

HOUSE BILL NO. 220

INTRODUCED BY SIMON, KENNEDY, HANSEN, FAGG, VOGEL, WINSLOW,
BURNETT, SCHWINDEN, BRUSKI-MAUS, REAM, HARPER, SWIFT

IN THE HOUSE

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| JANUARY 18, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING. |
| | FIRST READING. |
| FEBRUARY 4, 1993 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| FEBRUARY 5, 1993 | PRINTING REPORT. |
| FEBRUARY 6, 1993 | SECOND READING, DO PASS. |
| FEBRUARY 8, 1993 | ENGROSSING REPORT. |
| FEBRUARY 9, 1993 | THIRD READING, PASSED. AYES, 96; NOES, 2. |
| FEBRUARY 10, 1993 | TRANSMITTED TO SENATE. |

IN THE SENATE

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| FEBRUARY 11, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY. |
| | FIRST READING. |
| MARCH 30, 1993 | COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. |
| MARCH 31, 1993 | SECOND READING, CONCURRED IN. |
| APRIL 1, 1993 | THIRD READING, CONCURRED IN. AYES, 48; NOES, 0. |
| | RETURNED TO HOUSE WITH AMENDMENTS. |

IN THE HOUSE

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| APRIL 6, 1993 | SECOND READING, AMENDMENTS CONCURRED IN. |
| APRIL 12, 1993 | THIRD READING, AMENDMENTS CONCURRED IN. |

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *220*
 2 INTRODUCED BY *Sen. Kennedy, Sen. J. Hansen, Sen. Vogt, Sen. Winslow, Sen. Burnett, Sen. Schuler, Sen. Brooks, Sen. Mann, Sen. Regan, Sen. J. Hoff*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A HEALTH CARE
 5 FACILITY TO NOTIFY AN EMERGENCY SERVICES PROVIDER OF
 6 EXPOSURE TO AN INFECTIOUS DISEASE; AND AMENDING SECTIONS
 7 50-16-701, 50-16-702, 50-16-703, 50-16-704, AND 50-16-1007,
 8 MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 50-16-701, MCA, is amended to read:

12 "50-16-701. Definitions. As used in this part, the
 13 following definitions apply:

14 (1) "Department" means the department of health and
 15 environmental sciences provided for in 2-15-2101.

16 (2) "Emergency services provider" means a person
 17 employed by or acting as a volunteer with a public or
 18 private organization that provides emergency services to the
 19 public, including but not limited to a law enforcement
 20 officer, firefighter, emergency medical technician,
 21 paramedic, corrections officer, or ambulance service
 22 attendant.

23 (3) "Health care facility" means a health care
 24 facility as defined in 50-5-101.

25 (4) "Infectious disease" means a communicable

1 disease designated by department rule as transmittable
 2 through an unprotected exposure.

3 (4)(5) "Patient" means an individual who is sick,
 4 injured, wounded, or otherwise incapacitated or helpless.

5 (5)(6) "Unprotected exposure" means exposure of a
 6 person to an infectious disease in a manner defined by
 7 department rule as likely to allow transmission of the
 8 disease, including but not limited to mouth-to-mouth
 9 resuscitation and commingling of the blood or body fluids of
 10 the person and a patient."

11 **Section 2.** Section 50-16-702, MCA, is amended to read:

12 "50-16-702. Report Notification of exposure to
 13 infectious disease -- report of unprotected exposure to
 14 disease. (1) A--report--may--be--filed--as--provided--in
 15 subsection--(2)--by--a--person:

16 (a)--employed-by-or-acting-as-a-volunteer-with-a--public
 17 or--private-organization-that-provides-emergency-services-to
 18 the-public--including-but-not-limited-to-a--law--enforcement
 19 officer,--firefighter,--emergency--medical--technician,
 20 corrections-officer,--or-ambulance-service-attendant;--and

21 (b)--who,--in-his-official-capacity-with--the--public--or
 22 private--organization,--attends-or-assists-in-transporting-a
 23 patient-to-a--health--care--facility--and If an emergency
 24 services provider acting in an official capacity attends or
 25 assists in transporting to a health care facility a patient

1 who is subsequently diagnosed as having an infectious
 2 disease, the health care facility receiving the patient
 3 shall notify the highest ranking officer of the organization
 4 employing the emergency services provider of the exposure to
 5 the infectious disease. The officer shall then notify the
 6 exposed individual.

7 (2) (a) An emergency services provider who believes he
 8 that the provider has sustained an unprotected exposure;

9 ~~{2}--A person who qualifies in subsection {1}~~ may submit
 10 to the health care facility, on a form prescribed by the
 11 department, a report of unprotected exposure that contains
 12 ~~his~~ the provider's name and other information required by
 13 the department, including a description of the unprotected
 14 exposure.

15 ~~{3}~~(b) If the exposure described in the report occurred
 16 in a manner that may allow infection by HIV, as defined in
 17 50-16-1003, by a mode of transmission recognized by the
 18 centers for disease control, then submission of the report
 19 to the health care facility constitutes a request to the
 20 patient's physician to seek consent for performance of an
 21 HIV-related test pursuant to 50-16-1007(10)."

22 **Section 3.** Section 50-16-703, MCA, is amended to read:

23 "50-16-703. Notification of precautions after
 24 unprotected exposure to infectious disease. (1) After a
 25 patient is transported to a health care facility, a

1 physician shall inform the health care facility if:

2 {a} the physician determines that the transported
 3 patient has an infectious disease;

4 ~~{b}--a report of unprotected exposure to that patient~~
 5 ~~has been filed; and~~

6 ~~{c}--the physician believes the unprotected exposure is~~
 7 ~~capable of transmitting the infectious disease.~~

8 (2) The health care facility shall orally notify within
 9 48 hours after the time of diagnosis and notify in writing
 10 within 72 hours after diagnosis;

11 (a) the highest ranking officer of the organization
 12 employing the emergency services provider; or

13 (b) the person who filed the report in 50-16-702, of

14 (3) The notification must state the disease to which he
 15 the emergency services provider may have been exposed and
 16 the appropriate medical precautions and treatment that the
 17 exposed person needs to take."

18 **Section 4.** Section 50-16-704, MCA, is amended to read:

19 "50-16-704. Confidentiality -- penalty for violation --
 20 immunity from liability. (1) The names of the person who
 21 suffered the unprotected exposure and the person diagnosed
 22 as having an infectious disease may not be released to
 23 anyone, except as required by department rule concerning
 24 reporting of communicable disease or as allowed by Title 50,
 25 chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, or a physician may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact a person ~~filing-a-report~~ suspected of unprotected exposure are unsuccessful."

Section 5. Section 50-16-1007, MCA, is amended to read:

"50-16-1007. Testing -- counseling -- informed consent -- penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the written informed consent of:

- (a) the subject of the test;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated;
 - (ii) there is no legal guardian;
 - (iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

- (i) the subject is in a hospital; and
- (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, he the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test executes an informed consent agreement, the health care provider ordering the test or his the provider's designee must give pretest counseling to:

- (a) the subject;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated; and
 - (ii) there is no guardian; or
- (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
 - (i) the subject is in the hospital; and

1 (ii) the circumstances in subsections (1)(c)(i) and
2 (1)(c)(ii) exist.

3 (4) A health care provider who does not provide
4 HIV-related tests on an anonymous basis shall inform each
5 person who wishes to be tested that anonymous testing is
6 available at one of the counseling-testing sites established
7 by the department, or elsewhere.

8 (5) The subject of an HIV-related test or any of the
9 subject's representatives authorized by subsection (1) to
10 act in the subject's stead shall designate, as part of his a
11 written informed consent, a health care provider to receive
12 the results of an HIV-related test. The designated health
13 care provider shall inform the subject or the subject's
14 representative of the results in person.

15 (6) At the time the subject of a test or the subject's
16 representative is given the test results, the health care
17 provider or the provider's designee shall give the subject
18 or the subject's representative posttest counseling.

19 (7) If a test is performed as part of an application
20 for insurance, the insurance company must ensure that:

21 (a) negative results can be obtained by the subject or
22 his the subject's representative upon request; and

23 (b) positive results are returned to the health care
24 provider designated by the subject or his the subject's
25 representative.

1 (8) A minor may consent or refuse to consent to be the
2 subject of an HIV-related test, pursuant to 41-1-402.

3 (9) Subsections (1) through (6) do not apply to:

4 (a) the performance of an HIV-related test by a health
5 care provider or health care facility that procures,
6 processes, distributes, or uses a human body part donated
7 for a purpose specified under Title 72, chapter 17, if the
8 test is necessary to assure medical acceptability of the
9 gift for the purposes intended;

10 (b) the performance of an HIV-related test for the
11 purpose of research if the testing is performed in a manner
12 by which the identity of the test subject is not known and
13 may not be retrieved by the researcher;

14 (c) the performance of an HIV-related test when:

15 (i) the subject of the test is unconscious or otherwise
16 mentally incapacitated;

17 (ii) there are medical indications of an HIV-related
18 condition;

19 (iii) the test is advisable in order to determine the
20 proper course of treatment of the subject; and

21 (iv) none of the individuals listed in subsection
22 (1)(b), (1)(c), or (1)(d) exists or is available within a
23 reasonable time after the test is determined to be
24 advisable; or

25 (d) the performance of an HIV-related test conducted

1 pursuant to 50-18-107 or 50-18-108, with the exception that
2 the pretest and posttest counseling must still be given.

3 (10) (a) If an agent or employee of a health care
4 facility, a health care provider with privileges at the
5 health care facility, or a person providing emergency
6 services who is described in 50-16-702~~(1)~~ has been
7 voluntarily or involuntarily exposed to a patient in a
8 manner that may allow infection by HIV by a mode of
9 transmission recognized by the centers for disease control
10 of the United States public health service, the physician of
11 the patient shall, upon request of the exposed person,
12 notify the patient of the exposure and seek written informed
13 consent in accordance with guidelines of the centers for
14 disease control for an HIV-related test of the patient. If
15 written informed consent cannot be obtained, the health care
16 facility, in accordance with the infectious disease exposure
17 guidelines of the health care facility, may, without the
18 consent of the patient, conduct the test on previously drawn
19 blood or previously collected bodily fluids to determine if
20 the patient is in fact infected. A health care facility is
21 not required to perform a test authorized in this
22 subsection. If a test is conducted pursuant to this
23 subsection, the health care facility shall inform the
24 patient of the results and provide the patient with posttest
25 counseling. The patient may not be charged for a test

1 performed pursuant to this subsection. The results of a test
2 performed pursuant to this subsection may not be made part
3 of the patient's record and are subject to 50-16-1009(1).

4 (b) For the purposes of this subsection, "written
5 informed consent" means an agreement in writing that is
6 freely executed by the subject of an HIV-related test, by
7 the subject's legal guardian, or, if there is no legal
8 guardian and the subject is incapacitated, by the subject's
9 next of kin, significant other, or a person designated by
10 the subject in hospital records to act on the subject's
11 behalf.

12 (11) A knowing or purposeful violation of this section
13 is a misdemeanor punishable by a fine of \$1,000 or
14 imprisonment for up to 6 months, or both."

-End-

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

HOUSE BILL NO. 220

INTRODUCED BY SIMON, KENNEDY, HANSEN, FAGG, VOGEL, WINSLOW,
BURNETT, SCHWINDEN, BRUSKI-MAUS, REAM, HARPER, SWIFT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A HEALTH CARE
FACILITY TO NOTIFY AN EMERGENCY SERVICES PROVIDER OF
EXPOSURE TO AN INFECTIOUS DISEASE; AND AMENDING SECTIONS
50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-705, AND
50-16-1007, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the
following definitions apply:

(1) "Department" means the department of health and
environmental sciences provided for in 2-15-2101.

(2) "DESIGNATED OFFICER" MEANS THE PERSON WHOSE NAME IS
ON RECORD WITH THE DEPARTMENT AS DESIGNATED BY AN EMERGENCY
SERVICES PROVIDER AS THE INTERMEDIARY BETWEEN THE PROVIDER
AND HEALTH CARE FACILITIES FOR PURPOSES OF REPORTING AN
UNPROTECTED EXPOSURE TO AN INFECTIOUS DISEASE.

(3) "Emergency services provider" means a person
employed by or acting as a volunteer with a public or
private organization that provides emergency services to the
public, including but not limited to a law enforcement

officer, firefighter, emergency medical technician,
paramedic, corrections officer, or ambulance service
attendant.

(4) "Health care facility" means a health care
facility as defined in 50-5-101.

(5) "Infectious disease" means a communicable
disease designated--by--department--rule--as transmittable
through an unprotected exposure, INCLUDING THE DISEASES OF
HUMAN IMMUNODEFICIENCY VIRUS, HEPATITIS B, HEPATITIS C,
HEPATITIS D, COMMUNICABLE PULMONARY TUBERCULOSIS,
MENINGOCOCCAL MENINGITIS, HERPES SIMPLEX VIRUS, TETANUS, AND
OTHER DISEASES THAT MAY BE DESIGNATED BY DEPARTMENT RULE.

(6) "Patient" means an individual who is sick,
injured, wounded, or otherwise incapacitated or helpless.

(7) "Unprotected exposure" means:

(A) exposure of a person to an infectious disease in a
manner--defined--by--department--rule--as--likely--to--allow
transmission--of--the--disease--including--but--not--limited--to
mouth-to-mouth-resuscitation-and-comingling-of-the-blood-or
body-fluids-of--the--person--and--a--patient TO INFECTIOUS
AGENTS, SUCH AS BODILY FLUIDS;

(B) EXPOSURE THROUGH INHALATION OR PERCUTANEOUS
INOCULATION;

(C) NONBARRIER-PROTECTED CONTACT WITH AN OPEN WOUND,
NONINTACT SKIN, OR MUCOUS MEMBRANE; OR

(D) CONTACT WITH OTHER POTENTIALLY INFECTED MATERIALS
DESIGNATED BY DEPARTMENT RULE."

Section 2. Section 50-16-702, MCA, is amended to read:

"50-16-702. Report Notification of exposure to infectious disease -- report of unprotected exposure to disease TO DISEASE. (1) ~~A report may be filed, as provided in subsection (2), by a person:~~

~~(a) --employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and~~

~~(b) --who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and~~ If an emergency services provider acting in an official capacity attends or assists in transporting to a health care facility a patient who is subsequently diagnosed as having an infectious disease, the health care facility receiving the patient shall notify the highest-ranking DESIGNATED officer of the organization employing the emergency services provider of the exposure to the infectious disease THOSE MATTERS REQUIRED BY 50-16-703(2). The DESIGNATED officer shall then notify the exposed individual.

(2) (a) An emergency services provider who believes he

that the provider has sustained an unprotected exposure

~~(2) --A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his the provider's name and other information required by the department, including a description of the unprotected exposure.~~

~~(3)(b) If the exposure described in the report occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control, then submission of the report to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10)."~~

Section 3. Section 50-16-703, MCA, is amended to read:

"50-16-703. Notification of precautions after unprotected exposure to infectious disease. (1) After a patient is transported to a health care facility, a physician shall inform the health care facility WITHIN 24 HOURS if:

~~(a) the physician determines that the transported patient has an infectious disease;~~

~~(b) --a report of unprotected exposure to that patient has been filed; and~~

~~(c) --the physician believes the unprotected exposure is~~

capable-of-transmitting-the-infectious-disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis.

~~(a) the highest--ranking DESIGNATED officer of the organization employing the emergency services provider; or~~

~~(b)--the-person-who-filed-the-report--in--50-16-702; of WHO SUFFERED THE UNPROTECTED EXPOSURE.~~

(3) The notification must state the disease to which he the emergency services provider may have HAS been exposed and the appropriate medical precautions and treatment that the exposed person needs to take."

Section 4. Section 50-16-704, MCA, is amended to read:

"50-16-704. Confidentiality -- penalty for violation -- immunity from liability. (1) The names of the person who suffered the unprotected exposure and the person diagnosed as having an infectious disease may not be released to anyone, except as required by department rule concerning reporting of communicable disease or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, or a physician, OR THE DESIGNATED OFFICER OF AN ORGANIZATION EMPLOYING AN EMERGENCY SERVICES PROVIDER may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact a person filing--a--report suspected WHO FILED THE REPORT of unprotected exposure are unsuccessful."

Section 5. Section 50-16-1007, MCA, is amended to read:

"50-16-1007. Testing -- counseling -- informed consent -- penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the written informed consent of:

- (a) the subject of the test;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated;
 - (ii) there is no legal guardian;
 - (iii) there are medical indications of an HIV-related condition; and
 - (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
 - (d) the subject's next of kin or significant other or

1 the person, if any, designated by the subject in hospital
2 records to act on the subject's behalf if:

3 (i) the subject is in a hospital; and

4 (ii) the circumstances in subsections (1)(c)(i) through
5 (1)(c)(iv) exist.

6 (2) When a health care provider orders an HIV-related
7 test, he the provider also certifies that informed consent
8 has been received prior to ordering an HIV-related test.

9 (3) Before the subject of the test executes an informed
10 consent agreement, the health care provider ordering the
11 test or his the provider's designee must give pretest
12 counseling to:

13 (a) the subject;

14 (b) the subject's legal guardian;

15 (c) the subject's next of kin or significant other if:

16 (i) the subject is unconscious or otherwise mentally
17 incapacitated; and

18 (ii) there is no guardian; or

19 (d) the subject's next of kin or significant other or
20 the person, if any, designated by the subject in hospital
21 records to act on the subject's behalf if:

22 (i) the subject is in the hospital; and

23 (ii) the circumstances in subsections (1)(c)(i) and
24 (1)(c)(ii) exist.

25 (4) A health care provider who does not provide

1 HIV-related tests on an anonymous basis shall inform each
2 person who wishes to be tested that anonymous testing is
3 available at one of the counseling-testing sites established
4 by the department, or elsewhere.

5 (5) The subject of an HIV-related test or any of the
6 subject's representatives authorized by subsection (1) to
7 act in the subject's stead shall designate, as part of his a
8 written informed consent, a health care provider to receive
9 the results of an HIV-related test. The designated health
10 care provider shall inform the subject or the subject's
11 representative of the results in person.

12 (6) At the time the subject of a test or the subject's
13 representative is given the test results, the health care
14 provider or the provider's designee shall give the subject
15 or the subject's representative posttest counseling.

16 (7) If a test is performed as part of an application
17 for insurance, the insurance company must ensure that:

18 (a) negative results can be obtained by the subject or
19 his the subject's representative upon request; and

20 (b) positive results are returned to the health care
21 provider designated by the subject or his the subject's
22 representative.

23 (8) A minor may consent or refuse to consent to be the
24 subject of an HIV-related test, pursuant to 41-1-402.

25 (9) Subsections (1) through (6) do not apply to:

1 (a) the performance of an HIV-related test by a health
2 care provider or health care facility that procures,
3 processes, distributes, or uses a human body part donated
4 for a purpose specified under Title 72, chapter 17, if the
5 test is necessary to assure medical acceptability of the
6 gift for the purposes intended;

7 (b) the performance of an HIV-related test for the
8 purpose of research if the testing is performed in a manner
9 by which the identity of the test subject is not known and
10 may not be retrieved by the researcher;

11 (c) the performance of an HIV-related test when:

12 (i) the subject of the test is unconscious or otherwise
13 mentally incapacitated;

14 (ii) there are medical indications of an HIV-related
15 condition;

16 (iii) the test is advisable in order to determine the
17 proper course of treatment of the subject; and

18 (iv) none of the individuals listed in subsection
19 (1)(b), (1)(c), or (1)(d) exists or is available within a
20 reasonable time after the test is determined to be
21 advisable; or

22 (d) the performance of an HIV-related test conducted
23 pursuant to 50-18-107 or 50-18-108, with the exception that
24 the pretest and posttest counseling must still be given.

25 (10) (a) If an agent or employee of a health care

1 facility, a health care provider with privileges at the
2 health care facility, or a person providing emergency
3 services who is described in 50-16-702(1) has been
4 voluntarily or involuntarily exposed to a patient in a
5 manner that may allow infection by HIV by a mode of
6 transmission recognized by the centers for disease control
7 of the United States public health service, the physician of
8 the patient shall, upon request of the exposed person,
9 notify the patient of the exposure and seek written informed
10 consent in accordance with guidelines of the centers for
11 disease control for an HIV-related test of the patient. If
12 written informed consent cannot be obtained, the health care
13 facility, in accordance with the infectious disease exposure
14 guidelines of the health care facility, may, without the
15 consent of the patient, conduct the test on previously drawn
16 blood or previously collected bodily fluids to determine if
17 the patient is in fact infected. A health care facility is
18 not required to perform a test authorized in this
19 subsection. If a test is conducted pursuant to this
20 subsection, the health care facility shall inform the
21 patient of the results and provide the patient with posttest
22 counseling. The patient may not be charged for a test
23 performed pursuant to this subsection. The results of a test
24 performed pursuant to this subsection may not be made part
25 of the patient's record and are subject to 50-16-1009(1).

1 (b) For the purposes of this subsection, "written
2 informed consent" means an agreement in writing that is
3 freely executed by the subject of an HIV-related test, by
4 the subject's legal guardian, or, if there is no legal
5 guardian and the subject is incapacitated, by the subject's
6 next of kin, significant other, or a person designated by
7 the subject in hospital records to act on the subject's
8 behalf.

9 (11) A knowing or purposeful violation of this section
10 is a misdemeanor punishable by a fine of \$1,000 or
11 imprisonment for up to 6 months, or both."

-End-

HOUSE BILL NO. 220

INTRODUCED BY SIMON, KENNEDY, HANSEN, FAGG, VOGEL, WINSLOW,
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SERVICES PROVIDER AS THE INTERMEDIARY BETWEEN THE PROVIDER
AND HEALTH CARE FACILITIES FOR PURPOSES OF REPORTING AN
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{2}{3} "Emergency services provider" means a person
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private organization that provides emergency services to the
public, including but not limited to a law enforcement

officer, firefighter, emergency medical technician,
paramedic, corrections officer, or ambulance service
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{2}{3}{4} "Health care facility" means a health care
facility as defined in 50-5-101.

{3}{4}{5} "Infectious disease" means a communicable
disease designated--by--department--rule--as transmittable
through an unprotected exposure, INCLUDING THE DISEASES OF
HUMAN IMMUNODEFICIENCY VIRUS, HEPATITIS B, HEPATITIS C,
HEPATITIS D, COMMUNICABLE PULMONARY TUBERCULOSIS,
MENINGOCOCCAL MENINGITIS, HERPES SIMPLEX VIRUS, TETANUS, AND
OTHER DISEASES THAT MAY BE DESIGNATED BY DEPARTMENT RULE.

{4}{5}{6} "Patient" means an individual who is sick,
injured, wounded, or otherwise incapacitated or helpless.

{5}{6}{7} "Unprotected exposure" means:

(A) exposure of-a-person-to-an-infectious-disease-in--a
manner--defined--by--department--rule--as--likely--to--allow
transmission--of--the--disease,-including-but-not-limited-to
mouth-to-mouth-resuscitation-and-comingling-of-the-blood-or
body-fluids-of--the--person--and--a--patient TO INFECTIOUS
AGENTS, SUCH AS BODILY FLUIDS;

(B) EXPOSURE THROUGH INHALATION OR PERCUTANEOUS
INOCULATION;

(C) NONBARRIER-PROTECTED CONTACT WITH AN OPEN WOUND,
NONINTACT SKIN, OR MUCOUS MEMBRANE; OR

1 (D) CONTACT WITH OTHER POTENTIALLY INFECTED MATERIALS
2 DESIGNATED BY DEPARTMENT RULE."

3 **Section 2.** Section 50-16-702, MCA, is amended to read:

4 "50-16-702. Report Notification of exposure to
5 infectious disease -- report of unprotected exposure to
6 disease TO DISEASE. (1) A report may be filed, as provided
7 in subsection (2), by a person:

8 (a) -- employed by or acting as a volunteer with a -- public
9 or -- private organization that provides emergency services to
10 the public, including but not limited to a -- law -- enforcement
11 officer, -- firefighter, -- emergency -- medical -- technician,
12 corrections officer, or ambulance service attendant; and

13 (b) -- who, in his official capacity with the -- public -- or
14 private -- organization, -- attends or assists in transporting a
15 patient to a -- health -- care -- facility -- and If an emergency
16 services provider acting in an official capacity attends or
17 assists in transporting to a health care facility a patient
18 who is subsequently diagnosed as having an infectious
19 disease, the health care facility receiving the patient
20 shall notify the highest-ranking DESIGNATED officer of the
21 organization employing the emergency services provider of
22 the -- exposure -- to -- the -- infectious -- disease THOSE MATTERS
23 REQUIRED BY 50-16-703(2). The DESIGNATED officer shall then
24 notify the exposed individual.

25 (2) (a) An emergency services provider who believes he

1 that the provider has sustained an unprotected exposure

2 (2) -- A person who qualifies in subsection (1) may submit
3 to the health care facility, on a form prescribed by the
4 department, a report of unprotected exposure that contains
5 his the provider's name and other information required by
6 the department, including a description of the unprotected
7 exposure.

8 (3)(b) If the exposure described in the report occurred
9 in a manner that may allow infection by HIV, as defined in
10 50-16-1003, by a mode of transmission recognized by the
11 centers for disease control, then submission of the report
12 to the health care facility constitutes a request to the
13 patient's physician to seek consent for performance of an
14 HIV-related test pursuant to 50-16-1007(10)."

15 **Section 3.** Section 50-16-703, MCA, is amended to read:

16 "50-16-703. Notification of precautions after
17 unprotected exposure to infectious disease. (1) After a
18 patient is transported to a health care facility, a
19 physician shall inform the health care facility WITHIN 24
20 HOURS if:

21 (a) the physician determines that the transported
22 patient has an infectious disease;

23 (b) -- a -- report -- of -- unprotected exposure to that patient
24 has been filed; and

25 (c) -- the physician believes the unprotected exposure -- is

1 ~~capable-of-transmitting-the-infectious-disease.~~

2 (2) The health care facility shall orally notify within
3 48 hours after the time of diagnosis and notify in writing
4 within 72 hours after diagnosis;

5 ~~{a} the highest--ranking DESIGNATED officer of the~~
6 ~~organization employing the emergency services provider; or~~

7 ~~{b}--the-person-who-filed-the-report--in--50-16-782; of~~
8 ~~WHO SUFFERED THE UNPROTECTED EXPOSURE.~~

9 (3) The notification must state the disease to which he
10 the emergency services provider may have HAS been exposed
11 and the appropriate medical precautions and treatment that
12 the exposed person needs to take."

13 **Section 4.** Section 50-16-704, MCA, is amended to read:

14 "50-16-704. Confidentiality -- penalty for violation --
15 immunity from liability. (1) The names of the person who
16 suffered the unprotected exposure and the person diagnosed
17 as having an infectious disease may not be released to
18 anyone, except as required by department rule concerning
19 reporting of communicable disease or as allowed by Title 50,
20 chapter 16, part 5.

21 (2) A person who violates the provisions of this
22 section is guilty of a misdemeanor and upon conviction shall
23 be fined not less than \$500 or more than \$10,000, imprisoned
24 in the county jail not less than 3 months or more than 1
25 year, or both.

1 (3) A health care facility, a representative of a
2 health care facility, or a physician, OR THE DESIGNATED
3 OFFICER OF AN ORGANIZATION EMPLOYING AN EMERGENCY SERVICES
4 PROVIDER may not be held jointly or severally liable for
5 providing the notification required by 50-16-703 when the
6 notification is made in good faith or for failing to provide
7 the notification if good faith attempts to contact a person
8 filing--a--report suspected WHO FILED THE REPORT of
9 unprotected exposure are unsuccessful."

10 **Section 5.** Section 50-16-1007, MCA, is amended to read:

11 "50-16-1007. Testing -- counseling -- informed consent
12 -- penalty. (1) An HIV-related test may be ordered only by a
13 health care provider and only after receiving the written
14 informed consent of:

- 15 (a) the subject of the test;
- 16 (b) the subject's legal guardian;
- 17 (c) the subject's next of kin or significant other if:
- 18 (i) the subject is unconscious or otherwise mentally
- 19 incapacitated;
- 20 (ii) there is no legal guardian;
- 21 (iii) there are medical indications of an HIV-related
- 22 condition; and
- 23 (iv) the test is advisable in order to determine the
- 24 proper course of treatment of the subject; or
- 25 (d) the subject's next of kin or significant other or

the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

- (i) the subject is in a hospital; and
- (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, he the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test executes an informed consent agreement, the health care provider ordering the test or his the provider's designee must give pretest counseling to:

- (a) the subject;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated; and
 - (ii) there is no guardian; or
- (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
 - (i) the subject is in the hospital; and
 - (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.
- (4) A health care provider who does not provide

HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, as part of his a written informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company must ensure that:

- (a) negative results can be obtained by the subject or his the subject's representative upon request; and
- (b) positive results are returned to the health care provider designated by the subject or his the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research 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;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care

facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702(1) has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek written informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If written informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

1 (b) For the purposes of this subsection, "written
2 informed consent" means an agreement in writing that is
3 freely executed by the subject of an HIV-related test, by
4 the subject's legal guardian, or, if there is no legal
5 guardian and the subject is incapacitated, by the subject's
6 next of kin, significant other, or a person designated by
7 the subject in hospital records to act on the subject's
8 behalf.

9 (11) A knowing or purposeful violation of this section
10 is a misdemeanor punishable by a fine of \$1,000 or
11 imprisonment for up to 6 months, or both."

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 5
March 29, 1993

Page 2 of 5
March 29, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 220 (third reading copy -- blue), respectfully report that House Bill No. 220 be amended as follows and as so amended be concurred in.

Signed: *Dorothy Eck*
Senator Dorothy Eck, Chair

That such amendments read:

1. Page 1, line 15.

Following: line 14

Insert: "(1) 'Airborne infectious disease' means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis."

Renumber: subsequent subsections

2. Page 1, line 17.

Following: "THE"

Strike: "PERSON WHOSE NAME IS"

Insert: "emergency services organization's representative or alternate whose names are"

3. Page 1, lines 18 through 21.

Following: "AS" on line 18

Strike: remainder of line 18 through "DISEASE" on line 21

Insert: "the persons responsible for notifying the emergency services provider of exposure"

4. Page 2, line 4.

Following: line 3

Insert: "(5) 'Exposure' means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule."

Renumber: subsequent subsections

5. Page 2, line 8.

Following: "an"

Strike: "unprotected"

6. Page 2, line 11.

Following: "MENINGITIS,"

Strike: "HERPES SIMPLEX VIRUS, TETANUS,"

7. Page 2, line 13.

Following: line 12

Insert: "(8) 'Infectious disease control officer' means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule."

Renumber: subsequent subsections

8. Page 2, line 15 through page 3, line 2.

Strike: subsection (7) in its entirety

9. Page 3, line 5.

Following: "of"

Strike: "unprotected"

10. Page 3, line 6.

Following: "(1)"

Insert: "(a)"

11. Page 3, line 16.

Following: "attends"

Insert: "a patient prior to or during transport"

12. Page 3, line 17 through page 4, line 7.

Following: "transporting" on page 3, line 17

Insert: "a patient"

Following: "facility" on page 3, line 17

Strike: remainder of page 3, line 17 through "exposure" on page 4, line 7

Insert: "and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the required form to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. A designated officer shall submit the form verifying that there was an exposure"

13. Page 4, line 8.

Strike: "in the report"

Insert: "on the form"

14. Page 4, line 11.

Strike: "report"

Insert: "form"

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Amd. Coord.
Sec. of Senate

Sen. Eck
Senator Carrying Bill

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HB 220
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15. Page 4, line 15.

Following: line 14

Insert: "(c) Upon receipt of a request from a designated officer, the health care facility shall notify the designated officer in writing:

(i) whether or not the patient was infected with an infectious disease;
(ii) whether or not a determination has been made; and
(iii) the name of the disease and the date of transport if the patient was infected.

(d) The designated officer shall then notify the emergency services provider.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall notify the designated officer and the department within 48 hours after the determination has been made. The department shall, within 24 hours, notify the designated officer of the emergency services provider who transported the patient."

16. Page 4, line 17.

Strike: "unprotected"

17. Page 5, line 6.

Strike: "organization employing the emergency services provider"

Insert: "emergency services provider who attended the patient prior to or during transport or who transported the patient with the infectious disease."

18. Page 5, line 8.

Strike: line 8 in its entirety

19. Page 5, line 10.

Strike: "HAS been"

Insert: "was"

20. Page 5, line 16.

Strike: "unprotected"

21. Page 5, line 18.

Following: "anyone,"

Insert: "including the emergency services provider who was exposed,"

22. Page 6, lines 3 and 4.

Following: "OF AN" on line 3

Insert: "emergency services provider's"

Following: "ORGANIZATION" on line 3

Strike: remainder of line 3 through "PROVIDER" on line 4

23. Page 6, line 7.

Following: "contact"

Strike: "a"

Insert: "an exposed"

24. Page 6, line 8.

Strike: "WHO FILED THE REPORT"

25. Page 6, line 9.

Strike: "unprotected"

26. Page 6, line 10.

Following: line 9

Insert: "Section 5. Section 50-16-705, MCA, is amended to read: "50-16-705. Rulemaking authority. The department shall adopt rules to:

(1) define what constitutes an unprotected exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an unprotected exposure that must be included in a report of unprotected exposure; and

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part."

Renumber: subsequent sections

27. Page 11.

Following: line 11

Insert: "NEW SECTION. Section 7. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease. (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this chapter and department rules.

(2) The health care facility shall have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this chapter and the rules promulgated under this chapter.

(4) The emergency services organization shall name a designated officer and an alternate.

NEW SECTION. Section 8. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 50, chapter 16, part 7, and the provisions of Title 50,

Page 5 of 5
March 29, 1993

chapter 16, part 7, apply to [section 7]."

-END-

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HOUSE BILL NO. 220

INTRODUCED BY SIMON, KENNEDY, HANSEN, FAGG, VOGEL, WINSLOW,
BURNETT, SCHWINDEN, BRUSKI-MAUS, REAM, HARPER, SWIFT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A HEALTH CARE
FACILITY TO NOTIFY AN EMERGENCY SERVICES PROVIDER OF
EXPOSURE TO AN INFECTIOUS DISEASE; AND AMENDING SECTIONS
50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-705, AND
50-16-1007, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the
following definitions apply:

(1) "AIRBORNE INFECTIOUS DISEASE" MEANS AN INFECTIOUS
DISEASE TRANSMITTED FROM PERSON TO PERSON BY AN AEROSOL,
INCLUDING BUT NOT LIMITED TO INFECTIOUS TUBERCULOSIS.

(2) "Department" means the department of health and
environmental sciences provided for in 2-15-2101.

(3) "DESIGNATED OFFICER" MEANS THE PERSON-WHOSE-NAME
IS EMERGENCY SERVICES ORGANIZATION'S REPRESENTATIVE OR
ALTERNATE WHOSE NAMES ARE ON RECORD WITH THE DEPARTMENT AS
DESIGNATED---BY---AN---EMERGENCY---SERVICES---PROVIDER---AS---THE
INTERMEDIARY-BETWEEN-THE-PROVIDER-AND-HEALTH-CARE-FACILITIES
FOR-PURPOSES-OF-REPORTING--AN--UNPROTECTED--EXPOSURE--TO--AN

INFECTIOUS-DISEASE THE PERSONS RESPONSIBLE FOR NOTIFYING THE
EMERGENCY SERVICES PROVIDER OF EXPOSURE.

(2)(3)(4) "Emergency services provider" means a person
employed by or acting as a volunteer with a public or
private organization that provides emergency services to the
public, including but not limited to a law enforcement
officer, firefighter, emergency medical technician,
paramedic, corrections officer, or ambulance service
attendant.

(5) "EXPOSURE" MEANS THE SUBJECTING OF A PERSON TO A
RISK OF TRANSMISSION OF AN INFECTIOUS DISEASE THROUGH THE
COMMINGLING OF THE BLOOD OR BODILY FLUIDS OF THE PERSON AND
A PATIENT OR IN ANOTHER MANNER AS DEFINED BY DEPARTMENT
RULE.

(2)(3)(4)(6) "Health care facility" means a health care
facility as defined in 50-5-101.

(3)(4)(5)(7) "Infectious disease" means a communicable
disease designated--by--department--rule--as transmittable
through an unprotected exposure, INCLUDING THE DISEASES OF
HUMAN IMMUNODEFICIENCY VIRUS, HEPATITIS B, HEPATITIS C,
HEPATITIS D, COMMUNICABLE PULMONARY TUBERCULOSIS,
MENINGOCOCCAL MENINGITIS, HERPES-SIMPLEX-VIRUS, TETANUS, AND
OTHER DISEASES THAT MAY BE DESIGNATED BY DEPARTMENT RULE.

(8) "INFECTIOUS DISEASE CONTROL OFFICER" MEANS THE
PERSON DESIGNATED BY THE HEALTH CARE FACILITY AS THE PERSON

WHO IS RESPONSIBLE FOR NOTIFYING THE EMERGENCY SERVICES PROVIDER'S DESIGNATED OFFICER AND THE DEPARTMENT OF AN INFECTIOUS DISEASE AS PROVIDED FOR IN THIS CHAPTER AND BY RULE.

{4}{5}{6}(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

{5}{6}{7}--"Unprotected-exposure"--means:

{A}--exposure of a person to an infectious disease in a manner defined by department rule as likely to allow transmission of the disease, including but not limited to mouth-to-mouth resuscitation and commingling of the blood or body fluids of the person and a patient TO INFECTIOUS AGENTS, SUCH AS BODILY FLUIDS;

{B}--EXPOSURE--THROUGH--INHALATION--OR--PERCUTANEOUS INOCULATION;

{C}--NONBARRIER-PROTECTED-CONTACT--WITH--AN-OPEN-WOUND, NONINTACT SKIN, OR MUCOUS MEMBRANE; OR

{D}--CONTACT-WITH-OTHER-POTENTIALLY--INFECTED--MATERIALS DESIGNATED-BY-DEPARTMENT-RULE."

Section 2. Section 50-16-702, MCA, is amended to read:

"50-16-702. Report Notification of exposure to infectious disease -- report of unprotected exposure to disease TO DISEASE. (1) (A) A report may be filed, as provided in subsection (2), by a person:

{a}--employed-by-or-acting-as-a-volunteer-with-a-public

or--private-organization-that-provides-emergency-services-to the-public,-including-but-not-limited-to-a-law-enforcement officer,--firefighter,--emergency--medical--technician, corrections-officer, or ambulance-service-attendant; and

{b}--who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and if an emergency services provider acting in an official capacity attends A PATIENT PRIOR TO OR DURING TRANSPORT or assists in transporting A PATIENT to a health care facility a patient who is subsequently diagnosed as having an infectious disease, the health care facility receiving the patient shall notify the highest-ranking DESIGNATED officer of the organization employing the emergency services provider of the exposure to the infectious disease THOSE MATTERS REQUIRED BY 50-16-703(2). The DESIGNATED officer shall then notify the exposed individual.

{2}--(a) An emergency services provider who believes he that the provider has sustained an unprotected exposure;

{2}--A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his the provider's name and other information required by the department, including a description of the unprotected exposure AND THE EMERGENCY SERVICES PROVIDER HAS HAD AN

EXPOSURE, THE EMERGENCY SERVICES PROVIDER MAY REQUEST THE DESIGNATED OFFICER TO SUBMIT THE REQUIRED FORM TO THE HEALTH CARE FACILITY ON THE EMERGENCY SERVICES PROVIDER'S BEHALF. THE FORM MUST BE PROVIDED FOR IN RULES ADOPTED BY THE DEPARTMENT AND MUST INCLUDE THE EMERGENCY SERVICES PROVIDER'S NAME AND OTHER INFORMATION REQUIRED BY THE DEPARTMENT, INCLUDING A DESCRIPTION OF THE EXPOSURE. A DESIGNATED OFFICER SHALL SUBMIT THE FORM VERIFYING THAT THERE WAS AN EXPOSURE.

(b) If the exposure described in the report ON THE FORM occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control, then submission of the report FORM to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(C) UPON RECEIPT OF A REQUEST FROM A DESIGNATED OFFICER, THE HEALTH CARE FACILITY SHALL NOTIFY THE DESIGNATED OFFICER IN WRITING:

(I) WHETHER OR NOT THE PATIENT WAS INFECTED WITH AN INFECTIOUS DISEASE;

(II) WHETHER OR NOT A DETERMINATION HAS BEEN MADE; AND

(III) THE NAME OF THE DISEASE AND THE DATE OF TRANSPORT IF THE PATIENT WAS INFECTED.

(D) THE DESIGNATED OFFICER SHALL THEN NOTIFY THE EMERGENCY SERVICES PROVIDER.

(2) IF A HEALTH CARE FACILITY RECEIVING A PATIENT DETERMINES THAT THE PATIENT HAS AN AIRBORNE INFECTIOUS DISEASE, THE HEALTH CARE FACILITY SHALL NOTIFY THE DESIGNATED OFFICER AND THE DEPARTMENT WITHIN 48 HOURS AFTER THE DETERMINATION HAS BEEN MADE. THE DEPARTMENT SHALL, WITHIN 24 HOURS, NOTIFY THE DESIGNATED OFFICER OF THE EMERGENCY SERVICES PROVIDER WHO TRANSPORTED THE PATIENT."

Section 3. Section 50-16-703, MCA, is amended to read:

"50-16-703. Notification of precautions after unprotected exposure to infectious disease. (1) After a patient is transported to a health care facility, a physician shall inform the health care facility WITHIN 24 HOURS if:

(a) the physician determines that the transported patient has an infectious disease;

(b) a report of unprotected exposure to that patient has been filed; and

(c) the physician believes the unprotected exposure is capable of transmitting the infectious disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis:

(a) the highest-ranking DESIGNATED officer of the

~~organization---employing--the--emergency--services--provider~~
~~EMERGENCY SERVICES PROVIDER WHO ATTENDED THE PATIENT PRIOR~~
~~TO OR DURING TRANSPORT OR WHO TRANSPORTED THE PATIENT WITH~~
~~THE INFECTIOUS DISEASE.--or~~

~~(b)---the-person-who-filed-the-report---in--50-16-702, of~~
~~WHO-SUFFERED-THE-UNPROTECTED-EXPOSURE.~~

(3) The notification must state the disease to which he
 the emergency services provider may have ~~HAS~~ been ~~WAS~~
 exposed and the appropriate medical precautions and
 treatment that the exposed person needs to take."

Section 4. Section 50-16-704, MCA, is amended to read:

"50-16-704. Confidentiality -- penalty for violation --
 immunity from liability. (1) The names of the person who
 suffered the unprotected exposure and the person diagnosed
 as having an infectious disease may not be released to
 anyone, INCLUDING THE EMERGENCY SERVICES PROVIDER WHO WAS
EXPOSED, except as required by department rule concerning
 reporting of communicable disease or as allowed by Title 50,
 chapter 16, part 5.

(2) A person who violates the provisions of this
 section is guilty of a misdemeanor and upon conviction shall
 be fined not less than \$500 or more than \$10,000, imprisoned
 in the county jail not less than 3 months or more than 1
 year, or both.

(3) A health care facility, a representative of a

health care facility, or a physician, OR THE DESIGNATED
OFFICER OF AN EMERGENCY SERVICES PROVIDER'S ORGANIZATION
~~EMPLOYING-AN-EMERGENCY-SERVICES-PROVIDER~~ may not be held
 jointly or severally liable for providing the notification
 required by 50-16-703 when the notification is made in good
 faith or for failing to provide the notification if good
 faith attempts to contact a AN EXPOSED person filing--a
 report suspected WHO--FILED--THE--REPORT of unprotected
 exposure are unsuccessful."

SECTION 5. SECTION 50-16-705, MCA, IS AMENDED TO READ:

"50-16-705. Rulemaking authority. The department shall
 adopt rules to:

(1) define what constitutes an unprotected exposure to
 an infectious disease;

(2) specify the infectious diseases subject to this
 part;

(3) specify the information about an unprotected
 exposure that must be included in a report of unprotected
 exposure; and

(4) specify recommended medical precautions and
 treatment for each infectious disease subject to this part."

Section 6. Section 50-16-1007, MCA, is amended to read:

"50-16-1007. Testing -- counseling -- informed consent
 -- penalty. (1) An HIV-related test may be ordered only by a
 health care provider and only after receiving the written

1 informed consent of:

2 (a) the subject of the test;

3 (b) the subject's legal guardian;

4 (c) the subject's next of kin or significant other if:

5 (i) the subject is unconscious or otherwise mentally

6 incapacitated;

7 (ii) there is no legal guardian;

8 (iii) there are medical indications of an HIV-related

9 condition; and

10 (iv) the test is advisable in order to determine the

11 proper course of treatment of the subject; or

12 (d) the subject's next of kin or significant other or

13 the person, if any, designated by the subject in hospital

14 records to act on the subject's behalf if:

15 (i) the subject is in a hospital; and

16 (ii) the circumstances in subsections (1)(c)(i) through

17 (1)(c)(iv) exist.

18 (2) When a health care provider orders an HIV-related

19 test, he the provider also certifies that informed consent

20 has been received prior to ordering an HIV-related test.

21 (3) Before the subject of the test executes an informed

22 consent agreement, the health care provider ordering the

23 test or ~~his~~ the provider's designee must give pretest

24 counseling to:

25 (a) the subject;

1 (b) the subject's legal guardian;

2 (c) the subject's next of kin or significant other if:

3 (i) the subject is unconscious or otherwise mentally

4 incapacitated; and

5 (ii) there is no guardian; or

6 (d) the subject's next of kin or significant other or

7 the person, if any, designated by the subject in hospital

8 records to act on the subject's behalf if:

9 (i) the subject is in the hospital; and

10 (ii) the circumstances in subsections (1)(c)(i) and

11 (1)(c)(ii) exist.

12 (4) A health care provider who does not provide

13 HIV-related tests on an anonymous basis shall inform each

14 person who wishes to be tested that anonymous testing is

15 available at one of the counseling-testing sites established

16 by the department, or elsewhere.

17 (5) The subject of an HIV-related test or any of the

18 subject's representatives authorized by subsection (1) to

19 act in the subject's stead shall designate, as part of his a

20 written informed consent, a health care provider to receive

21 the results of an HIV-related test. The designated health

22 care provider shall inform the subject or the subject's

23 representative of the results in person.

24 (6) At the time the subject of a test or the subject's

25 representative is given the test results, the health care

1 provider or the provider's designee shall give the subject
2 or the subject's representative posttest counseling.

3 (7) If a test is performed as part of an application
4 for insurance, the insurance company must ensure that:

5 (a) negative results can be obtained by the subject or
6 his the subject's representative upon request; and

7 (b) positive results are returned to the health care
8 provider designated by the subject or his the subject's
9 representative.

10 (8) A minor may consent or refuse to consent to be the
11 subject of an HIV-related test, pursuant to 41-1-402.

12 (9) Subsections (1) through (6) do not apply to:

13 (a) the performance of an HIV-related test by a health
14 care provider or health care facility that procures,
15 processes, distributes, or uses a human body part donated
16 for a purpose specified under Title 72, chapter 17, if the
17 test is necessary to assure medical acceptability of the
18 gift for the purposes intended;

19 (b) the performance of an HIV-related test for the
20 purpose of research if the testing is performed in a manner
21 by which the identity of the test subject is not known and
22 may not be retrieved by the researcher;

23 (c) the performance of an HIV-related test when:

24 (i) the subject of the test is unconscious or otherwise
25 mentally incapacitated;

1 (ii) there are medical indications of an HIV-related
2 condition;

3 (iii) the test is advisable in order to determine the
4 proper course of treatment of the subject; and

5 (iv) none of the individuals listed in subsection
6 (1)(b), (1)(c), or (1)(d) exists or is available within a
7 reasonable time after the test is determined to be
8 advisable; or

9 (d) the performance of an HIV-related test conducted
10 pursuant to 50-18-107 or 50-18-108, with the exception that
11 the pretest and posttest counseling must still be given.

12 (10) (a) If an agent or employee of a health care
13 facility, a health care provider with privileges at the
14 health care facility, or a person providing emergency
15 services who is described in 50-16-702~~(1)~~ has been
16 voluntarily or involuntarily exposed to a patient in a
17 manner that may allow infection by HIV by a mode of
18 transmission recognized by the centers for disease control
19 of the United States public health service, the physician of
20 the patient shall, upon request of the exposed person,
21 notify the patient of the exposure and seek written informed
22 consent in accordance with guidelines of the centers for
23 disease control for an HIV-related test of the patient. If
24 written informed consent cannot be obtained, the health care
25 facility, in accordance with the infectious disease exposure

1 guidelines of the health care facility, may, without the
 2 consent of the patient, conduct the test on previously drawn
 3 blood or previously collected bodily fluids to determine if
 4 the patient is in fact infected. A health care facility is
 5 not required to perform a test authorized in this
 6 subsection. If a test is conducted pursuant to this
 7 subsection, the health care facility shall inform the
 8 patient of the results and provide the patient with posttest
 9 counseling. The patient may not be charged for a test
 10 performed pursuant to this subsection. The results of a test
 11 performed pursuant to this subsection may not be made part
 12 of the patient's record and are subject to 50-16-1009(1).

13 (b) For the purposes of this subsection, "written
 14 informed consent" means an agreement in writing that is
 15 freely executed by the subject of an HIV-related test, by
 16 the subject's legal guardian, or, if there is no legal
 17 guardian and the subject is incapacitated, by the subject's
 18 next of kin, significant other, or a person designated by
 19 the subject in hospital records to act on the subject's
 20 behalf.

21 (11) A knowing or purposeful violation of this section
 22 is a misdemeanor punishable by a fine of \$1,000 or
 23 imprisonment for up to 6 months, or both."

24 NEW SECTION. SECTION 7. HEALTH CARE FACILITY AND
 25 EMERGENCY SERVICES ORGANIZATION RESPONSIBILITIES FOR

1 TRACKING EXPOSURE TO INFECTIOUS DISEASE. (1) THE HEALTH CARE
 2 FACILITY AND THE EMERGENCY SERVICES ORGANIZATION SHALL
 3 DEVELOP INTERNAL PROCEDURES FOR IMPLEMENTING THE PROVISIONS
 4 OF THIS CHAPTER AND DEPARTMENT RULES.

5 (2) THE HEALTH CARE FACILITY SHALL HAVE AVAILABLE AT
 6 ALL TIMES A PERSON TO RECEIVE THE FORM PROVIDED FOR IN
 7 50-16-702 CONTAINING A REPORT OF EXPOSURE TO INFECTIOUS
 8 DISEASE.

9 (3) THE HEALTH CARE FACILITY SHALL DESIGNATE AN
 10 INFECTIOUS DISEASE CONTROL OFFICER AND AN ALTERNATE WHO WILL
 11 BE RESPONSIBLE FOR MAINTAINING THE REQUIRED RECORDS AND
 12 NOTIFYING DESIGNATED OFFICERS IN ACCORDANCE WITH THE
 13 PROVISIONS OF THIS CHAPTER AND THE RULES PROMULGATED UNDER
 14 THIS CHAPTER.

15 (4) THE EMERGENCY SERVICES ORGANIZATION SHALL NAME A
 16 DESIGNATED OFFICER AND AN ALTERNATE.

17 NEW SECTION. SECTION 8. CODIFICATION INSTRUCTION.
 18 [SECTION 7] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
 19 OF TITLE 50, CHAPTER 16, PART 7, AND THE PROVISIONS OF TITLE
 20 50, CHAPTER 16, PART 7, APPLY TO [SECTION 7].

-End-