



**WISCONSIN LAWS ON ACQUIRED  
IMMUNODEFICIENCY SYNDROME ENACTED DURING THE  
1989-90 LEGISLATIVE SESSION**

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**INFORMATION MEMORANDUM 90-13**

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INTRODUCTION

This Information Memorandum describes six Wisconsin laws that were enacted during the 1989-90 Legislative Session and that relate directly or indirectly to Acquired Immunodeficiency Syndrome (AIDS) and infection with Human Immunodeficiency Virus (HIV), the virus that causes AIDS. As of May 1, 1990, there were 674 reported cases of AIDS in Wisconsin. The Department of Health and Social Services (DHSS) estimates that, as of the beginning of 1990, there were between 7,143 and 11,957 Wisconsin residents who were infected with HIV. Also, DHSS estimates that the cumulative number of AIDS cases in Wisconsin at the beginning of 1990 will double by 1992 and double again by 1995 ["Projected Occurrence of HIV Infection and AIDS in Wisconsin, 1990-2000," Wisconsin AIDS Update, Wisconsin DHSS, March 1990].

The new laws described in this Information Memorandum are 1989 Wisconsin Acts 200, 201, 203 and 225 and portions of 1989 Wisconsin Acts 31 and 336. These enactments are in addition to laws that were enacted prior to the 1989-90 Legislative Session that relate to testing for HIV, disclosure of test results, limitation on the use of tests for employment or insurance purposes and funding for AIDS-related services. [See ss. 103.15, 146.022 to 146.025 and 631.90, Stats.] [References in this Information Memorandum to "HIV test" include tests for HIV or tests for the antibody to HIV.]

Copies of Acts 31, 200, 201, 203, 225 and 336 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone (608) 266-2400. Information about AIDS-related services provided or funded by DHSS may be obtained by calling the Wisconsin Division of Health, AIDS/HIV Program, at (608) 267-5287.

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A. 1989 WISCONSIN ACT 31 [FUNDING FOR LIFE SERVICES AND FOR AZT AND PENTAMIDINE]

The provisions of 1989 Wisconsin Act 31 (the 1989-91 Biennial Budget Act) that relate to AIDS took effect on August 9, 1989.

In addition to continuing funding for a number of AIDS-related services that received funding in the previous biennium, Act 31 requires DHSS to allocate \$564,000 general purpose revenue (GPR) in fiscal year 1989-90 and \$696,000 GPR in fiscal year 1990-91 for "life care services," which are described in the law as: (1) needs assessments; (2) assistance in procuring financial, medical, legal, social and pastoral services; (3) counseling and therapy; (4) home-care services and supplies; and (5) advocacy.

Act 31 also appropriates \$43,400 GPR in fiscal year 1989-90 and \$57,900 GPR in fiscal year 1990-91 for a program to provide azidothymidine (AZT; also called "zidovudine") and pentamidine to eligible persons. AZT is an antiviral medication that is administered orally to improve the quality of life and prolong the life of persons with HIV-related conditions such as AIDS. Pentamidine is used to treat and prevent the type of pneumonia that often afflicts persons with AIDS.

Under Act 31, a person is eligible to receive reimbursement for the cost of AZT or pentamidine if he or she: (1) resides in Wisconsin; (2) has an infection that is certified by a physician to be an HIV infection; (3) has a prescription issued by a physician for AZT or pentamidine; (4) has applied for coverage under, and has been denied eligibility for, Medical Assistance within the previous 12 months; (5) has no insurance coverage for AZT or pentamidine or, if he or she has insurance coverage, the coverage is inadequate to pay the full cost of the person's prescribed dosage; and (6) has an annual gross income of \$40,000 or less. Reimbursement may not be made under the program for any portion of the cost of AZT or pentamidine which is payable by an insurer.

B. 1989 WISCONSIN ACT 200 [POWER OF ATTORNEY FOR HEALTH CARE]

1989 Wisconsin Act 200 took effect on April 28, 1990. Under the Act, an adult who is of sound mind (referred to as a "principal") may execute a power of attorney for health care which authorizes a health care agent to make health care decisions for the principal if the principal is ever incapacitated. If the principal is incapacitated, the Act allows the health care agent to have access to any HIV test results for the principal.

C. 1989 WISCONSIN ACT 201 [NONDISCRIMINATION, INSURANCE COVERAGE, HIV TESTING]

1989 Wisconsin Act 201 took effect on April 28, 1990. The Act contains a number of provisions relating to AIDS and HIV infection.

1. Nondiscrimination by Insurers

Act 201 provides that an accident or a health insurance policy may not contain exclusions or limitations, including deductibles or copayments, for coverage of the treatment of an HIV infection or any illness or medical condition arising from or related to an HIV infection, unless the exclusions or limitations apply generally to other illnesses or medical conditions covered by the policy. This provision, as well as the provision in existing law that prohibits group health insurers from using HIV tests as a condition for coverage, also applies to health plans offered by the state and to health plans offered by certain local units of government on a self-insured basis.

Act 201 also provides that a life insurance policy may not deny or limit benefits solely because the insured's death is caused, directly or indirectly, by an HIV infection or any illness or medical condition arising from or related to an HIV infection.

2. Insurance Coverage for Drugs for Treatment of HIV Infection

Act 201 provides that every disability insurance policy, with certain enumerated exceptions, that is issued or renewed on or after April 28, 1990, and that provides coverage of prescription medication, must provide coverage for each drug that:

a. Is prescribed by the insured's physician for the treatment of an HIV infection or a medical condition related to an HIV infection.

b. Is approved by the Federal Food and Drug Administration for the treatment of an HIV infection or a medical condition related to an HIV infection, including investigational new drugs, and that is either in or has completed a specified clinical investigation.

c. Is prescribed and administered in accordance with federally-approved protocols, if it is an investigational new drug.

The above requirement, which applies to disability insurance policies, also applies to health care plans offered by the state and to health care benefits offered by certain local units of government on a self-insured basis.

Coverage of a drug under the above requirement may be subject to any copayments and deductibles that apply generally to other prescription medication covered by the policy.

### 3. Community Living Arrangements

Existing law allows a municipality to review a community living arrangement (e.g., a community-based residential facility or group home) annually and order the community living arrangement to cease operation if it is determined to be a threat to the health, safety or welfare of the residents of the municipality. Act 201 provides that the fact that a person with AIDS or an HIV infection resides in a community living arrangement with a capacity for eight or fewer persons may not be used by a municipality in making this determination.

### 4. Nondiscrimination by Health Care Providers and Facilities

Act 201 prohibits a health care provider, a home health agency or an inpatient health care facility from doing any of the following with respect to a person who has AIDS or an HIV infection solely because the person has an HIV infection or a medical condition that is related to an HIV infection:

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

b. Providing care to the person at a standard that is lower than that provided other persons with like medical needs.

c. Isolating the person unless medically necessary.

d. Subjecting the person to indignity, including humiliating, degrading or abusive treatment.

Any person violating the above prohibitions is liable to the patient for actual damages and costs, plus exemplary (punitive) damages of up to \$5,000 for an intentional violation. In determining the amount of exemplary damages, a court must consider the ability of a health care provider who is an individual to pay exemplary damages. Also, the Department of Regulation and Licensing or an appropriate examining board may reprimand a person and may deny, limit, suspend or revoke a license, permit, certificate or registration of any person who intentionally violates the above prohibitions or intentionally discloses the results of an HIV antibody test in violation of state law.

Act 201 requires a health care provider, home health agency or inpatient health care facility that treats a person who has AIDS or an HIV infection to develop and follow procedures that ensure continuity of care

for the person in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

#### 5. Testing by Health Care Providers

Act 201 states that a health care provider [as defined in an existing law--s. 146.81 (1), Stats.], or an employe of a health care provider, who provides care to a patient or who handles or processes specimens of body fluids or tissues of a patient and who is significantly exposed [as defined in an existing law--s. 146.025 (1) (Lm), Stats.] to a patient's body fluids or tissues may, without obtaining consent, subject the patient's blood to an HIV antibody test if all of the following conditions are met:

a. The health care provider or employe used universal precautions against significant exposure, except in an emergency circumstance in which the time necessary for use of universal precautions would endanger the life of the patient. The term "universal precautions" is defined as measures that a health care provider would take in accordance with recommendations of the Federal Centers for Disease Control for the prevention of HIV transmission in health care settings.

b. A physician has certified in writing that the health care provider or employe has been significantly exposed.

c. The test is performed on blood that is drawn for a purpose other than testing for the presence of HIV.

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

e. The patient has been informed of restrictions on disclosure of test results.

The results of the test above may be disclosed only to the patient (if the patient so consents), to anyone authorized by the patient and to the health care provider or employe who was significantly exposed. Whoever intentionally discloses the test results in violation of this provision and thereby causes bodily harm or psychological harm to the test subject may be fined not more than \$10,000, imprisoned not more than nine months, or both.

If the health care provider or employe knows the identity of the patient whose blood was tested, he or she may not disclose this to any other person except for the purpose of having the test performed. Also, a record may be retained of the test results only if the record does not reveal the patient's identity.

## 6. Testing of Minors and Persons Who Are Incompetent

Act 201 permits a health care provider to subject a person to an HIV antibody test without obtaining consent from the person, if both of the following conditions are met:

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

b. The health care provider obtains consent for the test from the person's guardian, if the person is adjudicated incompetent; from the person's parent or guardian, if the person is under 14 years of age; or from the person's closest living relative, as defined in the law, or another with whom the person has a meaningful social and emotional relationship, if the person is neither a minor nor adjudicated incompetent. Test results may be disclosed to the person who provides the consent.

## 7. Sale of Self-Use Tests

Act 201 states that no person may sell or offer to sell a test or test kit to detect the presence of HIV, for self-use by a person, unless the test or test kit is first approved by the State Epidemiologist (an official within DHSS). The State Epidemiologist is required to consider and weigh the benefits and risks of the test or test kit to the public health.

## D. 1989 WISCONSIN ACT 203 [AIDS EDUCATION]

1989 Wisconsin Act 203 took effect on April 28, 1990. The Act requires that the critical health problems education program in the Department of Public Instruction include education of youth regarding AIDS. The existing statutes dealing with the program listed a number of topics for inclusion in the program, including sexually transmitted disease education.

The Act also includes HIV and AIDS as topics that may be included in programs offered by school boards as part of human growth and development education. [School districts that receive human growth and development grants from the state must include HIV and AIDS as topics in their curriculum.]

In signing Act 203, the Governor partially vetoed provisions that would have required each school board to provide an instructional program designed to give pupils knowledge of HIV and AIDS. The vetoed provisions would have required that the instruction be scientifically accurate, discuss all methods and behaviors that prevent the transmission of HIV,



and state that abstinence from sexual activity and abstinence from the illegal use of intravenous drugs are the only completely effective means of preventing the transmission of HIV. Instruction would have been required at least once in grades 6 to 8 and at least once in grades 9 to 12, with the information provided being appropriate to each grade level and the age and maturity of the pupils. The vetoed provisions would have stated that no pupil may be required to take instruction in this subject if his or her parent filed a written request that the pupil be exempt.

In addition, the vetoed provisions would have provided a sum sufficient appropriation to pay the costs incurred by school districts to implement and administer Act 203.

On May 15, 1990, the Legislature failed to override the Governor's veto.

E. 1989 WISCONSIN ACT 225 [PROHIBITION ON EMPLOYER USE OF HIV TESTS]

1989 Wisconsin Act 225 took effect on April 28, 1990. The Act broadens the existing law on the use of HIV tests by employers, by stating that the term "employer" includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the Constitution or by any law, including the Legislature and the courts. The existing law prohibits employers from: (1) soliciting or requiring an HIV test as a condition of employment; and (2) affecting the terms, conditions or privileges of employment or terminating the employment of any employe who obtains an HIV test.

F. 1989 WISCONSIN ACT 336 [INSURANCE PREMIUM SUBSIDIES; TESTING NEW DRUGS]

The provisions of 1989 Wisconsin Act 336 (commonly referred to as the "Mini-Budget") that deal with HIV and AIDS took effect on May 11, 1990, although the funds appropriated may not be spent until July 1, 1990.

1. Premium Subsidies for Health Insurance Continuation Coverage

Under state law [s. 632.897, Stats.] and federal law [29 U.S.C. ss. 1161 to 1168 and 42 U.S.C. ss. 300bb-1 to 300bb-8], certain persons who terminate their employment are entitled to continue their group health insurance coverage for a period of time upon payment by the person of the full premium (or under federal law, upon payment of 102% of the full premium). Federal law, unlike state law, includes employers that offer health care benefits on a self-insured basis.

Act 336 requires DHSS to establish and administer a program to subsidize the premium costs for continuation coverage available to a

person with an HIV infection who is unable to continue his or her employment or who must reduce his or her work hours because of an illness or medical condition arising from or related to an HIV infection. In order to qualify for a premium subsidy, DHSS must determine that the person:

- a. Resides in Wisconsin.
- b. Has family income, as defined by DHSS rule, that does not exceed 200% of the federal poverty line for a family the size of the person's family.
- c. Has submitted to DHSS a certificate from a physician that states that the person has an HIV infection and that the person's employment has terminated or his or her work hours have been reduced because of a medical condition related to the HIV infection.
- d. Is eligible for continuation coverage.
- e. Has authorized DHSS to contact the person's former employer or the administrator of the group health plan to verify eligibility for continuation coverage, the premium and any other conditions of coverage and has authorized DHSS to make any necessary disclosure to the employer or administrator regarding the person's HIV status.
- f. Is not covered by any other group health plan, other than a group health plan that offers a substantial reduction in covered health care services compared to the group health plan for which the person is eligible for continuation coverage.
- g. Is not covered by an individual health insurance policy other than an individual health insurance policy that offers a substantial reduction in health care services compared to the group health plan for which the person is eligible for continuation coverage.
- h. Is not eligible for Medicare.
- i. Is employed by an employer who had at least 20 employees on a typical business day during the preceding year, if the continuation coverage for which the subsidy is sought is available through that employer.

In signing Act 336, the Governor partially vetoed a provision that would have made an applicant ineligible for a subsidy if his or her health care costs were paid for by Medical Assistance, General Relief or any other federal, state, county or municipal program, but retained the above criterion relating to Medicare.

If a person satisfies the above criteria, DHSS is required to pay the full amount of each premium payment for continuation coverage on or after the date on which the person becomes eligible for a subsidy. However,

DHSS need not pay more than 100% of the premium due for a person who is eligible for continuation coverage under federal law, even though the person himself or herself may be required to pay 102% of that premium. Under the law, DHSS is required to terminate the subsidy when the person no longer satisfies the eligibility criteria or 18 months after the continuation coverage began, whichever occurs first. The obligation of DHSS to make payments for premium subsidies is subject to the availability of funds appropriated, which amount to \$200,000 GPR in fiscal year 1990-91.

The law allows DHSS to establish, by rule, a procedure by which a person who does not satisfy certain eligibility criteria may submit an application for a premium subsidy that DHSS will hold until the person satisfies all of the eligibility criteria. However, if this is done and an application is submitted, DHSS may not contact the individual's employer or the administrator of the group health plan unless the person authorizes DHSS, in writing, to make that contact and make any necessary disclosure.

The law requires DHSS to evaluate the premium subsidy program and to submit its findings and recommendations to the Legislature by July 1, 1992. In its evaluation, DHSS is required to examine the impact of premium subsidies on: (a) the accessibility of health care to persons with an HIV infection; and (b) the expenditures under Medical Assistance for persons with an HIV infection.

## 2. Clinical Trials Program Grant

Act 336 appropriates \$150,000 GPR for fiscal year 1990-91 for DHSS to allocate as a grant to a community-based agency, a medical institution or an academic institution. The purpose of the grant is to establish a statewide program of community-based clinical trials of investigational new drugs for management of persons with an HIV infection in Wisconsin; with services provided by a statewide consortium of physicians. Award of a grant is conditioned on receipt by DHSS of an agreement by the grant recipient to provide funds to match at least 100% of the amount of the grant awarded.

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