

26:5C-5

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 26:5C-5

(Aids--reporting)

LAWS OF: 1989

CHAPTER: 303

Bill No: S3104

Sponsor(s): Lipman & Cody

Date Introduced: December 12, 1988

Committee: Assembly: Judiciary

Senate: Institutions, Health & Welfare

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 4, 1990

Senate: March 2, 1989

Date of Approval: January 12, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: Yes

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(over)

974.90 New Jersey. Legislature.
H434 Assembly. Health & Human Resources Committee.
1989a Public hearing, held February 9, 1989.
Trenton, 1989.

See also Appendix

[FIRST REPRINT]
SENATE, No. 3104

STATE OF NEW JERSEY

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INTRODUCED DECEMBER 12, 1988

By Senators LIPMAN and CODY

1 **AN ACT** concerning acquired immune deficiency syndrome and
supplementing Title 26 of the Revised Statutes.

3

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

1. As used in this act:

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

"Commissioner" means the Commissioner of Health.

11 "Department" means the Department of Health.

"Diagnosis and treatment" means services or activities carried
13 out for the purpose of, or as an incident to, diagnosis, prevention
and treatment of AIDS and HIV infection and includes
15 interviewing and counseling.

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

19 "HIV related illness" means an illness that may result from, or
may be associated with, HIV infection.

21 "HIV related test" means any laboratory test or series of tests
for any virus, antibody, antigen or etiologic agent thought to
23 cause or to indicate the presence of AIDS.

"Identifying information" means the name, address, Social
25 Security number, or similar information by which the identity of
a ¹[patient] person who has or is suspected of having AIDS or HIV
27 infection¹ may be determined with reasonable accuracy either
directly or by reference to other publicly available information.

29 "Informed consent" means consent obtained pursuant to
policies and procedures prescribed in 42 C.F.R. § 2.31.

31 "Minor" means a person under the age of 12.

¹["Patient" means a person who has or is suspected to have
33 AIDS, or HIV infection.]¹

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
¹ Senate SIH committee amendments adopted February 23, 1989.

1 "Program" means either an individual or an organization
furnishing diagnosis and treatment of AIDS and conditions related
3 to HIV infection.

2. ¹[A person shall report diagnosed AIDS cases] All diagnosed
5 cases of AIDS shall be reported¹ to the department. The
commissioner shall determine those ¹[persons] individuals¹ who
7 shall be required to make the reports and the manner in which the
report shall be made to the department.

9 3. A record maintained by:

- a. the department;
- 11 b. a local health department;
- c. an organization pursuant to a contract with, grant from, or
13 regulation by the department in connection with this act;
- d. a provider of health care or a health care facility as defined
15 by section 2 of P.L.1971, c.136 (C.26:2H-2);
- e. a laboratory;
- 17 f. a blood bank;
- g. a third-party payer; or
- 19 h. any other institution or person;

which contains identifying information about a ¹[patient] person¹
21 who has or is suspected of having AIDS or HIV infection is
confidential and shall be disclosed only for the purposes
23 authorized by this act.

4. a. The content of a record referred to in section 3 of this
25 act may be disclosed in accordance with the prior written
informed consent of the ¹[patient] person¹ who is the subject of
27 the record or if the ¹[patient] person¹ is legally incompetent or
deceased, in accordance with section 8 of this act.

29 b. If the prior written consent of the ¹[patient] person who is
the subject of the record¹ is not obtained, the ¹[patient's]
31 person's¹ records shall be disclosed only under the following
conditions:

33 (1) To qualified personnel for the purpose of conducting
scientific research, but a record shall be released for research
35 only following review of the research protocol by an Institutional
Review Board constituted pursuant to federal regulation 45
37 C.F.R. § 46.101 et seq. ¹[A patient] The person who is the
subject of the record¹ shall not be identified, directly or
39 indirectly, in any report of the research and research personnel

1 shall not disclose ¹[patient identities] the person's identity¹ in
any manner.

3 (2) To qualified personnel for the purpose of conducting
management audits, financial audits or program evaluation, but
5 the personnel shall not identify, directly or indirectly, ¹[a
patient] the person who is the subject of the record¹ in a report
7 of an audit or evaluation, or otherwise disclose ¹[a patient's] the
person's¹ identity in any manner. Identifying information shall
9 not be released to the personnel unless it is vital to the audit or
evaluation.

11 (3) To qualified personnel involved in medical education or ¹in
the¹ diagnosis and treatment of the ¹[patient] person who is the
13 subject of the record¹. Disclosure is limited to only ¹[those
persons] personnel¹ directly involved in medical education or ¹in¹
15 the diagnosis and treatment of ¹[a patient] the person¹.

(4) To the department as required by ¹State or federal¹ law.

17 (5) As permitted by rules and regulations adopted by the
commissioner for the purposes of disease prevention and control.

19 (6) In all other instances authorized by ¹State or federal¹ law.

21 5. a. The ¹[records] record¹ of a ¹[patient] person who has or
is suspected of having AIDS or HIV infection¹ may be disclosed
23 by an order of a court of competent jurisdiction which is granted
pursuant to an application showing good cause therefor. At a
good cause hearing the court shall weigh the public interest and
25 need for disclosure against the injury to the ¹[patient] person who
is the subject of the record¹, to the physician-patient
27 relationship, and to the services offered by the program. Upon
the granting of the order, the court, in determining the extent to
29 which a disclosure of all or any part of a record is necessary,
shall impose appropriate safeguards to prevent an unauthorized
31 disclosure.

b. A court may authorize disclosure of ¹[records pertaining to
33 a patient] a person's record¹ for the purpose of conducting an
investigation of or a prosecution for a crime of which the
35 ¹[patient] person¹ is suspected, only if the crime is a first degree
crime and there is a reasonable likelihood that the ¹[records]
37 record¹ in question will disclose material information or evidence
of substantial value in connection with the investigation or
39 prosecution.

1 c. Except as provided in subsections a. and b. of this section, a
2 record shall not be used to initiate or substantiate any criminal or
3 civil charges against ¹[a patient] the person who is the subject of
4 the record¹ or to conduct any investigation of ¹[a patient] that
5 person¹.

6 d. The court shall deny an application for disclosure of a
7 ¹[patient's records] person's record¹ unless the court makes a
8 specific finding that the program was afforded the opportunity to
9 be represented at the hearing. A program operated by a federal,
10 State or local government agency or department shall be
11 represented at the hearing.

12 ¹e. Nothing in this section shall be construed to authorize
13 disclosure of any confidential communication which is otherwise
14 protected by statute, court rule or common law.¹

15 6. The limits on disclosure set forth in this act shall continue
16 to apply to ¹[records] a record¹ relating to AIDS and HIV
17 infection concerning a person who has been a patient ¹or a
18 participant in a program¹, whether that person remains a patient
19 ¹or participant¹ or ceases to be a patient ¹or participant¹.

20 7. Any record disclosed under this act shall be held
21 confidential by the recipient of the record and shall not be
22 released by said recipient unless the conditions of this act are
23 met.

24 8. When consent is required for disclosure of the record of a
25 deceased or legally incompetent ¹[patient] person who has or is
26 suspected of having AIDS or HIV infection¹, consent may be
27 obtained:

28 a. From an executor, administrator of the estate, or
29 authorized representative of the legally incompetent or deceased
30 person;

31 b. From the ¹[patient's] person's¹ spouse ¹or primary
32 caretaking partner¹ or, if none, by another member of the
33 ¹[patient's] person's¹ family; and

34 c. From the commissioner in the event that a deceased
35 ¹[patient] person¹ has neither an authorized representative or
36 next-of-kin.

37 9. When consent is required for disclosure of the record of a
38 ¹[patient who is a] ¹minor ¹who has or is suspected of having
39 AIDS or HIV infection¹, consent shall be obtained from the

1 parent, guardian, or other ¹[person] individual¹ authorized under
State law to act in the minor's behalf.

3 10. a. ¹[A person who violates any provision of this act is
guilty of a disorderly persons offense.

5 b. A person or institution who willfully violates this act or any
regulation promulgated pursuant to this act, which violation
7 results in economic, bodily, or psychological harm to a patient is
liable to that patient for all actual damages resulting from the
9 violation.

11 c.] An individual or institution who negligently violates this
act is liable to the person whose records were disclosed for a civil
penalty of not more than \$1,000 plus reasonable attorney's fees
13 and court costs.

15 b. An individual or institution who willfully violates this act is
liable to the person whose records were disclosed for a civil
penalty of not less than \$1,000 or more than \$10,000 plus
17 reasonable attorney's fees and court costs.

19 c. A person who has or is suspected of having AIDS or HIV
infection who is aggrieved as a result of a violation of this act
may commence a civil action against the individual or institution
21 who committed the violation to obtain appropriate relief,
including actual and punitive damages, equitable relief and
23 reasonable attorney's fees and court costs.

25 d.¹ Each disclosure made in violation of this act is a separate
and actionable offense.

27 11. The commissioner, in consultation with the Public Health
Council, shall promulgate rules and regulations necessary to carry
out the purposes of this act pursuant to the "Administrative
29 Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

31 12. This act shall take effect immediately.

33 HEALTH
Health Care Facilities and Providers

35 Requires that cases of AIDS be reported to the DOH and provides
37 for confidentiality of patient records.

1 7. Any record disclosed under this act shall be held
confidential by the recipient of the record and shall not be
3 released by said recipient unless the conditions of this act are
met.

5 8. When consent is required for disclosure of the record of a
deceased or legally incompetent patient, consent may be obtained:

7 a. From an executor, administrator of the estate, or
authorized representative of the legally incompetent or deceased
9 person;

11 b. From the patient's spouse or, if none, by another member
of the patient's family; and

13 c. From the commissioner in the event that a deceased patient
has neither an authorized representative or next-of-kin.

15 9. When consent is required for disclosure of the record of a
patient who is a minor, consent shall be obtained from the parent,
guardian, or other person authorized under State law to act in the
17 minor's behalf.

19 10. a. A person who violates any provision of this act is guilty
of a disorderly persons offense.

21 b. A person or institution who willfully violates this act or any
regulation promulgated pursuant to this act, which violation
results in economic, bodily, or psychological harm to a patient is
23 liable to that patient for all actual damages resulting from the
violation.

25 c. Each disclosure made in violation of this act is a separate
and actionable offense.

27 11. The commissioner, in consultation with the Public Health
Council, shall promulgate rules and regulations necessary to carry
29 out the purposes of this act pursuant to the "Administrative
Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

31 12. This act shall take effect immediately.

33

SPONSOR'S STATEMENT

35

37 This bill requires that cases of acquired immune deficiency
syndrome (AIDS) be reported to the Department of Health. The
department shall determine who shall be required to make these
39 reports and the manner in which the report is to be made. All

1 records containing information about a patient who has or is
2 suspected of having AIDS or human immunodeficiency virus (HIV)
3 infection shall be confidential and shall be disclosed only for the
4 purposes authorized by this bill. The bill sets forth to whom the
5 disclosure of these records is authorized. Records may also be
6 disclosed pursuant to a court order. Records which are disclosed
7 to third parties are to be kept confidential by the recipient. A
8 person who violates these provisions is guilty of a disorderly
9 persons offense.

11

HEALTH

13

Health Care Facilities and Providers

15 Requires that cases of AIDS be reported to the DOH and provides
for confidentiality of patient records.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 3104

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 24, 1989

The Assembly Judiciary reports favorably and with committee amendments Senate Bill No. 3104 [1R].

This bill requires that diagnosed cases of acquired immune deficiency syndrome (AIDS) be reported to the Department of Health. The department shall determine who shall be required to make these reports and the manner in which the report is to be made.

The bill also provides that a record containing information about a person who has or is suspected of having AIDS or human immunodeficiency virus (HIV) infection shall be confidential and shall be disclosed only with the prior written consent of the person who is the subject of the record or, if the consent is not obtained, only for the purposes authorized by this bill. The bill sets forth to whom the disclosure of the record is authorized and provides that a record may also be disclosed pursuant to a court order. A record which is disclosed to a third party is to be kept confidential by the recipient.

Regulations adopted by the Department of Health in October 1986 (NJAC 8:57-1.14) currently require every physician attending any person ill with AIDS or AIDS related complex to report in writing to the department the name and address of the reporting physician, the name of the disease, the name, birth date and sex of the person who has the disease, the date of onset of the disease, and any other information required by the department. The regulations also require the superintendent or other person who has control or supervision over any institution, including a hospital, nursing home and correctional institution, to make a similar report to the department. The information reported to the department is not subject to public inspection and can be used only by the department for public health purposes.

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The committee amended section 10 of the bill pertaining to penalties for violation of the act. The new language deletes the general reference to punitive damages. The rationale is that negligent violations do not warrant punitive damages. Punitive damages apart from egregious conduct are inappropriate so the "wantonly reckless and intentionally malicious" standard is suggested to justify imposition of punitive damages in certain cases.

The committee also deleted the language which would have placed a maximum amount on the amount of a civil penalty which could have been imposed. The bill now permits appropriate relief with no stated minimum or maximum.

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

SENATE, No. 3104

with committee amendments

STATE OF NEW JERSEY

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DATED: FEBRUARY 23, 1989

The Senate Institutions, Health and Welfare Committee favorably reports Senate Bill No. 3104 with committee amendments.

As amended by committee, this bill requires that diagnosed cases of acquired immune deficiency syndrome (AIDS) be reported to the Department of Health. The department shall determine who shall be required to make these reports and the manner in which the report is to be made.

The bill also provides that a record containing information about a person who has or is suspected of having AIDS or human immunodeficiency virus (HIV) infection shall be confidential and shall be disclosed only with the prior written consent of the person who is the subject of the record or, if the consent is not obtained, only for the purposes authorized by this bill. The bill sets forth to whom the disclosure of the record is authorized and provides that a record may also be disclosed pursuant to a court order. A record which is disclosed to a third party is to be kept confidential by the recipient.

The bill provides the following penalties for disclosure of information in violation of the bill. An individual or institution who negligently discloses information in violation of the bill is liable to a civil penalty of up to \$1,000 plus reasonable attorney's fees and court costs, and an individual or institution who willfully discloses information in violation of the bill is liable to a civil penalty of between \$1,000 and \$10,000 plus reasonable attorney's fees and court costs. The bill further provides that a person who has or is suspected of having AIDS or HIV infection who is aggrieved as a result of a disclosure in violation of the bill, may commence a civil action against the individual or institution to obtain appropriate relief, including actual and punitive damages, equitable relief and reasonable attorney's fees and court costs.

Regulations adopted by the Department of Health in October 1986 (NJAC 8:57-1.14) currently require every physician attending any person ill with AIDS or AIDS related complex to report in writing to the department the name and address of the reporting physician, the name of the disease, the name, birth date and sex of the person who has the disease, the date of onset of the disease, and any other information required by the department. The regulations also require the superintendent or other person who has control or supervision over any institution, including a hospital, nursing home and correctional institution, to make a similar report to the department. The information reported to the department is not subject to public inspection and can be used only by the department for public health purposes.

The committee amended the bill to: (1) specify that disclosure of information about a person who has or is suspected of having AIDS or HIV infection may be made in other instances authorized by "State or federal law," rather than "by law," as the bill originally provided, to ensure that local laws cannot be enacted to provide for additional disclosure; (2) provide that either the spouse of the person who is the subject of the record or that person's primary caretaking partner, rather than only the person's spouse as the bill originally provided, may give consent for disclosure of the record if the subject of the record is deceased or legally incompetent; and (3) change the penalty for disclosure from a disorderly persons offense to a civil penalty and provide that an aggrieved person may commence a civil action to obtain appropriate relief.

Other amendments delete the definition of "patient" and replace all references to "patient" with "person who has or is suspected of having AIDS or HIV infection" or "person who is the subject of the record," to clarify that the confidentiality provisions in the bill apply whether the person is a patient in a health care setting or a participant in any other type of program in which a record concerning AIDS or HIV infection is maintained. The amendments also clarify that notwithstanding the authorization to release a person's record pursuant to a court order, nothing in the bill shall be construed to authorize the disclosure of confidential (or privileged) communications that are otherwise protected by law or court rule.