B virus, in health care

1 settings which, in part, called for the identification of exposure-prone
2 procedures by medical, surgical and dental organizations and
3 institutions at which medical, surgical and dental procedures are
4 preformed; awareness by health care workers of their HIV and HBV
5 status; and limits on the performance of exposure-prone procedures by
6 HIV and HBV-infected workers, including notification to prospective
7 patients before the performance of such procedures.

8 e. Notwithstanding these considerations to the contrary, the
9 Department of Health has developed a policy on HIV-infected health
10 care workers for submission to the CDC, as required of all the states
11 by federal law, which refutes the recommendation contained in the
12 CDC guidelines of July 1991 that an HIV-infected health care worker
13 should notify a prospective patient before an exposure-prone
14 procedure is performed on that patient. It is, therefore, incumbent
15 upon the Legislature to take action to ensure the public's right to know
16 on this issue.

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18 2. As used in this act:

19 "AIDS" means acquired immune deficiency syndrome as defined by
20 the Centers for Disease Control of the United States Public Health
21 Service.

22 "Commissioner" means the Commissioner of Health.

23 "Health care worker" means a physician, dentist, nurse or other
24 person as determined by the commissioner whose professional duties
25 involve direct participation in the performance of exposure-prone
26 procedures.

27 "HBV" means the virus identified as a probable causative agent of
28 hepatitis B.

29 "HIV" means the human immunodeficiency virus or any other
30 related virus identified as a probable causative agent of AIDS.

31 "Exposure-prone procedure" means a medical, surgical or dental
32 procedure which poses a risk of transmission of HIV or HBV from a
33 health care worker to a patient, to be determined by the commissioner
34 in consultation with the State Board of Medical Examiners, the New
35 Jersey State Board of Dentistry and the New Jersey Board of Nursing.

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37 3. a. A health care worker who has been diagnosed as being
38 infected with HIV or HBV shall inform a patient of his infection and
39 obtain written informed consent from the patient prior to participating
40 in an exposure-prone procedure on that patient, according to
41 guidelines established by the commissioner, in consultation with the
42 State Board of Medical Examiners, the New Jersey State Board of
43 Dentistry and the New Jersey Board of Nursing.

44 b. If the patient is legally incompetent, the health care worker shall
45 inform an authorized representative of the patient of his HIV or HBV
46 infection and obtain the written informed consent from the authorized

1 representative.

2 c. A copy of the written informed consent shall be included in the
3 medical or dental record of the patient.

4 d. Written informed consent shall consist of a statement, on a form
5 or in a manner to be determined by the commissioner, signed by the
6 patient or by an authorized representative of the patient, which
7 acknowledges that notification has been provided to the patient by the
8 health care worker that the health care worker has been diagnosed as
9 having HIV or HBV infection, and that the patient or authorized
10 representative of the patient consents to the health care worker's
11 participation in the procedure.

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13 4. The commissioner shall take such actions as are necessary to
14 notify health care workers about the provisions of this act and is
15 entitled to receive the cooperation of the State Board of Medical
16 Examiners, the New Jersey State Board of Dentistry and the New
17 Jersey Board of Nursing, in addition to any other agency of State,
18 county or local government, for this purpose.

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20 5. A health care worker who knowingly fails to comply with the
21 provisions of this act is a disorderly person.

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23 6. The commissioner, pursuant to the "Administrative Procedure
24 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
25 regulations to effectuate the purposes of this act.

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27 7. This act shall take effect on the 60th day after enactment, except
28 that the commissioner shall take such actions prior to the effective
29 date as are necessary to implement the provisions of this act.

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STATEMENT

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34 This bill requires that a health care worker, such as a physician,
35 dentist or nurse, who has been diagnosed as being infected with HIV
36 (the virus which is believed to cause AIDS) or HBV (the hepatitis B
37 virus) inform the patient of his HIV or HBV infection and obtain
38 written informed consent from a patient prior to participating in an
39 invasive procedure on that patient, according to guidelines established
40 by the Commissioner of Health in consultation with the Board of
41 Medical Examiners, the Board of Dentistry and the Board of Nursing.

42 The bill provides that if the patient is legally incompetent, the health
43 care worker shall inform an authorized representative of the patient of
44 his HIV or HBV infection and obtain the written informed consent
45 from the authorized representative. A copy of the written informed
46 consent shall be included in the medical or dental record of the patient.

1 The bill stipulates that written informed consent shall consist of a
2 statement, signed by the patient or by an authorized representative of
3 the patient, which acknowledges that notification has been provided
4 to the patient by the health care worker that the latter has been
5 diagnosed as having HIV or HBV infection, and that the patient or
6 authorized representative of the patient consents to the health care
7 worker's participation in the procedure.

8 The bill further provides that the Commissioner of Health shall take
9 such actions as are necessary to notify health care workers about the
10 provisions of the bill and is entitled to receive the cooperation of the
11 Board of Medical Examiners, the Board of Dentistry and the Board of
12 Nursing, in addition to any other agency of State, county or local
13 government, for this purpose.

14 Finally, the bill provides that a health care worker who knowingly
15 fails to comply with the provisions of the bill is a disorderly person
16 (which is punishable by a fine of up to \$1,000 or imprisonment for up
17 to six months, or both).

18 The rationale for this bill is supported by an April 1991 decision by
19 Mercer County Superior Court Judge Philip S. Carchman which held
20 that a physician who tests positive for HIV should advise a patient of
21 that fact and should secure informed consent from a patient before
22 performing surgery, on the grounds that the risk to a patient of being
23 exposed to HIV as a result of the performance of an invasive
24 procedure is so devastating as to require informed consent by the
25 patient.

26 In addition, the State Board of Medical Examiners has adopted a
27 policy statement (as amended June 10, 1992), as "an advisory to its
28 licensees to guide professional behavior," which recommends that an
29 HIV-infected physician "either abstain from performing invasive
30 procedures which pose an identifiable risk of transmission or disclose
31 their status to the patient and proceed only with informed consent."

32 Finally, the American Medical Association adopted a policy
33 statement in 1991 which contends that: "HIV infected physicians
34 should either abstain from performing invasive procedures which pose
35 an identifiable risk of transmission or disclose their sero-positive status
36 prior to performing a procedure and proceed only if there is informed
37 consent."

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42 Requires health care workers infected with HIV or hepatitis B virus to
43 obtain informed consent from their patients before performing
44 exposure-prone procedures.