

105TH CONGRESS
1ST SESSION

H. R. 1062

To amend title XIX of the Social Security Act with respect to preventing the transmission of the human immunodeficiency virus (commonly known as HIV), and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

Mr. COBURN (for himself, Mr. BARR of Georgia, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BILBRAY, Mr. BLUNT, Mr. BRYANT, Mr. BURTON of Indiana, Mr. CALVERT, Mr. CANADY of Florida, Mr. CHAMBLISS, Mrs. CHENOWETH, Mr. CHRISTENSEN, Mr. COMBEST, Mr. COOKSEY, Mr. CRANE, Mrs. CUBIN, Mr. DAVIS of Virginia, Mr. DELAY, Mr. DICKEY, Mr. DOOLITTLE, Mr. DUNCAN, Ms. DUNN, Mrs. FOWLER, Mr. GANSKE, Mr. GRAHAM, Mr. HASTERT, Mr. HAYWORTH, Mr. HEFLEY, Mr. HILLEARY, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. HUNTER, Mr. HUTCHINSON, Mr. SAM JOHNSON of Texas, Mr. JONES, Mr. KINGSTON, Mr. KLUG, Mr. LARGENT, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. LIPINSKI, Mr. LUCAS of Oklahoma, Mr. MCCRERY, Mr. MCINNIS, Mr. MCINTOSH, Ms. MOLINARI, Mrs. MYRICK, Mr. NETHERCUTT, Mr. NEUMANN, Mr. NORWOOD, Mr. PARKER, Mr. PICKERING, Mr. POMBO, Mr. ROHRABACHER, Mr. RYUN, Mr. SALMON, Mr. SAXTON, Mr. SHADEGG, Mr. SCARBOROUGH, Mr. SENSENBRENNER, Mr. SMITH of New Jersey, Mrs. SMITH of Washington, Mr. SOUDER, Mr. STEARNS, Mr. STUMP, Mr. TALENT, Mr. TIAHRT, Mr. WAMP, Mr. WATKINS, Mr. WATTS of Oklahoma, Mr. WELDON of Florida, and Mr. WICKER) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend title XIX of the Social Security Act with respect to preventing the transmission of the human

immunodeficiency virus (commonly known as HIV), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “HIV Prevention Act
5 of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) The States should recognize that the terms
9 “acquired immune deficiency syndrome” and
10 “AIDS” are obsolete. In the case of individuals who
11 are infected with the human immunodeficiency virus
12 (commonly known as HIV), the more important
13 medical fact for the individuals and for the protec-
14 tion of the public health is the fact of infection, and
15 not just the later development of AIDS (the stage at
16 which the infection causes symptoms). The term
17 “HIV disease”, meaning infection with HIV regard-
18 less of whether the infection has progressed to
19 AIDS, more correctly defines the medical condition.

20 (2) The medical, public health, political, and
21 community leadership must focus on the full course
22 of HIV disease rather than concentrating on later
23 stages of the disease. Continual focus on AIDS rath-
24 er than the entire spectrum of HIV disease has left

1 our Nation unable to deal adequately with the epi-
2 demic. Federal and State data collection efforts
3 should focus on obtaining data as early as possible
4 after infection occurs, while continuing to collect
5 data on the symptomatic stage of the disease.

6 (3) Recent medical breakthroughs may enable
7 doctors to treat HIV disease as a chronic disease
8 rather than as a terminal disease. Early intervention
9 in the progression of the infection is imperative to
10 prolonging and improving the lives of individuals
11 with the disease.

12 (4) The Centers for Disease Control and Pre-
13 vention has recommended partner notification as a
14 primary prevention service. The health needs of the
15 general public, and the care and protection of those
16 who do not have the disease, should be balanced
17 with the needs of individuals with the disease in a
18 manner that allows for the infected individuals to re-
19 ceive optimal medical care and for public health
20 services to protect the uninfected.

21 (5) Individuals with HIV disease have an obli-
22 gation to protect others from being exposed to HIV
23 by avoiding behaviors that place others at risk of be-
24 coming infected. The States should have in effect

1 laws providing that intentionally infecting others
 2 with HIV is a felony.

3 **SEC. 3. ESTABLISHMENT OF HIV-RELATED REQUIREMENTS**
 4 **IN MEDICAID PROGRAM.**

5 (a) IN GENERAL.—Title XIX of the Social Security
 6 Act (42 U.S.C. 1396 et seq.) is amended—

7 (1) in section 1902(a)—

8 (A) in paragraph (61), by striking “and”
 9 after the semicolon at the end;

10 (B) in paragraph (62), by striking the pe-
 11 riod at the end and inserting “; and”; and

12 (C) by inserting after paragraph (62) the
 13 following paragraph:

14 “(63) meet the requirements of section 1930A
 15 (relating to the prevention of the transmission of the
 16 human immunodeficiency virus, commonly known as
 17 HIV).”; and

18 (2) by inserting after section 1930 the following
 19 section:

20 “PREVENTION OF TRANSMISSION OF HIV

21 “SEC. 1930A. (a) For purposes of section
 22 1902(a)(63), a State plan meets the requirements of this
 23 section if the plan demonstrates to the satisfaction of the
 24 Secretary that the law or regulations of the State are in
 25 accordance with the following:

1 “(1) The State requires that, in the case of a
2 health professional or other entity that provides for
3 the performance of a test for HIV on an individual,
4 the entity confidentially report positive test results
5 to the State public health officer, together with any
6 additional necessary information, in order to carry
7 out the following purposes:

8 “(A) The performance of statistical and
9 epidemiological analyses of the incidence in the
10 State of cases of such disease.

11 “(B) The performance of statistical and
12 epidemiological analyses of the demographic
13 characteristics of the population of individuals
14 in the State who have the disease.

15 “(C) The assessment of the adequacy of
16 preventive services in the State with respect to
17 the disease.

18 “(D) The performance of the functions re-
19 quired in paragraph (2).

20 “(2)(A) The State requires that the public
21 health officer of the State carry out a program of
22 partner notification to inform individuals that the
23 individuals may have been exposed to HIV. For pur-
24 poses of this paragraph, the term ‘partner’ includes
25 the sexual partners of individuals with HIV disease;

1 the partners of such individuals in the sharing of
2 hypodermic needles for the intravenous injection of
3 drugs; and the partners of such individuals in the
4 sharing of any drug-related paraphernalia deter-
5 mined by the Secretary to place such partners at
6 risk of HIV infection.

7 “(B) The State requires that any information
8 collected for purposes of partner notification be suf-
9 ficient for the following purposes:

10 “(i) To provide the partners of the in-
11 dividual with HIV disease with an appro-
12 priate opportunity to learn that the part-
13 ners have been exposed to HIV.

14 “(ii) To provide the partners with
15 counseling and testing for HIV disease.

16 “(iii) To provide the individual who
17 has the disease with information regarding
18 therapeutic measures for preventing and
19 treating the deterioration of the immune
20 system and conditions arising from the dis-
21 ease, and to provide the individual with
22 other preventive information.

23 “(iv) With respect to an individual
24 who undergoes testing for HIV disease but
25 does not seek the results of the testing,

1 and who has positive test results for the
2 disease, to recall and provide the individual
3 with counseling, therapeutic information,
4 and other information regarding preventiva-
5 tive health services appropriate for the in-
6 dividual.

7 “(C) The State cooperates with the Director of
8 the Centers for Disease Control and Prevention in
9 carrying out a national program of partner notifica-
10 tion, including the sharing of information between
11 the public health officers of the States.

12 “(3) With respect to a defendant against whom
13 an information or indictment is presented for a
14 crime in which by force or threat of force the per-
15 petrator compels the victim to engage in sexual ac-
16 tivity, the State requires as follows:

17 “(A) That the defendant be tested for HIV
18 disease if—

19 “(i) the nature of the alleged crime is
20 such that the sexual activity would have
21 placed the victim at risk of becoming in-
22 fected with HIV; or

23 “(ii) the victim requests that the de-
24 fendant be so tested.

1 “(B) That if the conditions specified in
2 subparagraph (A) are met, the defendant un-
3 dergo the test not later than 48 hours after the
4 date on which the information or indictment is
5 presented, and that as soon thereafter as is
6 practicable the results of the test be made avail-
7 able to the victim; the defendant (or if the de-
8 fendant is a minor, to the legal guardian of the
9 defendant); the attorneys of the victim; the at-
10 torneys of the defendant; the prosecuting attor-
11 neys; the judge presiding at the trial, if any;
12 and the principal public health official for the
13 local governmental jurisdiction in which the
14 crime is alleged to have occurred.

15 “(C) That if the defendant has been tested
16 pursuant to subparagraph (B), the defendant,
17 upon request of the victim, undergo such follow-
18 up tests for HIV as may be medically appro-
19 priate, and that as soon as is practicable after
20 each such test the results of the test be made
21 available in accordance with subparagraph (B)
22 (except that this subparagraph applies only to
23 the extent that the individual involved continues
24 to be a defendant in the judicial proceedings in-
25 volved, or is convicted in the proceedings).

1 “(D) That, if the results of a test con-
2 ducted pursuant to subparagraph (B) or (C) in-
3 dicate that the defendant has HIV disease, such
4 fact may, as relevant, be considered in the judi-
5 cial proceedings conducted with respect to the
6 alleged crime.

7 “(4)(A) With respect to a patient who is to un-
8 dergo a medical procedure that would place the
9 health professionals involved at risk of becoming in-
10 fected with HIV, the State—

11 “(i) authorizes such health professionals in
12 their discretion to provide that the procedure
13 will not be performed unless the patient under-
14 goes a test for HIV disease and the health pro-
15 fessionals are notified of the results of the test;
16 and

17 “(ii) requires that, if such test is per-
18 formed and the patient has positive test results,
19 the patient be informed of the results.

20 “(B) The State authorizes funeral-services
21 practitioners in their discretion to provide that fu-
22 neral procedures will not be performed unless the
23 body involved undergoes a test for HIV disease and
24 the practitioners are notified of the results of the
25 test.

1 “(5) The State requires that, if a health care
2 entity (including a hospital) transfers a body to a fu-
3 neral-services practitioner and such entity knows
4 that the body is infected with HIV, the entity notify
5 the funeral-services practitioner of such fact.

6 “(6) The State requires that, if a health insur-
7 ance issuer requires an applicant for such insurance
8 to be tested for HIV disease as a condition of issu-
9 ing such insurance, the applicant be afforded an op-
10 portunity by the health insurance issuer to be in-
11 formed, upon request, of the HIV status of the ap-
12 plicant. For purposes of this paragraph, the term
13 ‘health insurance issuer’ means an insurance com-
14 pany, insurance service, or insurance organization
15 (including a health maintenance organization) which
16 is licensed to engage in the business of insurance in
17 the State and which is subject to State law which
18 regulates insurance. This paragraph may not be con-
19 strued as affecting the provisions of section 514 of
20 the Employee Retirement Income Security Act of
21 1974 with respect to group health plans.

22 “(7) The State requires that, if an adoption
23 agency is giving significant consideration to approv-
24 ing an individual as an adoptive parent of a child
25 and the agency knows whether the child has HIV

1 disease, such prospective adoptive parent be afforded
2 an opportunity by the agency to be informed, upon
3 request, of the HIV status of the child.

4 “(b) For purposes of this section, the term ‘HIV’
5 means the human immunodeficiency virus; and the term
6 ‘HIV disease’ means infection with HIV and includes any
7 condition arising from such infection.”.

8 (b) SENSE OF CONGRESS REGARDING HEALTH PRO-
9 FESSIONALS WITH HIV DISEASE.—It is the sense of the
10 Congress that, with respect to health professionals who
11 have HIV disease—

12 (1) the health professionals should notify their
13 patients that the health professionals have the dis-
14 ease in medical circumstances that place the patients
15 at risk of being infected with HIV by the health pro-
16 fessionals; and

17 (2) the States should encourage the medical
18 profession to develop guidelines to assist the health
19 professionals in so notifying patients.

20 (c) APPLICABILITY OF REQUIREMENTS.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendment made by subsection (a)
23 applies upon the expiration of the 120-day period be-
24 ginning on the date of the enactment of this Act.

1 (2) DELAYED APPLICABILITY FOR CERTAIN
 2 STATES.—In the case of the State involved, if the
 3 Secretary determines that a requirement established
 4 by the amendment made by subsection (a) cannot be
 5 implemented in the State without the enactment of
 6 State legislation, then such requirement applies to
 7 the State on and after the first day of the first cal-
 8 endar quarter that begins after the close of the first
 9 regular session of the State legislature that begins
 10 after the date of the enactment of this Act. For pur-
 11 poses of the preceding sentence, in the case of a
 12 State that has a 2-year legislative session, each year
 13 of such session is deemed to be a separate regular
 14 session of the State legislature.

15 (d) RULE OF CONSTRUCTION.—Part D of title XXVI
 16 of the Public Health Service Act (42 U.S.C. 300ff–71 et
 17 seq.) is amended by inserting after section 2675 the fol-
 18 lowing section:

19 **“SEC. 2675A. RULE OF CONSTRUCTION.**

20 “With respect to an entity that is an applicant for
 21 or a recipient of financial assistance under this title, com-
 22 pliance by the entity with any State law or regulation that
 23 is consistent with section 1930A of the Social Security Act
 24 may not be considered to constitute a violation of any con-
 25 dition under this title for the receipt of such assistance.”.

1 **SEC. 4. SENSE OF CONGRESS REGARDING INTENTIONAL**
2 **TRANSMISSION OF HIV.**

3 It is the sense of the Congress that the States should
4 have in effect laws providing that, in the case of an indi-
5 vidual who knows that he or she has HIV disease, it is
6 a felony for the individual to infect another with HIV if
7 the individual engages in the behaviors involved with the
8 intent of so infecting the other individual.

9 **SEC. 5. SENSE OF CONGRESS REGARDING CONFIDENTIAL-**
10 **ITY.**

11 It is the sense of the Congress that strict confidential-
12 ity should be maintained in carrying out the provisions
13 of section 1930A of the Social Security Act (as added by
14 section 3(a) of this Act).

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