

1985 Assembly Bill 487

Date of enactment: **November 14, 1985**  
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## 1985 Wisconsin Act 73

AN ACT to amend 20.435 (1) (a); to repeal and recreate 103.15, 146.025 and 631.90; and to create 146.023 and 619.12 (1) (e) of the statutes, relating to restricting the use of a test for an antibody to the virus that causes acquired immunodeficiency syndrome, requiring certain blood testing, providing penalties and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 20.435 (1) (a) of the statutes is amended to read:

20.435 (1) (a) *General program operations.* The amounts included in the schedule for general program operations; including health services regulation, administration and field services. Of the amounts appropriated under this paragraph, unless the department has expended all federal moneys available for provision of these services:

1. In state fiscal year 1985-86 \$75,000 may not be expended and in state fiscal year 1986-87 \$150,000 may not be expended for the provision of in-person counseling services and laboratory testing services for the presence of an antibody to HTLV-III at alternate testing sites.

2. In state fiscal year 1985-86 \$41,400 may not be expended and in state fiscal year 1986-87 \$83,000 may not be expended to fund department administrative costs and a total of 1.5 full-time equivalent general purpose revenue positions to assist in responding to the epidemic of acquired immunodeficiency syndrome and HTLV-III infections.

SECTION 2. 103.15 of the statutes, as created by 1985 Wisconsin Act 29, is repealed and recreated to read:

**103.15 Restrictions on use of a test for an antibody to HTLV-III.** (1) In this section:

(a) "HTLV-III" means the human T-cell lymphotropic virus-type III that causes acquired immunodeficiency syndrome.

(b) "HTLV-III infection" means the pathological state produced by a human body in response to the presence of HTLV-III.

(c) "State epidemiologist" means the individual designated by the secretary of health and social services as the individual in charge of communicable disease control for this state.

(2) Notwithstanding ss. 227.01 (9) and 227.011 (1) unless the state epidemiologist determines and the secretary of health and social services declares under s. 140.05 (1) that individuals who have HTLV-III infections may, through employment, provide a significant risk of transmitting HTLV-III to other individuals, no employer or agent of an employer may directly or indirectly:

(a) Solicit or require as a condition of employment of any employe or prospective employe a test for the presence of an antibody to HTLV-III.

(b) Affect the terms, conditions or privileges of employment or terminate the employment of any employe who obtains a test for the presence of an antibody to HTLV-III.

(3) Any agreement by an employer or agent of the employer and an employe or prospective employe offering employment or any pay or benefit to an employe or prospective employe in return for taking a test for the presence of an antibody to HTLV-III is prohibited, except as provided under sub. (2) (intro.).

SECTION 2m. 146.023 of the statutes is created to read:

**146.023 Blood tests for antibody to virus that causes acquired immunodeficiency syndrome.** (1) Except as provided under sub. (3), any blood bank, blood center or plasma center in this state that purchases or receives voluntarily donated whole blood, blood plasma, a blood product or a blood derivative shall, prior to its distribution or use, subject that blood, plasma, product or derivative to a test approved by the federal food and drug administration and the department for the presence of an antibody to the human T-cell lymphotropic virus-type III that causes acquired immunodeficiency syndrome.

(2) If performance of a validated test as defined under s. 146.025 (1) (g) yields a result positive for the presence of an antibody to the human T-cell lymphotropic virus-type III, the whole blood, blood plasma, blood product or blood derivative so tested with this result may not be distributed or used except for purposes of research.

(3) If a medical emergency, including a threat to the preservation of life of a potential donee, exists under which whole blood, blood plasma, a blood product or a blood derivative that has been subjected to testing under sub. (1) is unavailable, the requirement of sub. (1) shall not apply.

(4) Subsections (1) and (2) do not apply to the extent that federal law or regulations require that a blood bank, blood center or plasma center test whole blood, blood plasma, a blood product or a blood derivative.

SECTION 3. 146.025 of the statutes, as created by 1985 Wisconsin Act 29, is repealed and recreated to read:

**146.025 Restrictions on use of a test for an antibody to HTLV-III.** (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given under s. 146.81 (1).

(b) "HTLV-III" means the human T-cell lymphotropic virus-type III that causes acquired immunodeficiency syndrome.

(c) "HTLV-III infection" means the pathological state produced by a human body in response to the presence of HTLV-III.

(d) "Informed consent for testing or disclosure" means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of an antibody to HTLV-III or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) "Informed consent for testing or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of an antibody to HTLV-III or authorize the disclosure of any test results obtained.

(f) "State epidemiologist" means the individual designated by the secretary of health and social services as the individual in charge of communicable disease control for this state.

(g) "Validated test result" means a result of a test for the presence of an antibody to HTLV-III that meets the validation requirements determined to be necessary by the state epidemiologist.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE.

(a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of an antibody to HTLV-III unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. A health care provider who procures, processes, distributes or uses a human body part donated for a purpose specified under s. 155.06 (3) may, without obtaining consent to the testing, test for the presence of an antibody to HTLV-III in order to assure medical acceptability of the gift for the purpose intended.

2. The department, a laboratory certified under s. 143.15 (4) or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of an antibody to HTLV-III 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.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of an antibody to HTLV-III under par. (a) shall provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and shall obtain the potential test subject's signature on the form:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed.

2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under sub. (5) (a) 2 to 10 or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of an antibody to HTLV-III under sub. (2) (b) may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose his or her test results to anyone at any time subsequent to providing informed

consent for disclosure under sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) RECORD MAINTENANCE. A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to HTLV-III shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained.

(5) CONFIDENTIALITY OF TEST. (a) The results of a test for the presence of an antibody to HTLV-III may be disclosed only to the following persons or under the following circumstances, except that the person who receives a test may under sub. (2) (b) or (3) authorize disclosure to anyone:

1. To the subject of the test.

2. To the test subject's health care provider, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employe of the test subject's health care provider under subd. 2 who provides patient care or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under sub. (2) (a), for any of the following purposes:

a. Determining the medical acceptability of blood or plasma secured from the test subject.

b. Notifying the test subject of the test results.

c. Investigating HTLV-III infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated for a purpose specified under s. 155.06 (3), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 (5) or to other persons who prepare the body of a decedent for burial or other disposition.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with the test subject's health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

(b) A private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10 if he or she annually submits to the maintenance of his or her test results under sub. (4) (c) a signed, written request that denial be made.

(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED. No person to whom the results of a test for the presence of an antibody to HTLV-III have been disclosed under sub. (5) (a) may disclose the test results except as authorized under sub. (5) (a).

(7) REPORTING OF POSITIVE TEST RESULTS. (a) Notwithstanding ss. 227.01 (9) and 227.011 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result for the presence of an antibody to HTLV-III and the secretary of health and social services shall so declare under s. 140.05 (1). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary of health and social services shall declare the revision under s. 140.05 (1).

(b) If a positive, validated test result for the presence of an antibody to HTLV-III is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HTLV-III infections.

(c) A report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 143.04 with respect to persons for whom a diagnosis of acquired immunodeficiency syndrome has been made.

(8) CIVIL LIABILITY. (a) Any person violating sub. (2), (5) (a), (6) or (7) (c) is liable to the subject of the test for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under sub. (2), (5) (a), (6) or (7) (c). A conviction under sub. (2), (5) (a), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) CRIMINAL PENALTY. Whoever intentionally discloses the results of a blood test in violation of sub. (5) (a) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

SECTION 4. 619.12 (1) (e) of the statutes is created to read:

619.12 (1) (e) A notice of rejection or cancellation of coverage from one insurer and evidence of a positive test for the presence of an antibody to the human T-cell lymphotropic virus-type III that causes acquired immunodeficiency syndrome.

SECTION 5. 631.90 of the statutes, as created by 1985 Wisconsin Act 29, is repealed and recreated to read:

**631.90 Restrictions on use of a test for an antibody to HTLV-III.** (1) In this section, "HTLV-III" means the human T-cell lymphotropic virus-type III that causes acquired immunodeficiency syndrome.

(2) With regard to policies issued or renewed on and after July 20, 1985, an insurer may not do any of the following:

(a) Require or request directly or indirectly any individual to reveal whether the individual has obtained a test for the presence of an antibody to HTLV-III or what the results of this test, if obtained by the individual, were.

(b) Condition the provision of insurance coverage on whether an individual has obtained a test for the presence of an antibody to HTLV-III or what the results of this test, if obtained by the individual, were.

(c) Consider in the determination of rates or any other aspect of insurance coverage provided to an individual whether an individual has obtained a test for the presence of an antibody to HTLV-III or what the results of this test, if obtained by the individual, were.

(3) (a) Subsection (2) does not apply with regard to any test or series of tests for use in the underwriting of individual life, accident and health insurance policies

that the person designated by the secretary of health and social services as the state epidemiologist finds medically significant and sufficiently reliable for the presence of an antibody to HTLV-III and that the commissioner finds and designates by rule as sufficiently reliable for use in the underwriting of individual life, accident and health insurance policies.

(b) Paragraph (a) does not authorize the use of any test or series of tests for the presence of an antibody to HTLV-III to discriminate in violation of s. 628.34 (3).

**SECTION 6. Appropriation changes; health and social services.** (1) The appropriation to the department of health and social services under section 20.435 (1) (a) of the statutes, as affected by the acts of 1985, is increased by \$75,000 for fiscal year 1985-86 and by

\$150,000 for fiscal year 1986-87 to fund provision of in-service counseling services and laboratory testing services for the presence of an antibody to HTLV-III at alternate testing sites designated by the department.

(2) The appropriation to the department of health and social services under section 20.435 (1) (a) of the statutes, as affected by the acts of 1985, is increased by \$41,400 for fiscal year 1985-86 and by \$83,000 for fiscal year 1986-87 to fund department administrative costs and a total of 1.5 FTE GPR positions to assist in responding to the epidemic of acquired immunodeficiency syndrome and HTLV-III infections. The department shall reallocate a total of 1.5 FTE existing positions to assist in responding to the epidemic.

**SECTION 7. Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.191 (intro.)	none	103.15 (2), 631.90 (3) (a)

**SECTION 8. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
103.20, as affected by 1985 Wis. Act 29	103.15	103.15 (2) or (3)

**SECTION 9. Initial applicability.** The treatment of section 631.90 (3) of the statutes by this act first applies to policies issued or renewed on the effective date of this SECTION.

**SECTION 10. Effective dates.** (1) Except as provided in subsection (2), this act takes effect on the day following publication.

(2) The treatment of section 146.023 of the statutes takes effect on January 1, 1986.