

1989 Assembly Bill 400

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1989 WISCONSIN ACT 201

AN ACT *to amend* 59.07 (2) (c), 103.15 (title), 103.15 (1) (a), 119.04 (1), 120.13 (2) (d), 146.022 (1) (a), 146.022 (2) (a) 5, 146.023 (title), 146.025 (title), 146.025 (1) (b), 146.025 (2) (b) 2, 146.025 (2) (bm) 2, 146.025 (5) (a) (intro.), 146.025 (7) (a), 146.025 (7) (b) (intro.), 146.025 (9), 185.981 (4t), 185.983 (1) (intro.), 601.41 (1), 619.10 (4m), 631.90 (title) and (1) and 901.05 (1); and *to create* 40.51 (12), 59.97 (15) (im), 60.63 (10m), 62.23 (7) (i) 9m, 66.184, 120.13 (2) (g), 146.024, 146.025 (1) (ed), 146.025 (1) (eg), 146.025 (1) (fm), 146.025 (2) (a) 4, 146.025 (2) (a) 5 and 5m, 146.025 (5) (a) 15, 146.025 (5r), 440.20 (4), 609.80, 631.93 and 632.895 (8) of the statutes, **relating to:** insurance coverage of HIV infection and related conditions, prohibiting certain discrimination toward individuals with HIV infection or AIDS, permitting certain testing for HIV without consent, prohibiting sale of unapproved tests or test kits to detect HIV and providing grounds for discipline for holders of permits and licenses.

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

SECTION 1. 40.51 (12) of the statutes is created to read:

40.51 (12) Every health care plan offered by the state under sub. (6) shall comply with ss. 631.90, 631.93 (2) and 632.895 (8).

SECTION 1m. 59.07 (2) (c) of the statutes is amended to read:

59.07 (2) (c) *Employe insurance.* Provide for individual or group hospital, surgical and life insurance for county officers and employes and for payment of premiums therefor. In addition, a county with at least 100 employes may elect to provide health care benefits on a self-insured basis to its officers and employes, and any 2 or more counties which together have at least 100 employes may jointly provide health care benefits on a self-insured basis to officers and employes of the counties. Counties which elect to provide health care benefits on a self-insured basis to their officers and employes shall be subject to the requirements set forth under s. 120.13 (2) (c) to (e) and (g).

SECTION 2. 59.97 (15) (im) of the statutes is created to read:

59.97 (15) (im) The fact that an individual with acquired immunodeficiency syndrome or a positive test for the presence of HIV, as defined in s. 146.025 (1) (b), antigen or nonantigenic products of HIV or an antibody to HIV resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under par. (i) to assert or prove that the existence of the community living arrangement in the city, town or village poses a threat to the health, safety or welfare of the residents of the city, town or village.

SECTION 3. 60.63 (10m) of the statutes is created to read:

60.63 (10m) The fact that an individual with acquired immunodeficiency syndrome or a positive test for the presence of HIV, as defined in s. 146.025 (1) (b), antigen or nonantigenic products of HIV or an antibody to HIV resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under sub. (10) to assert or prove that the existence of the community living arrangement in the town poses a threat to the health, safety or welfare of the residents of the town.

SECTION 4. 62.23 (7) (i) 9m of the statutes is created to read:

62.23 (7) (i) 9m. The fact that an individual with acquired immunodeficiency syndrome or a positive test

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for the presence of HIV, as defined in s. 146.025 (1) (b), antigen or nonantigenic products of HIV or an antibody to HIV resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9 to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.

SECTION 4g. 66.184 of the statutes is created to read:

66.184 Self-Insured health plans. If a city, including a 1st class city, or a village provides health care benefits under its home rule power to its officers and employes on a self-insured basis, the self-insured plan shall comply with ss. 631.90, 631.93 (2) and 632.895 (8).

SECTION 5. 103.15 (title) of the statutes is amended to read:

103.15 (title) Restrictions on use of a test for HIV.

SECTION 6. 103.15 (1) (a) of the statutes is amended to read:

103.15 (1) (a) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 6g. 119.04 (1) of the statutes, as affected by 1989 Wisconsin Acts 31, 120, and (Oct. 1989 Spec. Sess. Assembly Bills 9 and 12), is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.03 (3) (c), 115.01 (1) and (2), 115.28 (15), 115.33, 115.34, 115.343, 115.345, 115.361, 115.45, 118.01 to 118.04, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.15, 118.153, 118.16, 118.162, 118.163, 118.18, 118.19 (3) (b) and (7), 118.20, 118.24 (2) (c) to (f), 118.255, 118.258, 118.30 to 118.35, 120.12 (5), (15), (16), (17), (18) and (19), 120.125 and 120.13 (1), (2) (b) to (f) ~~(g)~~, (14), (17) to (19), (26) and (34) are applicable to a 1st class city school district and board.

SECTION 6j. 120.13 (2) (d) of the statutes is amended to read:

120.13 (2) (d) The commissioner of insurance may prescribe detailed requirements for reinsurance under par. (c) by rule or by order. The commissioner of insurance may promulgate rules governing self-insurance plans under pars. (b) to ~~(f)~~ ~~(g)~~ to ensure that they comply with all applicable provisions of chs. 600 to 647.

SECTION 6k. 120.13 (2) (g) of the statutes is created to read:

120.13 (2) (g) Every self-insured plan under par. (b) shall comply with ss. 631.90, 631.93 (2) and 632.895 (8).

SECTION 7. 146.022 (1) (a) of the statutes is amended to read:

146.022 (1) (a) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 8. 146.022 (2) (a) 5. of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

146.022 (2) (a) 5. HIV seroprevalence studies. The department shall perform tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody

to HIV and conduct behavioral surveys among population groups determined by the department to be highly at risk of ~~contracting acquired immunodeficiency syndrome~~ becoming infected with or transmitting HIV. Information obtained shall be used to develop targeted ~~acquired immunodeficiency syndrome~~ HIV prevention efforts for these groups and to evaluate the state's prevention strategies.

SECTION 9. 146.023 (title) of the statutes is amended to read:

146.023 (title) Blood tests for HIV.

SECTION 10. 146.024 of the statutes is created to read:

146.024 Discrimination related to acquired immunodeficiency syndrome. (1) In this section:

(a) "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist or occupational therapy assistant certified under ch. 448, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, an employe or agent thereof, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, an emergency medical technician — advanced (paramedic) licensed under s. 146.35 or an ambulance attendant licensed under s. 146.50.

(b) "HIV" has the meaning specified in s. 146.025 (1) (b).

(c) "Home health agency" has the meaning specified in s. 141.15 (1) (a).

(d) "Inpatient health care facility" means a hospital, nursing home, community-based residential facility, county home, county mental health complex, tuberculosis sanatorium or other place licensed or approved by the department under ss. 49.14, 49.16, 49.171, 50.02, 50.03, 50.35, 51.08, 51.09, 58.06, 149.01 and 149.02 or a facility under s. 45.365, 48.62, 51.05, 51.06 or 149.06 or ch. 142.

(2) No health care provider, home health agency or inpatient health care facility may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(c) Isolate the individual unless medically necessary.

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(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to \$5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

SECTION 11. 146.025 (title) of the statutes is amended to read:

146.025 (title) Restrictions on use of a test for HIV.

SECTION 12. 146.025 (1) (b) of the statutes is amended to read:

146.025 (1) (b) “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 13. 146.025 (1) (ed) of the statutes is created to read:

146.025 (1) (ed) “Physician” has the meaning given in s. 448.01 (5).

SECTION 14. 146.025 (1) (eg) of the statutes is created to read:

146.025 (1) (eg) “Relative” means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 852.03 (2). This relationship may be by consanguinity or direct affinity.

SECTION 15. 146.025 (1) (fm) of the statutes is created to read:

146.025 (1) (fm) “Universal precautions” means measures that a health care provider or an employe of a health care provider takes in accordance with recommendations of the federal centers for disease control for prevention of HIV transmission in health-care settings.

SECTION 16. 146.025 (2) (a) 4. of the statutes is created to read:

146.025 (2) (a) 4. A health care provider may subject an individual to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual’s guardian, if the individual is adjudicated incompetent under ch. 880; from the individual’s parent or guardian, if the individual is under 14

years of age; or from the individual’s closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

SECTION 17. 146.025 (2) (a) 5. and 5m of the statutes are created to read:

146.025 (2) (a) 5. A health care provider or an employe of a health care provider who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who is significantly exposed to the patient may, without obtaining consent, subject the patient’s blood to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if all of the following apply:

a. The health care provider or employe uses universal precautions against significant exposure except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the patient.

b. A physician, based on information provided to the physician, determines and certifies in writing that the health care provider or employe has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the health care provider or employe who is significantly exposed is a physician, he or she may not make this determination or certification.

c. The test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

d. The patient, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

e. The patient has been informed that his or her blood may be tested for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including the patient, without the patient’s consent, except to the health care provider or employe who was significantly exposed; that if the health care provider or employe knows the identity of the patient, he or she may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the patient’s identity.

5m. The results of a test under subd. 5 may be disclosed only to the patient, if the patient so consents, to anyone authorized by the patient and to the health care provider or employe of a health care provider who was significantly exposed. A record may be retained of the results of the test only if the record does not reveal the patient’s identity. If the health care provider or employe knows the identity of the patient whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test performed.

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SECTION 18. 146.025 (2) (b) 2. of the statutes is amended to read:

146.025 (2) (b) 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 14 15 or a statement that the listing is available upon request.

SECTION 19. 146.025 (2) (bm) 2 of the statutes is amended to read:

146.025 (2) (bm) 2. A statement of explanation 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 14 15 or a statement that the listing is available upon request.

SECTION 20. 146.025 (5) (a) (intro.) of the statutes is amended to read:

146.025 (5) (a) (intro.) The results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, except a test under sub. (2) (a) 5. 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:

SECTION 21. 146.025 (5) (a) 15. of the statutes is created to read:

146.025 (5) (a) 15. To anyone who provides consent for the testing under sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

SECTION 22. 146.025 (5r) of the statutes is created to read:

146.025 (5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED. No person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV for self-use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

SECTION 23. 146.025 (7) (a) of the statutes is amended to read:

146.025 (7) (a) Notwithstanding ss. 227.01 (9) and 227.10 (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 HIV or an antibody to HIV~~ and the secretary 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 shall declare the revision under s. 140.05 (1).

SECTION 24. 146.025 (7) (b) (intro.) of the statutes is amended to read:

146.025 (7) (b) (intro.) If a positive, validated test result ~~for the presence of HIV or an antibody to HIV~~ 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:

SECTION 25. 146.025 (9) of the statutes is amended to read:

146.025 (9) CRIMINAL PENALTY. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 5m, (5) (a) or (5m) 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 26. 185.981 (4t) of the statutes is amended to read:

185.981 (4t) A sickness care plan operated by a cooperative association is subject to ~~s. ss. 146.024 (2) and 632.87 (2m) and (3).~~

SECTION 27. 185.983 (1) (intro.) of the statutes, as affected by 1989 Wisconsin Act 23, section 3, is amended to read:

185.983 (1) (intro.) Every such voluntary nonprofit sickness care plan shall be exempt from chs. 600 to 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41, 601.42, 601.43, 601.44, 601.45, 611.67, 619.04, 628.34 (10), 631.93, 632.79, 632.795, 632.87 (2m) and (3) and 632.895 (5) and (8), subch. II of ch. 619 and chs. 609, 630, 645 and 646, but the sponsoring association shall:

SECTION 28. 440.20 (4) of the statutes is created to read:

440.20 (4) In addition to any grounds for discipline specified in chs. 440 to 459, the department, real estate board or appropriate examining board may reprimand any holder of a license, permit, certificate or registration or deny, limit, suspend or revoke a license, permit, certificate or registration of any person who intentionally violates s. 146.024 (2) or intentionally discloses the results of a blood test in violation of s. 146.025 (5) (a) or (5m).

SECTION 28s. 601.41 (1) of the statutes is amended to read:

601.41 (1) DUTIES. The commissioner shall administer and enforce chs. 600 to 647 and ss. 59.07 (2) (c), 66.184 and 120.13 (2) (b) to (f) (g) and shall act as promptly as possible under the circumstances on all matters placed before the commissioner.

SECTION 29. 609.80 of the statutes is created to read:

609.80 Coverage related to HIV infection. Health maintenance organizations, limited service health organizations and preferred provider plans are subject to s.

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631.93. Health maintenance organizations and preferred provider plans are subject to s. 632.895 (8).

SECTION 30. 619.10 (4m) of the statutes is amended to read:

619.10 (4m) “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 31. 631.90 (title) and (1) of the statutes are amended to read:

631.90 (title) Restrictions on use of tests for HIV. (1) In this section, “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 32. 631.93 of the statutes is created to read:

631.93 Prohibited provisions concerning HIV infection. (1) **DEFINITIONS.** In this section, “HIV infection” means the pathological state produced by a human body in response to the presence of HIV, as defined in s. 631.90 (1).

(2) **ACCIDENT AND HEALTH INSURANCE.** An accident or health insurance policy may not contain exclusions or limitations, including deductibles or copayments, for coverage of the treatment of HIV infection or any illness or medical condition arising from or related to HIV infection, unless the exclusions or limitations apply generally to other illnesses or medical conditions covered by the policy.

(3) **LIFE INSURANCE.** A life insurance policy may not deny or limit benefits solely because the insured’s death is caused, directly or indirectly, by HIV infection or any illness or medical condition arising from or related to HIV infection.

SECTION 33. 632.895 (8) of the statutes is created to read:

632.895 (8) **DRUGS FOR TREATMENT OF HIV INFECTION.** (a) In this subsection, “HIV infection” means the pathological state produced by a human body in response to the presence of HIV, as defined in s. 631.90 (1).

(b) Except as provided in par. (d), every disability insurance policy that is issued or renewed on or after the effective date of this paragraph ... [revisor inserts date], and that provides coverage of prescription medication shall provide coverage for each drug that satisfies all of the following:

1. Is prescribed by the insured’s physician for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection.

2. Is approved by the federal food and drug administration for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection, including each investigational new drug that is approved under 21 CFR 312.34 to 312.36 for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection and that is in, or has completed, a phase 3 clinical investigation performed in accordance with 21 CFR 312.20 to 312.33.

3. If the drug is an investigational new drug described in subd. 2, is prescribed and administered in accordance with the treatment protocol approved for the investigational new drug under 21 CFR 312.34 to 312.36.

(c) Coverage of a drug under par. (b) may be subject to any copayments and deductibles that the disability insurance policy applies generally to other prescription medication covered by the disability insurance policy.

(d) This subsection does not apply to any of the following:

1. A disability insurance policy that covers only certain specified diseases.

2. A health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. A medicare replacement policy or a medicare supplement policy.

SECTION 34. 901.05 (1) of the statutes is amended to read:

901.05 (1) In this section, “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

SECTION 35. Initial applicability. (1) HIV TEST DISCLOSURE. The treatment of section 146.025 (9) of the statutes first applies to violations occurring on the effective date of this subsection.

SECTION 36. Terminology changes. Wherever “presence of HIV or an antibody” appears in the following sections of the statutes, “presence of HIV, antigen or nonantigenic products of HIV or an antibody” is substituted: 103.15 (2) (a) and (b) and (3), 118.125 (2m) (b), 146.023 (1m), (1r) (intro.), (2) and (5), 146.025 (1) (d), (e) and (g), (2) (a) (intro.), 1, 1r, 2 and 3, (b) (intro.) and (bm) (intro.), (3), (4) (intro.), (5m) (intro.), (a) and (c) and (6), 619.12 (1) (e), 631.90 (2) (a) to (c) and (3) and 901.05 (2) (intro.).