

# Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

## Chapter 501: MEDICAL CONDITIONS

### Table of Contents

<b>Part 23. PUBLIC HEALTH .....</b>	
Section 19201. DEFINITIONS.....	3
Section 19202. MAINE HIV ADVISORY COMMITTEE.....	5
Section 19203. CONFIDENTIALITY OF TEST.....	7
Section 19203-A. VOLUNTARY INFORMED CONSENT REQUIRED.....	9
Section 19203-B. ANONYMOUS TESTING SITES.....	11
Section 19203-C. JUDICIAL CONSENT TO HIV TEST.....	11
Section 19203-D. RECORDS.....	13
Section 19203-E. HIV TEST AFTER CONVICTION FOR SEXUAL ASSAULT (REPEALED).....	15
Section 19203-F. HIV TEST AFTER CONVICTION FOR SEXUAL ASSAULT.....	15
Section 19204. RESTRICTIONS UPON REVEALING HIV TEST RESULTS (REPEALED).....	16
Section 19204-A. COUNSELING NEW HIV CASES.....	16
Section 19204-B. RESTRICTIONS ON REQUIRING TESTS OR RESULTS OF TESTS.....	17
Section 19204-C. RESTRICTIONS UPON REVEALING HIV ANTIBODY TEST RESULTS.....	17
Section 19205. COORDINATION OF SERVICES TO PERSONS WITH HIV OR AIDS.....	18
Section 19206. CIVIL LIABILITY.....	18
Section 19207. CIVIL LIABILITY (REPEALED).....	18
Section 19208. PROCEEDINGS.....	19



**Maine Revised Statutes**  
**Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES**  
**Chapter 501: MEDICAL CONDITIONS**

**§19201. DEFINITIONS**

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 539, (RPR).]

**1. Antibody to HIV.** "Antibody to HIV" means the specific immunoglobulin produced by the body's immune system in response to HIV.

[ 1987, c. 539, (RPR) . ]

**1-A. Bona fide occupational exposure.** "Bona fide occupational exposure" means skin, eye, mucous membrane or parenteral contact of a person with the potentially infectious blood or other body fluids of another person that results from the performance of duties by the exposed person in the course of employment. It also includes such contact resulting from performance of emergency services by a volunteer firefighter as defined by Title 30-A, section 3151 or by an emergency medical services person licensed under Title 32, chapter 2-B when responding to an emergency as part of a governmental, nonprofit or other organized entity, whether the firefighter or emergency medical services person is compensated for such services or not.

[ 1999, c. 429, §1 (AMD) . ]

**1-B. Employer; employer of the person exposed.** "Employer" and "employer of the person exposed" include a self-employed person who is exposed to the potentially infectious blood or other body fluids of another person. It also includes, in the case of a volunteer firefighter or emergency medical services person, the organization for which the services are performed.

[ 1999, c. 429, §1 (AMD) . ]

**2. Health care provider.** "Health care provider" means any appropriately licensed, certified or registered provider of mental or physical health care, either in the public or private sector or any business establishment providing health care services.

[ 1987, c. 539, (RPR) . ]

**2-A. Health care setting.** "Health care setting" means any location where there is provision of preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures or counseling, including emergency services performed in the field, and appropriate assistance with disease or symptom management and maintenance that affects an individual's physical, mental or behavioral condition, including the process of banking blood, sperm, organs or any other tissue.

[ 1999, c. 429, §2 (NEW) . ]

**2-B. Health care facility.** "Health care facility" or "facility" means a facility, institution or entity licensed pursuant to Title 22 that offers health care to persons in this State, including a home health care provider and hospice program. "Health care facility" or "facility" includes a pharmacy licensed pursuant to Title 32.

[ 2011, c. 347, §1 (NEW) . ]

**3. HIV.** "HIV" means the human immunodeficiency virus, identified as the causative agent of Acquired Immune Deficiency Syndrome or AIDS.

[ 1987, c. 539, (RPR) . ]

**4. HIV antigen.** "HIV antigen" means the specific immune-recognizable marker proteins of HIV.

[ 1987, c. 539, (RPR) . ]

**4-A. HIV test.** "HIV test" means a test for the presence of an antibody to HIV or a test for an HIV antigen or other diagnostic determinants specific for HIV infection.

[ 1995, c. 404, §2 (AMD) . ]

**5. HIV infection; HIV infection status.** "HIV infection" means the state wherein HIV has invaded the body and is being actively harbored by the body. "HIV infection status" means the results of an HIV test.

[ 1995, c. 404, §3 (AMD) . ]

**5-A. Informed consent.** "Informed consent" means consent that is:

A. Based on an actual understanding by the person to be tested:

- (1) That the test is being performed;
- (2) Of the nature of the test;
- (3) Of the persons to whom the results of that test may be disclosed;
- (4) Of the purpose for which the test results may be used; and
- (5) Of any reasonably foreseeable risks and benefits resulting from the test; and [1987, c. 811, §2 (AMD) . ]

B. Wholly voluntary and free from express or implied coercion. [1987, c. 539, (RPR) . ]

[ 1987, c. 811, §2 (AMD) . ]

**6. Person.** "Person" means any natural person, firm, corporation, partnership or other organization, association or group, however organized.

[ 1987, c. 539, (RPR) . ]

**7. Seropositivity.** "Seropositivity" means the presence of antibody to HIV as detected by appropriate laboratory tests.

[ 1987, c. 539, (RPR) . ]

**8. Viral positivity.** "Viral positivity" means demonstrated presence of HIV.

[ 1987, c. 539, (RPR) . ]

#### SECTION HISTORY

1987, c. 402, §A76 (NEW). 1987, c. 443, §2 (NEW). 1987, c. 539, (RPR).  
1987, c. 811, §§1,2 (AMD). 1995, c. 404, §§1-3 (AMD). 1999, c. 429,  
§§1,2 (AMD). 2011, c. 347, §1 (AMD).

## §19202. MAINE HIV ADVISORY COMMITTEE

### 1. Duties.

[ 1999, c. 390, §10 (AFF); 1999, c. 390, §1 (RP) .]

#### 1-A. Duties.

[ 2009, c. 203, §8 (AFF); 2009, c. 203, §1 (RP) .]

**1-B. Duties.** The Maine HIV Advisory Committee, as established in section 12004-I, subsection 42 and referred to in this section as "the committee," on behalf of those individuals infected by, at risk for or affected by the human immunodeficiency virus, referred to in this section as "HIV," in the State, shall:

A. Advise the Office of the Governor and state, federal and private sector agencies, officials and committees on HIV-related and AIDS-related policy, planning, budget or rules; [2009, c. 203, §2 (NEW); 2009, c. 203, §8 (AFF).]

B. Make an annual assessment of emerging HIV-related issues and trends; [2009, c. 203, §2 (NEW); 2009, c. 203, §8 (AFF).]

C. Initiate and respond to legislation, both state and federal; and [2009, c. 203, §2 (NEW); 2009, c. 203, §8 (AFF).]

D. Prepare and present, in person, an annual report on the status of HIV in the State to the Office of the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters by March 1st of each year. [2013, c. 108, §1 (AMD).]

[ 2013, c. 108, §1 (AMD) .]

### 2. Membership.

[ 1999, c. 390, §10 (AFF); 1999, c. 390, §3 (RP) .]

#### 2-A. Membership.

[ 2009, c. 203, §8 (AFF); 2009, c. 203, §3 (RP) .]

**2-B. Membership.** The committee consists of 19 members as provided in this subsection.

A. The committee includes 7 members as follows, of whom only the Legislators are voting members:

- (1) Two members of the Legislature, one Senator nominated by the President of the Senate and one Representative nominated by the Speaker of the House of Representatives;
- (2) The director of the HIV, STD and viral hepatitis program within the Department of Health and Human Services, Maine Center for Disease Control and Prevention;
- (3) A representative of the Department of Education, nominated by the Commissioner of Education;
- (4) A representative of the Department of Corrections, nominated by the Commissioner of Corrections;
- (5) A representative of the organizational unit of the Department of Health and Human Services that provides programs and services for substance abuse prevention and treatment, nominated by the Commissioner of Health and Human Services; and
- (6) A representative of the Department of Health and Human Services, Office of MaineCare Services, nominated by the Commissioner of Health and Human Services. [2011, c. 657, Pt. AA, §4 (AMD).]

B. The committee shall identify 12 additional voting representatives for membership as described in this paragraph, with broad input from persons with HIV or at risk for HIV infection or from organizations with extensive participation of persons with HIV, organizations interested in and working on HIV and AIDS prevention and health, other community-based organizations providing HIV and AIDS services, rural health centers and the public:

- (1) Four persons living with HIV/AIDS;
- (2) Two representatives of populations most affected by HIV/AIDS in the State;
- (3) Two providers of HIV-related prevention or social services;
- (4) Two representatives of the public health community who have experience in the prevention of and the care and treatment of persons with HIV or infectious diseases; and
- (5) Two persons chosen by the committee because of the positive impact the persons' expertise or experience will have on the work of the committee. [2013, c. 108, §2 (RPR).]

[ 2013, c. 108, §2 (AMD) .]

**3. Terms.** The term of office of each voting member is 3 years except that nonvoting members serve during the duration of the commissioner's term of office for the agency that each member represents and Legislators serve during the term for which they were elected. The membership shall annually elect a chair and vice-chair. The chair is the presiding member of the committee. All vacancies must be filled for the balance of the unexpired term in the same manner as original appointments.

[ 2009, c. 203, §5 (AMD); 2009, c. 203, §8 (AFF) .]

**3-A. Compensation.** The members of the committee are entitled to compensation in accordance with chapter 379. All members are entitled to reimbursement for expenses.

[ 1999, c. 390, §6 (NEW); 1999, c. 390, §10 (AFF) .]

**4. Meetings.** The committee shall meet at least 4 times a year and more frequently if needed to respond to the duties of this committee as specified in subsection 1-B. Special meetings may be called by the chair and must be called at the request of the Department of Health and Human Services, Maine Center for Disease Control and Prevention or by 3 or more members of the committee.

[ 2009, c. 203, §6 (AMD); 2009, c. 203, §8 (AFF) .]

#### **5. Annual program and budget review.**

[ 1999, c. 390, §10 (AFF); 1999, c. 390, §8 (RP) .]

**6. Committee may accept funds.** The committee may vote to accept or refuse gifts, grants or other funding that may be offered to the committee.

[ 1993, c. 384, §2 (NEW) .]

#### SECTION HISTORY

1987, c. 402, §A76 (NEW). 1987, c. 443, §2 (NEW). 1987, c. 539, (RPR). 1987, c. 651, (AMD). 1987, c. 769, §A33 (AMD). 1987, c. 861, §§7,8 (AMD). 1989, c. 189, (AMD). 1991, c. 404, §1 (AMD). 1991, c. 404, §2 (AFF). 1993, c. 384, §2 (RPR). 1999, c. 390, §§1-8 (AMD). 1999, c. 390, §10 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §10 (COR). 2003, c. 689, §B6 (REV). 2009, c. 203, §§1-6 (AMD). 2009, c. 203, §8 (AFF). 2011, c. 657, Pt. AA, §4 (AMD). 2013, c. 108, §§1, 2 (AMD).

## §19203. CONFIDENTIALITY OF TEST

No person may disclose the results of an HIV test, except as follows: [1987, c. 811, §3 (RPR) .]

**1. Subject of test.** To the subject of the test;

[ 1987, c. 811, §3 (RPR) .]

**2. Designated health care provider.** To a health care provider designated by the subject of the test in writing . When a patient has authorized disclosure of HIV test results to a person or organization providing health care, the patient's health care provider may make these results available only to other health care providers working directly with the patient and only for the purpose of providing direct medical or dental patient care. Any health care provider who discloses HIV test results in good faith pursuant to this subsection is immune from any criminal or civil liability for the act of disclosing HIV test results to other health care providers;

[ 1999, c. 512, Pt. B, §1 (AMD); 1999, c. 512, Pt. B, §§5, 6 (AFF) .]

**3. Authorized person.** To a person or persons to whom the test subject has authorized disclosure in writing, except that the disclosure may not be used to violate any other provisions of this chapter;

[ 1987, c. 811, §3 (RPR) .]

**4. Certain health care providers.** A health care provider who procures, processes, distributes or uses a human body part donated for a purpose may, without obtaining informed consent to the testing, perform an HIV test in order to assure medical acceptability of the gift for the purpose intended. Testing pursuant to this subsection does not require pretest and post-test counseling;

[ 1987, c. 811, §3 (RPR) .]

**5. Research facility.** The Department of Health and Human Services, a laboratory certified and approved by the Department of Health and Human Services pursuant to Title 22, chapter 411, or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining informed consent to the testing, subject any body fluids or tissues to an HIV test 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;

[ 1987, c. 811, §3 (RPR); 2003, c. 689, Pt. B, §6 (REV) .]

**6. Anonymous testing sites.** To an anonymous testing site established pursuant to section 19203-B;

[ 1987, c. 811, §3 (RPR) .]

**7. Other agencies.** To employees of, or other persons designated by, the Department of Corrections and the Department of Health and Human Services, to the extent that those employees or other persons are responsible for the treatment or care of subjects of the test. Those agencies shall adopt rules, within 90 days of August 4, 1988, pursuant to chapter 375, subchapter 2, designating the persons or classes of persons to whom the test results may be disclosed. The rules of the Department of Corrections must designate those persons who may receive the results of an HIV test of a county jail inmate;

[ 2003, c. 2, §11 (COR) .]

**8. Bureau of Health.** To the Department of Health and Human Services, which may disclose results to other persons only if that disclosure is necessary to carry out its duties as provided in Title 22, section 42 and chapters 250 and 251;

[ 2007, c. 539, Pt. N, §6 (AMD) .]

**9. Medical records.** As part of a medical record when release or disclosure of that record is authorized pursuant to section 19203-D;

[ 2011, c. 347, §2 (AMD) .]

**10. Court ordered disclosure.** To:

A. A person authorized by section 19203-C to receive test results following an accidental exposure; or [1991, c. 803, §1 (NEW).]

B. A victim-witness advocate authorized by section 19203-F to receive the test results of a person convicted of a sexual crime as defined in section 19203-F, subsection 1, paragraph C, who shall disclose to a victim under section 19203-F, subsection 4; or [2011, c. 347, §3 (AMD).]

[ 2011, c. 347, §3 (AMD) .]

**11. Access by health information exchange or other entity.** To a statewide health information exchange designated by the State that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow that statewide health information exchange to disclose that individual's health care information covered under this section to a health care provider or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to an individual at all times.

A state-designated statewide health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when in a health care provider's judgment disclosure is necessary to:

A. Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or [2011, c. 347, §4 (NEW) .]

B. Prevent or respond to imminent and serious harm to the individual and disclosure is to a provider for diagnosis or treatment. [2011, c. 347, §4 (NEW) .]

[ 2011, c. 347, §4 (NEW) .]

This section does not prohibit limited administrative disclosure in conjunction with a mandatory testing program of a military organization subject to Title 37-B. [1987, c. 811, §3 (RPR) .]

Nothing in this section may be construed as prohibiting the entry of an HIV test result on the patient's medical record in accordance with this chapter. [1999, c. 512, Pt. B, §3 (AMD); 1999, c. 512, Pt. B, §§5, 6 (AFF) .]

#### SECTION HISTORY

1987, c. 402, §A76 (NEW). 1987, c. 443, §2 (NEW). 1987, c. 539, (RPR). 1987, c. 811, §3 (RPR). 1989, c. 487, §1 (AMD). 1995, c. 319, §1 (AMD). 1995, c. 404, §4 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 70, §1 (AMD). 1997, c. 793, §§B1-3 (AMD). 1997, c. 793, §B6 (AFF). 1999, c. 3, §§4,5 (AFF). 1999, c. 127, §A13 (AMD).

1999, c. 512, §§B1-3 (AMD). 1999, c. 512, §B5 (AFF). 1999, c. 790, §§A59,60 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §11 (COR). 2003, c. 689, §B6 (REV). 2007, c. 539, Pt. N, §6 (AMD). 2011, c. 347, §§2-4 (AMD).

## §19203-A. VOLUNTARY INFORMED CONSENT REQUIRED

**1. Individual tested.** Except as provided in this section and section 19203, subsections 4 and 5, an HIV test must be voluntary and undertaken only with a patient's knowledge and understanding that an HIV test is planned. A patient must be informed orally or in writing that an HIV test will be performed unless the patient declines. Oral or written information required to be given to a patient under this subsection must include an explanation of what an HIV infection involves and the meaning of positive and negative test results. A patient must be provided the opportunity to ask questions, either orally or in writing. Informed consent is not required for repeated HIV testing by health care providers to monitor the course of established infection.

[ 2007, c. 93, §1 (AMD) . ]

**2. Insurers.** Persons required to take an HIV test by an insurer, nonprofit hospital or medical service organization or nonprofit health care plan must provide their written informed consent on forms approved by the Superintendent of Insurance. If the test is positive, post-test counseling must be provided by the person or organization requesting the test. The Superintendent of Insurance may adopt rules to define language requirements of the form.

[ 2007, c. 93, §1 (AMD) . ]

**3. Access to medical care.** A health care provider may not deny any person medical treatment or care solely for refusal to give consent for an HIV test. A health care provider may not request a person's written consent to an HIV test as a precondition to the provision of health care. All written consent to testing must be in accordance with section 19201, subsection 5-A. This section does not prohibit a health care provider from recommending an HIV test for diagnostic or treatment purposes. A physician or other health care provider is not civilly liable for failing to have an HIV test performed for diagnostic or treatment purposes if the test was recommended and refused in writing by the patient.

[ 2007, c. 93, §1 (AMD) . ]

**4. Occupational exposure.** Consent need not be obtained when a bona fide occupational exposure creates a significant risk of infection if a court order has been obtained under section 19203-C. The fact that an HIV test was given as a result of an occupational exposure and the results of that test may not appear in any records of the person whose blood or body fluid is the source of the exposure. If the test is positive, post-test counseling must be offered. The subject of the test may choose not to be informed about the result of the test.

[ 2007, c. 93, §1 (AMD) . ]

**4-A. Occupational exposure in health care setting.** When a bona fide occupational exposure occurs in a health care setting, authorization to test the source patient for HIV must be obtained from that patient if the patient is present or can be contacted at the time of exposure and is capable of providing consent. At the time of exposure, if the source patient is not present and can not be contacted or is incapacitated, then any reasonably available member of the following classes of individuals, in descending order of priority, may authorize an HIV test on a blood or tissue sample from the source patient:

A. The patient's legal guardian; [1999, c. 429, §3 (NEW) . ]

B. An individual known to have power of attorney for health care for the patient; [1999, c. 429, §3 (NEW) . ]

C. An adult relative, by blood, marriage or adoption; [1999, c. 429, §3 (NEW).]

D. An adult with whom the patient has a meaningful social and emotional relationship; and [1999, c. 429, §3 (NEW).]

E. A physician who is familiar with occupational exposures to HIV. [1999, c. 429, §3 (NEW).]

The individual authorizing the HIV test must be informed of the nature, reliability and significance of the HIV test and the confidential nature of the test.

If the person contacted for authorization refuses to authorize the test, the test may not be conducted unless consent is obtained from the source patient or from the court pursuant to section 19203-C.

This subsection does not authorize a person described in paragraphs A to D to receive the test result. Test results must be given to the exposed person, to a personal physician if designated by the exposed person and to either the physician who authorizes the test or the health care provider who manages the occupational exposure.

The patient may choose not to be informed about the result of the HIV test. Without express patient authorization, the results of the HIV test and the fact that an HIV test was done as a result of an occupational exposure in a health care setting may not appear in the patient's health care records. The exposed individual's occupational health care record may include documentation of the occupational exposure and, if the record does not reveal the source patient's identity, the results of the source patient's HIV test.

[ 1999, c. 429, §3 (NEW) .]

**5. Exposure from sexual crime.** Consent need not be obtained when a court order has been issued under section 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test unless the court has ordered that the convicted offender be informed of the result.

[ 1995, c. 319, §2 (AMD) .]

**6. Protection of newborn infants.** Subject to the consent and procedure requirements of subsection 1, a health care provider who is providing care for a pregnant woman shall include an HIV test in a standard set of medical tests performed on the woman. A health care provider who is providing care for a newborn infant shall test the infant for HIV and ensure that the results are available within 12 hours of birth of the infant if the health care provider does not know the HIV status of the mother or the health care provider believes that HIV testing is medically necessary unless a parent objects to the test on the grounds that it conflicts with the sincere religious or conscientious beliefs and practices of the parent. If a woman declines to be tested for HIV pursuant to this subsection and subsection 1, the health care provider shall document the woman's decision in the woman's medical record.

[ 2011, c. 229, §1 (NEW) .]

#### SECTION HISTORY

1987, c. 443, §2 (NEW). 1987, c. 539, (RPR). 1987, c. 811, §§4,5 (AMD). 1991, c. 803, §2 (AMD). 1995, c. 319, §2 (AMD). 1995, c. 404, §§5,6 (AMD). 1999, c. 429, §3 (AMD). 2007, c. 93, §1 (AMD). 2011, c. 229, §1 (AMD).

## §19203-B. ANONYMOUS TESTING SITES

The Department of Health and Human Services may designate or establish certification and approval standards for and support anonymous testing sites where an individual may request an HIV test under conditions which ensure anonymity. [1987, c. 539, (NEW); 2003, c. 689, Pt. B, §6 (REV).]

### SECTION HISTORY

1987, c. 539, (NEW). 2003, c. 689, §B6 (REV).

## §19203-C. JUDICIAL CONSENT TO HIV TEST

**1. Petition.** Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to an HIV test and to require that the results of the test be provided to the petitioner 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 adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375; [1995, c. 404, §7 (AMD).]

B. The authorized representative of the employer of the person exposed has informed the person whose blood or body fluid is the source of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [1995, c. 404, §7 (AMD).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested, or, in the event of an occupational exposure in a health care setting when the source patient was not present and could not be contacted or was incapacitated, the individual contacted for authorization to test the source patient's blood or tissue sample denied the authorization. [1999, c. 429, §4 (AMD).]

[ 1999, c. 429, §4 (AMD) .]

### **1-A. Persons authorized.**

[ 1995, c. 404, §8 (RP) .]

**2. Prehearing duties of the court.** Upon receipt by the District Court of the petition, the court shall:

A. Schedule a hearing to be held as soon as practicable; [1987, c. 811, §6 (NEW).]

B. Cause a written notice of the petition and hearing to be given, in accordance with the Maine Rules of Civil Procedure, to the patient who is the subject of the proceeding; [1987, c. 811, §6 (NEW).]

C. Appoint counsel, if requested, for any indigent client not already represented; and [1987, c. 811, §6 (NEW).]

D. Furnish counsel with copies of the petition. [1987, c. 811, §6 (NEW).]

[ 1987, c. 811, §6 (NEW) .]

**3. Hearing.** The hearing shall be governed as follows.

A. The hearing shall be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure. [1987, c. 811, §6 (NEW).]

B. The hearing shall be confidential and be electronically or stenographically recorded. [1987, c. 811, §6 (NEW).]

C. The report of the hearing proceedings must be sealed. No report of the hearing proceedings may be released to the public, except by permission of the person whose blood or body fluid is the source of the exposure or that person's counsel and with the approval of the court. [1995, c. 404, §9 (AMD).]

D. The court may order a public hearing at the request of the person whose blood or body fluid is the source of the exposure or that person's counsel. [1995, c. 404, §9 (AMD).]

[ 1995, c. 404, §9 (AMD) .]

**4. Determination.** The court shall require the person whose blood or body fluid is the source of the exposure to obtain an HIV test if the petitioner proves, by a preponderance of the evidence, that:

A. The exposure to blood or body fluids of the person created a significant risk of HIV infection as defined by the Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375; [1995, c. 404, §10 (AMD).]

B. An authorized representative of the employer of the person exposed has informed the patient of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [1995, c. 404, §10 (AMD).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested. [1995, c. 404, §10 (AMD).]

[ 1997, c. 331, §2 (AMD) .]

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

[ 1995, c. 404, §10 (AMD) .]

**6. Costs.** The 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.

[ 1995, c. 404, §10 (AMD) .]

**7. Appeals.** A 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.

[ 1995, c. 404, §10 (AMD) .]

**8. Reporting to bureau and counseling.**

[ 1995, c. 404, §11 (RP) .]

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

[ 1995, c. 404, §12 (AMD) .]

**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 [1995, c. 404, §13 (NEW).]

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. [1995, c. 404, §13 (NEW).]

[ 1995, c. 404, §13 (NEW) .]

#### SECTION HISTORY

1987, c. 811, §6 (NEW). 1989, c. 219, §§1,2 (AMD). 1995, c. 404, §§7-13 (AMD). 1997, c. 331, §§1,2 (AMD). 1999, c. 429, §4 (AMD).

### §19203-D. RECORDS

When a medical record entry is made concerning information of a person's HIV infection status, including the results of an HIV test, the following apply to the release of that information as a part of the medical record. [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

**1. Authorized release.** The 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 that person's medical record has been requested. A new election may be made when a change in the person's HIV infection status occurs or whenever the person makes a new election. The release form must clearly state whether or not the person has authorized the release of that information. The person 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 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 is not a violation of any of the confidentiality provisions of this chapter. [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

B. When release has not been authorized, the custodian of the medical record may, upon request, release that portion of the medical record that does not contain the HIV infection status information. Except as otherwise provided in this section, HIV infection status information may be released only if the person has specifically authorized a separate release of that information. A general release form is insufficient. [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

[ 1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN) .]

**2. Authorized disclosure.** 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 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; [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

B. Proceedings held pursuant to the Adult Protective Services Act, Title 22, chapter 958-A; [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

C. Proceedings held pursuant to the child protection laws, Title 22, chapter 1071; [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

D. Proceedings held pursuant to the mental health laws, Title 34-B, chapter 3, subchapter IV, article III; and [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

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 ensuring confidentiality. [1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN).]

[ 1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN) .]

**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 the identities of persons tested in any manner.

[ 1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN) .]

**4. Access by health care providers.** Nothing in this section may prohibit access to medical records by the designated health care provider of the person who is the subject of an HIV test in accordance with section 19203, subsection 2.

[ 1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN) .]

**5. Confidentiality policy.** Health care providers and others with 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 must require, at a minimum, action consistent with disciplinary procedures for violations of the confidentiality policy.

[ 1999, c. 512, Pt. B, §§5, 6 (AFF); 1999, c. 512, Pt. B, §4 (REEN) .]

**6. Access by health information exchange or other entity.** Nothing in this section precludes the disclosure of a medical record containing HIV information to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow the state-designated statewide health information exchange to disclose that individual's health care information covered under this section to a health care provider or health care facility consistent with the rules and regulations contained in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to an individual at all times.

A state-designated statewide health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when in a health care provider's judgment disclosure is necessary to:

A. Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or [2011, c. 347, §5 (NEW) .]

B. Prevent or respond to imminent and serious harm to the individual and disclosure is to a provider for diagnosis or treatment. [2011, c. 347, §5 (NEW).]

[ 2011, c. 347, §5 (NEW) .]

#### SECTION HISTORY

1987, c. 811, §6 (NEW). 1995, c. 404, §14 (AMD). 1997, c. 793, §B6 (AFF). 1997, c. 793, §B4 (RP). 1999, c. 3, §§4,5 (AFF). 1999, c. 512, §B5 (AFF). 1999, c. 512, §B4 (REEN). 1999, c. 790, §§A59,60 (AFF). 2011, c. 347, §5 (AMD).

### **§19203-E. HIV TEST AFTER CONVICTION FOR SEXUAL ASSAULT**

*(REPEALED)*

#### SECTION HISTORY

1991, c. 803, §3 (NEW). 1993, c. 391, §§1,2 (AMD). 1995, c. 319, §3 (RP).

### **§19203-F. HIV TEST AFTER CONVICTION FOR SEXUAL ASSAULT**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Convicted offender" means a person who has been convicted of a sexual crime or, in the case of a juvenile, a person who has been adjudicated as having committed a sexual crime. [1995, c. 319, §4 (NEW).]

B. "Incapacitated adult" means an adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that the individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual. [1995, c. 319, §4 (NEW).]

C. "Sexual crime" means a crime involving a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, subparagraph (1). [1995, c. 319, §4 (NEW).]

[ 1995, c. 319, §4 (NEW) .]

**2. Request for testing.** A person who is the victim of a sexual crime, or that person's parent, guardian or authorized representative if that person is a minor or incapacitated adult, may petition the court at any time prior to sentencing or no later than 180 days after conviction to order the convicted offender to submit to HIV testing and to order that the convicted offender be informed of the test results.

[ 1995, c. 319, §4 (NEW) .]

**3. Duties of the court.** Upon receipt of the petition, the court shall order that the convicted offender obtain HIV testing conducted by or under authority of the Department of Health and Human Services and, if requested by the petitioner, that the convicted offender be informed of the test results.

[ 1995, c. 319, §4 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

**4. Reporting and counseling.** The health care facility in which a convicted offender is tested pursuant to this section shall disclose the results of the test to the victim-witness advocate, who shall disclose the result to the petitioner. The health care facility shall, upon order of the court, disclose the results of the test to the convicted offender.

[ 2007, c. 93, §2 (AMD) .]

SECTION HISTORY

1995, c. 319, §4 (NEW). 2003, c. 689, §B6 (REV). 2007, c. 93, §2 (AMD).

## **§19204. RESTRICTIONS UPON REVEALING HIV TEST RESULTS**

*(REPEALED)*

SECTION HISTORY

1987, c. 402, §A76 (NEW). 1987, c. 443, §2 (NEW). 1987, c. 539, (RPR).  
1987, c. 811, §7 (AMD).

### **§19204-A. COUNSELING NEW HIV CASES**

Except as otherwise provided by this chapter, persons who test positive for HIV infection must be offered post-test counseling. Persons who are authorized by section 19203-C or 19203-F 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. [2007, c. 93, §3 (AMD) .]

#### **1. Pretest counseling.**

[ 2007, c. 93, §3 (RP) .]

#### **2. Post-test counseling.** "Post-test counseling" 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. The person providing post-test counseling shall communicate the result confidentially and through personal contact;
- (3) Information on good preventive practices and risk reduction plans; and
- (4) Referrals for medical care and information and referrals for support services, including social, emotional support and legal services, as needed; [2007, c. 93, §3 (AMD) .]

B. An entry in the medical record of the person being counseled summarizing the contents of the discussion; and [2001, c. 647, §2 (AMD) .]

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. [1995, c. 404, §15 (NEW) .]

[ 2007, c. 93, §3 (AMD) .]

#### **3. Preventive practices.**

[ 1987, c. 811, §8 (RP) .]

#### **4. Referrals.**

[ 1987, c. 811, §8 (RP) .]

**5. Written information to person being counseled.** To comply with the requirements of this section regarding post-test counseling, in addition to meeting the requirements of subsection 2, the provider of an HIV test shall give to the person being counseled a written document containing information on the subjects described in subsection 2, paragraph A.

[ 2007, c. 93, §3 (AMD) .]

#### SECTION HISTORY

1987, c. 443, §2 (NEW). 1987, c. 539, (RPR). 1987, c. 811, §8 (RPR). 1991, c. 803, §4 (AMD). 1995, c. 319, §5 (AMD). 1995, c. 404, §15 (AMD). 1995, c. 625, §A15 (AMD). 2001, c. 647, §§1-3 (AMD). 2007, c. 93, §3 (AMD).

## §19204-B. RESTRICTIONS ON REQUIRING TESTS OR RESULTS OF TESTS

**1. Employee testing.** 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. The Maine Human Rights Commission shall enforce this subsection.

[ 1995, c. 404, §16 (AMD) .]

**2. Employee rights.** The employment status of any employee may not be affected or changed:

A. If the employee declines to be tested; [2007, c. 93, §4 (AMD).]

B. If the employee testifies or assists in any proceeding under this chapter; [1987, c. 811, §9 (NEW).]

C. If the employee asserts any other rights exercised in good faith pursuant to this chapter; or [1987, c. 811, §9 (NEW).]

D. Because of the result of any test taken pursuant to this chapter. [1987, c. 811, §9 (NEW).]

[ 2007, c. 93, §4 (AMD) .]

#### SECTION HISTORY

1987, c. 811, §9 (NEW). 1989, c. 161, (AMD). 1995, c. 404, §16 (AMD). 2007, c. 93, §4 (AMD).

## §19204-C. RESTRICTIONS UPON REVEALING HIV ANTIBODY TEST RESULTS

An insurer, nonprofit hospital or medical services organization, 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. [1995, c. 404, §17 (AMD).]

#### SECTION HISTORY

1991, c. 3, §1 (NEW). 1995, c. 404, §17 (AMD).

## §19205. COORDINATION OF SERVICES TO PERSONS WITH HIV OR AIDS

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

[ 2003, c. 2, §12 (COR) .]

**2. Coordination of services.** A person designated by the Commissioner of Health and Human Services shall ensure coordination of new and existing services so as to meet the needs of persons with 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 ensure the coordination of services to meet the needs of persons with HIV or AIDS.

[ 1995, c. 404, §19 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

**3. Development of a client support services system.** A client support services system shall be developed to assist individuals infected with the Human Immune Deficiency Virus and to ensure that they receive necessary services. The client support service, arranged by the staff of community-based agencies, shall include, but not be limited to, assisting the individual's needs and assisting the individual with obtaining access to necessary health care, social service, housing, transportation, counseling and income maintenance services. The Department of Health and Human Services shall be responsible for providing overall direction for the development of the client support services system.

[ 1987, c. 769, Pt. A, §34 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

### SECTION HISTORY

1987, c. 402, §A76 (NEW). 1987, c. 443, §2 (NEW). 1987, c. 539, (RPR). 1987, c. 769, §A34 (AMD). 1989, c. 502, §A22 (AMD). 1989, c. 700, §A28 (AMD). RR 1995, c. 1, §5 (COR). 1995, c. 404, §§18,19 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §12 (COR). 2003, c. 689, §§B6,7 (REV).

## §19206. CIVIL LIABILITY

Any person violating this chapter is liable to the subject of the test for actual damages and costs plus a civil penalty of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation, subject to Title 14, chapter 741. [1987, c. 811, §10 (AMD).]

Any person may bring an action for injunctive relief for a violation of sections 19203 and 19204 in addition to or instead of the penalties provided in this section. The applicant for injunctive relief under this section shall not be required to give security as a condition upon the issuance of the injunction. [1987, c. 539, (RPR).]

### SECTION HISTORY

1987, c. 402, §A76 (NEW). 1987, c. 443, §2 (NEW). 1987, c. 539, (RPR). 1987, c. 811, §10 (AMD).

## §19207. CIVIL LIABILITY

*(REPEALED)*

### SECTION HISTORY

1987, c. 443, §2 (NEW). 1987, c. 539, (RP).

## §19208. PROCEEDINGS

All proceedings brought pursuant to this chapter shall be closed to the public, unless the court orders otherwise with the consent of all parties. [1987, c. 811, §11 (NEW).]

### SECTION HISTORY

1987, c. 811, §11 (NEW).

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