

SENATE BILL 404

Introduced by Keating, et al.

2/15	Referred to Public Health, Welfare & Safety
2/15	First Reading
2/15	Fiscal Note Requested
2/16	Hearing
2/19	Committee Report--Bill Not Passed
2/20	Adverse Committee Report Adopted
2/22	Fiscal Note Received
2/23	Fiscal Note Printed

1 *Senate* BILL NO. *404*
 2 INTRODUCED BY *Heating Bill 11 01*
 3 *200 Hager*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE
 5 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TREAT HIV
 6 INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE AND
 7 SEXUALLY TRANSMITTED DISEASES; REMOVING WRITTEN INFORMED
 8 CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT; PROVIDING
 9 FOR EXCEPTIONS FROM KNOWLEDGE AND CONSENT REQUIREMENTS;
 10 PROVIDING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 11 SCIENCES IS RESPONSIBLE FOR NOTIFYING POTENTIAL CONTACTS;
 12 AND AMENDING SECTIONS 50-16-1003, 50-16-1007, AND
 13 50-16-1009, MCA."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. **Section 1.** AIDS, HIV-related illness, and
 17 HIV infection to be treated as other communicable diseases.
 18 It is the intent of the legislature to treat AIDS,
 19 HIV-related illness, and HIV infection in the same manner as
 20 other communicable and sexually transmitted diseases with
 21 regard to testing, reporting, partner notification, and
 22 disease intervention and to direct the department to adopt
 23 rules as provided in 50-1-202 to reflect this policy.
 24 **Section 2.** Section 50-16-1003, MCA, is amended to read:
 25 "50-16-1003. Definitions. As used in this part, the

1 following definitions apply:

2 (1) "AIDS" means acquired immune deficiency syndrome as
 3 further defined by the department in accordance with
 4 standards promulgated by the centers for disease control of
 5 the United States public health service.

6 (2) "Contact" means:

7 (a) an individual identified by the subject of an
 8 HIV-related test as a past or present sexual partner or as a
 9 person with whom the subject has shared hypodermic needles
 10 or syringes; or

11 (b) any other person who has been exposed to the test
 12 subject in a manner, voluntary or involuntary, that may
 13 allow HIV transmission in accordance with modes of
 14 transmission recognized by the centers for disease control
 15 of the United States public health service.

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

18 (4) "Health care facility" means a health care
 19 institution, private or public, including but not limited to
 20 a hospital, nursing home, clinic, blood bank, blood center,
 21 sperm bank, or laboratory.

22 (5) "Health care provider" means a person who is
 23 licensed, certified, or otherwise authorized by the laws of
 24 this state to provide health care in the ordinary course of
 25 business or practice of a profession. The term does not

1 include a person who provides health care solely through the
2 sale or dispensing of drugs or medical devices.

3 (6) "HIV" means the human immunodeficiency virus,
4 identified as the causative agent of AIDS, and all HIV and
5 HIV-related viruses that damage the cellular branch of the
6 human immune or neurological systems and leave the infected
7 person immunodeficient or neurologically impaired.

8 (7) "HIV-related condition" means a chronic disease
9 resulting from infection with HIV, including but not limited
10 to AIDS and asymptomatic seropositivity for HIV.

11 (8) "HIV-related test" means a test approved by the
12 federal food and drug administration, including but not
13 limited to an enzyme immunoassay and a western blot, that is
14 designed to detect the presence of HIV or antibodies to HIV.

15 (9) "Legal guardian" means a person appointed by a
16 court to assume legal authority for another who has been
17 found incapacitated or, in the case of a minor, a person who
18 has legal custody of the minor.

19 (10) "Local board" means a county, city, city-county, or
20 district board of health.

21 (11) "Local health officer" means a county, city,
22 city-county, or district health officer appointed by the
23 local board.

24 (12) "Next of kin" means an individual who is a parent,
25 adult child, grandparent, adult sibling, or legal spouse of

1 a person.

2 (13) "Person" means an individual, corporation,
3 organization, or other legal entity.

4 (14) "Posttest counseling" means counseling, conducted
5 at the time the HIV-related test results are given, and
6 includes, at a minimum, written materials provided by the
7 department.

8 (15) "Pretest counseling" means the provision of
9 counseling to the subject prior to conduct of an HIV-related
10 test, including, at a minimum, written materials developed
11 and provided by the department.

12 (16) "Release of test results" means a written
13 authorization for disclosure of HIV-related test results
14 that:

15 (a) is signed and dated by the person tested or the
16 person authorized to act for the person tested; and

17 (b) specifies the nature of the information to be
18 disclosed and to whom disclosure is authorized.

19 (17) "Significant other" means an individual living in a
20 current spousal relationship with another individual but who
21 is not legally a spouse of that individual.

22 ~~(18) "(a) "Written informed consent" means an agreement~~
23 ~~in writing that is freely executed by the subject of an~~
24 ~~HIV-related test, by the subject's legal guardian, or if~~
25 ~~there is no legal guardian and the subject is unconscious or~~

otherwise-mentally-incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company;

(b) The department shall develop a form agreement that may be used for purposes of this subsection."

Section 3. 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: Except as provided in subsection (4), a health care provider may not test a specimen of a patient or cause a specimen to be tested for HIV infection without the knowledge and 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 health care provider also certifies that

1 informed consent has been received prior to ordering an
2 HIV-related test.

3 (3) Before the subject of the test ~~executes-an-informed~~
4 ~~consent--agreement~~ gives consent, the health care provider
5 ordering the test or ~~his~~ a designee ~~must~~ shall give pretest
6 counseling to:

7 (a) the subject;

8 (b) the subject's legal guardian;

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

10 (i) the subject is unconscious or otherwise mentally
11 incapacitated; and

12 (ii) there is no guardian; or

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

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

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

19 (4) Knowledge and consent need not be given:

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

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

5 (c) when a health care provider or a custodial employee
6 of the department of corrections and human services is
7 exposed to blood or other bodily fluids that may be
8 HIV-infected;

9 (d) when a patient's medical condition is such that
10 knowledge and consent cannot be obtained;

11 (e) when the testing is done as part of seroprevalence
12 surveys if all personal identifiers are removed from the
13 specimens prior to laboratory testing; or

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

17 (5) A patient tested for HIV infection without the
18 patient's knowledge and consent must be given notice
19 promptly, personally, and confidentially that a specimen was
20 taken and that the result of the test may be obtained upon
21 request of the patient.

22 (4)--A--health--care--provider--who--does--not---provide
23 HIV-related--tests--on--an-anonymous-basis--shall--inform--each
24 person--who--wishes--to--be--tested--that--anonymous--testing--is
25 available--at--one--of--the--counseling--testing--sites--established

1 by-the-department, or elsewhere;

2 (5)(6) The subject of an HIV-related test or any of the
3 subject's representatives authorized by subsection (1) to
4 act in the subject's stead shall designate, as part of his
5 written the informed consent, a health care provider to
6 receive the results of an HIV-related test. The designated
7 health care provider shall inform the subject or the
8 subject's representative of the results in person.

9 (6)(7) At the time the subject of a test or the
10 subject's representative is given the test results, the
11 health care provider or the provider's designee shall give
12 the subject or the subject's representative posttest
13 counseling.

14 (7)(8) If a test is performed as part of an application
15 for insurance, the insurance company must ensure that:

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

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

21 (8)(9) A minor may consent or refuse to consent to be
22 the subject of an HIV-related test, pursuant to 41-1-402.

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

24 (a)--the--performance-of-an-HIV-related-test-by-a-health
25 care--provider--or--health--care--facility--that--procures,

1 processes,--distributes,--or--uses-a-human-body-part-donated
2 for-a-purpose-specified-under-Title-72, chapter-17--if--the
3 test--is--necessary--to--assure-medical-acceptability-of-the
4 gift-for-the-purposes-intended;

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

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

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

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

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

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

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

23 (10) (a) If an agent or employee of a health care
24 facility, a health care provider with privileges at the
25 health care facility, or a person providing emergency

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

24 (b) For the purposes of this subsection (10), "~~written~~
 25 ~~informed--consent~~" "consent" means an agreement ~~in-writing~~

1 that is freely executed, either orally or in writing, by the
 2 subject of an HIV-related test, by the subject's legal
 3 guardian, or, if there is no legal guardian and the subject
 4 is incapacitated, by the subject's next of kin, significant
 5 other, or a person designated by the subject in hospital
 6 records to act on the subject's behalf.

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

10 **Section 4.** Section 50-16-1009, MCA, is amended to read:

11 **"50-16-1009. Confidentiality of records -- notification**
 12 **of contacts -- penalty for unlawful disclosure.** (1) Except
 13 as provided in subsection (2), a person may not disclose or
 14 be compelled to disclose the identity of a subject of an
 15 HIV-related test or the results of a test in a manner that
 16 permits identification of the subject of the test, except to
 17 the extent allowed under the Uniform Health Care Information
 18 Act, Title 50, chapter 16, part 5.

19 (2) A local board, local health officer, or the
 20 department may disclose the identity of the subject of an
 21 HIV-related test or the test results only to the extent
 22 allowed by the Government Health Care Information Act, Title
 23 50, chapter 16, part 6, unless it is in possession of that
 24 information because a health care provider employed by it
 25 provided health care to the subject, in which case the

1 Uniform Health Care Information Act governs the release of
2 that information.

3 (3) If After a health care provider informs the subject
4 of an HIV-related test that the results are positive and
5 submits the report to the department, the provider
6 department or a local public health officer shall encourage
7 obtain from the subject to notify the names of persons who
8 are potential contacts. ~~if--the--subject--is--unable--or~~
9 ~~unwilling-to-notify-all-contacts,-the-health--care--provider~~
10 ~~may--ask--the-subject-to-disclose-voluntarily-the-identities~~
11 ~~of-the-contacts--and--to--authorize--notification--of--those~~
12 ~~contacts--by--a--health--care--provider.~~ The department or a
13 local public health officer shall notify contacts of their
14 potential exposure. A notification may state only that the
15 contact may have been exposed to HIV and may not include the
16 time or place of possible exposure or the identity of the
17 subject of the test. The notification must include pretest
18 counseling and information regarding testing.

19 (4) A person who discloses or compels another to
20 disclose confidential health care information in violation
21 of this section is guilty of a misdemeanor punishable by a
22 fine of \$1,000 or imprisonment for 1 year, or both."

23 NEW SECTION. Section 5. Codification instruction.
24 [Section 1] is intended to be codified as an integral part
25 of Title 50, chapter 16, part 10, and the provisions of

1 Title 50, chapter 16, part 10, apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0404, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:

An act directing the Department of Health and Environmental Sciences to treat HIV infection in the same manner as other communicable and sexually transmitted diseases; removing written informed consent requirement from the AIDS prevention act; providing for exceptions from knowledge and consent requirements; providing that the department is responsible for notifying potential contacts.

ASSUMPTIONS:

1. Costs for partner notification for HIV+ patients range from \$198 in Colorado, \$100 in South Carolina, to \$454 in San Francisco. Costs per seropositive contact identified range from \$810 in South Carolina, \$1245 in Colorado, to \$2203 in San Francisco. Estimates in Montana are \$200/HIV+ patient interviewed, increasing with number of contacts.
2. Increased costs below are for increased reporting and documentation costs of activities.
3. Public CTRPN (Counseling Testing Referral Partner Notification) sites currently do HIV partner notification with assistance from DHES.
4. Projected HIV+ in 1994 = 70 and in 1995 = 80.

FISCAL IMPACT:

	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Contracted Services	9,000	14,000	5,000	10,000	16,000	6,000
<u>Funding</u>						
General Fund	0	5,000	5,000	0	6,000	6,000
Federal funds	<u>9,000</u>	<u>9,000</u>	<u>0</u>	<u>10,000</u>	<u>10,000</u>	<u>0</u>
Total	9,000	14,000	5,000	10,000	16,000	6,000
<u>Net Impact:</u>						
General Fund			(5,000)			(6,000)

(Continued)

David Lewis 2-20-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program and Planning

Thomas F. Keating 2/23/93
 THOMAS F. KEATING, PRIMARY SPONSOR DATE
 Fiscal Note for SB0404, as introduced

SB 404

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Most local health departments currently serving as CTRPN sites expend local resources towards HIV prevention activities including partner notification, in addition to federal contract support from DHES. During 1992, DHES received information from 4/11 CTRPN sites which reported expending an additional \$33,000 for AIDS. Other local health departments would be called upon to do partner notification as needed, with no contractual support from DHES. DHES currently does not receive information on what other local health departments spend on AIDS activities, other than through block grant reports.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Colorado has reported cost benefits from their voluntary partner notification program which they have calculated as outweighing the costs in terms of infections prevented. An unknown factor is whether fewer persons at risk would come forward for HIV testing under mandatory named reporting, since Colorado has named reporting, with one anonymous testing site