# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2259

2005 SENATE HUMAN SERVICES

SB 2259

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2259**

**Senate Human Services**

Business and Conference Committee

Hearing Date February 08, 2005

| Tape Number | Side A | Side B | Meter # |
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| Committee Clerk Signature | Cathy Hunard | | |

**Chairman Lee** opens hearing on **SB 2259**

**Related to informed consent for HIV testing.**

**(meter #3482)**

**Senator Kilzer** - Sponsor of this bill - He explained the bill saying it is simple and straightforward. He said going back 30 to 40 years ago we did not have informed consent for drawing blood. In 1989 in ND we passed a law that says in order for a person to be tested for Aids they had to give their written consent. That has caused a lot of difficulties because we generally do not have the requirement for written consents for diagnostic tests.

**(meter #3929)**

**Dave Peske** - Director of Governmental Relations for ND Medical Association - See written testimony. He said this is not an attempt to take the medical community off the hook for

informed consent testing. This only removes the requirement that it be a written form and will still be documented.

**(meter #4929)**

**Senator Dever** - Asked regarding HIPPA, collecting and sharing data.

**Peske** - You can share information that has to due with health care of the individual, from provider to provider.

**Larry Shireley** - Director of the Division of Disease Control for the ND Department of Health - In neutral position - see written testimony.

**Senator Lee** - Discussed amendments to 2252 and 2259. Also 1410.

Discussion followed about all the bills 2259, 2252, with all the changes and rewrites.

**Senator Warner** - Asked Mike Mullen who owns the data generated by the test.

**Mullen** - Said that is difficult, in a sense its the hospital, but state law and the HIPPA give patients a right in the use and disclosure of those records. Patients have a right to protect the privacy of that information, and except, as authorized by law, you otherwise have to get an authorized written authorization from those patients to disclose it to anyone else.

**Senator Warner:** For incarcerated people, do the jail personnel know if someone has AIDS?

**Mullen: HIPAA** has a special rule that lists a series of disclosures that are permitted by law, including disclosure for public health, law enforcement subject to a supoena, disclosure regarding an inmate to the administrator of jail or prison or the medical director of the jail or prison and to other correctional personnel as needed to protect the safety of the prison population and their staff.

**Chairman Lee:** And this is as true for TB or hepatitis. This should be viewed as one of many that could be of danger to a population

**Mullen:** That's correct.

**Sen. Dever:** I heard it said years ago that if a doctor had a patient with HIV that he/she could legally could not tell the spouse.

**Mullen:** That is true, technically. But at the same time, the provider will tell the patient "you have a legal and a moral duty to inform the people you have intimate contact with that you have a contagious disease and you should take action to protect yourself so that they do not contract this disease from you." This happens all the time. If you would call up Blue Cross and ask for information about a payment for a treatment for your wife, they will ask if you have permission to obtain that information--not just with HIV but with anything.

**Chairman Lee:** That would be the same for anyone over 12; you have to have you kid sign off so you can get information.

**Mullen:** That is correct, but we have worked with Blue Cross to clarify their policy on that. On these amendments, the reason we worked with the Department of Health, so that you would have before you, to see what this omnibus clarification, how you proceed on that is a judgment call. But remember in SB 2252, that was to cover laboratory personnel. But in this omnibus amendment, we specifically used the language "personnel of the state crime laboratory" because laboratory personnel are already be covered because they're health care providers.

**There was no further testimony on SB 2259. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2259**

Senate Human Services Committee

❑ Conference Committee

Hearing Date February 8, 2005

| Tape Number | Side A | Side B | Meter # |
|---|---|---|---|
| 1 | | x | 2400-2585 |
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| Committee Clerk Signature | | | |

Minutes:

**Chairman Lee reopened discussion on SB 2259. All members were present.**

**Senator Lyson moved DO PASS the amendment on SB 2259 recommended by the ND Medical Association; seconded by Senator Dever.**

**Vote: 5 yeas, 0 nays, 0 absent**

**Senator Brown moved DO PASS as amended, seconded by Senator Dever**

**Vote: 5 yeas, 0 nays, 0 absent**

**Carrier: Senator Dever**

Date: 2-7-05
Roll Call Vote #: 1

## 2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
## BILL/RESOLUTION NO. SB2259

Senate **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass amendment

Motion Made By Sen Lyp Seconded By Sen Dever

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| Sen. Judy Lee - Chairman | ✓ | | Sen. John Warner | ✓ | |
| Sen. Dick Dever - Vice Chairman | ✓ | | | | |
| Sen. Richard Brown | ✓ | | | | |
| Sen. Stanley Lyson | ✓ | | | | |
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Total (Yes) 5 No 0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-7-05
Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 2259

Senate **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Sen. Brown Seconded By Sen Dever

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| Sen. Judy Lee - Chairman | ✓ | | Sen. John Warner | ✓ | |
| Sen. Dick Dever - Vice Chairman | ✓ | | | | |
| Sen. Richard Brown | ✓ | | | | |
| Sen. Stanley Lyson | ✓ | | | | |
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Total (Yes) 5 No Ø

Absent Ø

Floor Assignment Sen. Dever

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**SB 2259: Human Services Committee (Sen. J. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2259 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 23-07.5-01 and"

Page 1, after line 3, insert:

"**SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.

2. "Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.

3. "Health care services" means any services included in the furnishing to any individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

4. "Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.

5. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus.

6. "Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus.

7. ~~"Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus.~~

~~8.~~ "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

~~9.~~ 8. "Significant exposure" means:

a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;

b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.

~~10.~~ 9. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease."

Renumber accordingly

2005 HOUSE HUMAN SERVICES

SB 2259

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2259**

House Human Services Committee

❑ Conference Committee

Hearing Date **23 February 2005**

| Tape Number | Side A | Side B | Meter # |
|---|---|---|---|
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| Committee Clerk Signature | | | |

Minutes:

**Chairman Price opened the hearing of SB 2259.**

**Senator Ralph Kilzer, District 47,** introduced to bill. This bill does one thing and one thing only and that is in testing patients for the AIDS virus in drawing blood at the present time it is required to have written consent to draw the blood and do the procedure. It is the only blood test for which consent is required. This bill comes to you at the request of the medical association which considers it as unnecessary and somewhat redundant at the present time to make laboratories, whether they be in clinics or doctor's offices or where ever, to go through this cumbersome procedure and record keeping. For that reason the bill is before you.

**Chairman Price:** We had HB 1410 and rewrote this whole chapter. We may have covered everything you want. I will have you take a look at the one too.

**David Peske, director of Governmental Relations for the ND Medical Association,** testified in favor of the bill. **(Testimony attached.)** You revised HB 1410 and it does indeed incorporate

the same amendment as the statute we're asking for in this bill. The Senate amended this bill and passed it over by a vote of 44 to 1 and the reason they did that is we asked them to keep both a Senate vehicle alive as well as HB 1410 alive. We ask you to do the same thing here. You can take action if you like but we ask you to hold it until we see how the Senate bill fares.

**Chairman Price:** You are in agreement with the current language in HB 1410?

**Peske:** Yes, we are.

**Karen Mongeon, manager of the HIV and AIDS Program for the ND Department of Health,** testified neutral on the bill. **(Testimony attached.)**

There being no further testimony, Chairman Price closed the hearing on SB 2259.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2259

House Human Services Committee

❑ Conference Committee

Hearing Date March 16, 2005

| Tape Number | Side A | Side B | Meter # |
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| 2 | x | | 258-420 |
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| Committee Clerk Signature | | | |

Minutes:

**Chairman Price** reopened discussion on SB 2259.

**Rep. Porter:** SB 2259 changes just one little piece within the existing HIV statute. If you remember on the first half, we had HB 1410 that rewrote the whole section. These bills just happened to crossover, so this language, although, it did change the informed consent category. That change that is in this bill is also happened when we rewrote HB 1410, so SB 2259 is no longer needed. I would move a Do Not Pass.

**Rep. Weisz:** Second

**Vote: 11-0-1. Carrier: Rep.Damschen**

Date: 3/16/05 Roll Call Vote #: 1

**2005 HOUSE STANDING COMMITTEE ROLL CALL**
**BILL/RESOLUTION NO. SB 2259**

House **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By **Rep.** Porter Seconded By **Rep** Weisz

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman C.S. **Price** | ✓ | | Rep.L. **Kaldor** | AB | |
| V Chrm.G. **Kreidt** | ✓ | | Rep.L. **Potter** | ✓ | |
| Rep. V. **Pietsch** | ✓ | | Rep.S. **Sandvig** | ✓ | |
| Rep.J.O. **Nelson** | ✓ | | | | |
| Rep.W.R. **Devlin** | ✓ | | | | |
| Rep.T. **Porter** | ✓ | | | | |
| Rep.G. **Uglem** | ✓ | | | | |
| Rep C. **Damschen** | ✓ | | | | |
| Rep.R. **Weisz** | ✓ | | | | |
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**Total** **Yes** 11 **No** 0

**Absent** 1

**Floor Assignment** **Rep.** Damschen

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**SB 2259, as engrossed: Human Services Committee (Rep. Price, Chairman)** recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2259 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2259

Attachment 1

# SENATE HUMAN SERVICES COMMITTEE

## NORTH DAKOTA MEDICAL ASSOCIATION
## SUPPORT FOR SENATE BILL NO. 2259

## INFORMED CONSENT FOR HIV TESTING

## FEBRUARY 8, 2005

Chairman Lee and members of the Senate Human Services Committee, my name is David Peske, Director of Governmental Relations for the North Dakota Medical Association. NDMA represents member physicians who are in active practice in all medical specialties, residents in training programs, students, and retired members from across the state. Thank you for this opportunity to provide information **in support of Senate Bill 2259**.

Last September, the ND Medical Association House of Delegates passed a resolution, introduced by a Fargo infectious disease specialist and a family physician from Valley City. The resolution (attached) seeks to update the ND law regarding testing for the human immunodeficiency virus (HIV) by removing the requirement that informed consent for the test be obtained in writing.

We are not aware of any other state law that requires a patient to sign a consent form prior to receiving a diagnostic test, and physicians agreed that the requirement serves now only to perpetuate the initial stigma associated with HIV and AIDS, common when this law was first enacted in 1989, and may also serve as a deterrent to seeking testing. Many national organizations, such as the Centers for Disease Control, the Institute of Medicine, the American College of Obstetrics and Gynecology, and the American Academy of Pediatrics, have adopted recommendations in support of "normalizing" the testing for HIV. It is now seen by the healthcare community as a public health issue rather than a civil rights and lifestyle issue, and it is now time to update our statutes to remove the unnecessary burden and stigma associated with the testing procedure for HIV.

North Dakota has not seen a large number of HIV and AIDS cases. The ND Department of Health *2004 HIV/AIDS Epidemiologic Update* (attached) indicates that 9 cases of HIV were diagnosed during the first half of 2004, and that a total of 336 cumulative cases of HIV/AIDS have been reported to the Department since surveillance began in 1984.

In reviewing the revisions being prepared on other legislation amending this chapter of ND law (SB 2252 and HB 1410), we discovered that the definition section also needs amending to delete the definition of the "informed consent form", which will no longer be referenced in the law if SB 2259 is enacted. We have included the amendment to accomplish this for your consideration as well. **We respectfully request that the Committee support SB 2259, with the proposed amendment, and recommend a Do Pass to the members of the Senate.**

# RESOLUTION

Introduced by Robert R. Tight, MD and Genevieve M. Goven, MD

Subject: Eliminate the state statutory requirement that informed consent for HIV testing be in writing.

*A resolution urging the North Dakota Medical Association to support state legislation that eliminates the requirement that informed consent for HIV testing be in writing.*

**Whereas,** Human Immunodeficiency Virus (HIV) testing should be encouraged for diagnosis and treatment of HIV infection or of medical conditions that may be affected by HIV, and wider testing is imperative to ensure that individuals in need of treatment are identified and treated; and

**Whereas,** physicians should ensure that HIV testing is conducted in a way that respects patient autonomy and assures patient confidentiality as much as possible; and

**Whereas,** individuals should knowingly and willingly give consent before a voluntary HIV test is conducted, in a manner that is the least burdensome to the individual and to those administering the test; and

**Whereas,** North Dakota law requires that the informed consent of a patient be obtained for HIV testing, and specifically mandates that an informed consent form be signed by the individual authorized to consent to HIV testing [NDCC 23-07.5-02], which is in contrast to most other diagnostic tests, which generally do not involve written informed consent unless an invasive surgical procedure is involved; and

**Whereas,** the written informed consent requirement for HIV testing resulted from earlier perceptions of HIV infection and AIDS as civil rights issues rather than as public health issues, yet the pendulum has shifted in the direction of treating HIV infection and AIDS increasingly as a public health issue;

**Therefore, be it resolved by the 2004 House of Delegates of the North Dakota Medical Association** that the North Dakota Medical Association support state legislation that eliminates the requirement that informed consent for HIV testing be in writing.

September 30, 2004

NORTH DAKOTA
DEPARTMENT of HEALTH

# 2004 HIV/AIDS Epidemiologic Update

## At a Glance: 2004

Table 1 summarizes newly diagnosed HIV/AIDS cases reported from Jan. 1 through June 30, 2004, and compares the data to the same period in 2003. The table also provides a summary about people diagnosed with HIV or AIDS as residents of North Dakota and known to be living as of June 30, 2004.

**Table 1. HIV and AIDS by Gender, Age at Diagnosis, Race/Ethnicity, and Exposure Risk North Dakota, 2003-2004**

| | New HIV Diagnoses [1] January - June | | | | New AIDS Diagnoses [2] January - June | | | | Living HIV and AIDS Cases [3] | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2004 | | 2003 | | 2004 | | 2003 | | | |
| | No. | (%) | No. | (%) | No. | (%) | No. | (%) | No. | (%) |
| **Gender** | | | | | | | | | | |
| Male | 8 | (89) | 5 | (100) | 4 | (100) | 3 | (100) | 95 | (80) |
| Female | 1 | (11) | 0 | – | 0 | – | 0 | – | 24 | (20) |
| **Race/Ethnicity** | | | | | | | | | | |
| White, not Hispanic | 6 | (67) | 5 | (100) | 4 | (100) | 3 | (100) | 87 | (73) |
| American Indian | 0 | – | 0 | – | 0 | – | 0 | – | 10 | (8) |
| Black, not Hispanic | 2 | (22) | 0 | – | 0 | – | 0 | – | 16 | (13) |
| Hispanic, all races | 1 | (11) | 0 | – | 0 | – | 0 | – | 6 | (5) |
| **Age at Diagnosis** | | | | | | | | | | |
| ≤12 | 0 | – | 0 | – | 0 | – | 0 | – | 2 | (2) |
| 13-19 | 0 | – | 0 | – | 0 | – | 0 | – | 5 | (4) |
| 20-29 | 3 | (33) | 0 | – | 0 | – | 0 | – | 37 | (31) |
| 30-39 | 4 | (44) | 1 | (20) | 0 | – | 1 | (33) | 39 | (33) |
| 40-49 | 1 | (11) | 3 | (60) | 1 | (25) | 1 | (33) | 26 | (22) |
| 50-59 | 1 | (11) | 1 | (20) | 3 | (75) | 1 | (33) | 10 | (8) |
| **Risk** | | | | | | | | | | |
| Male-to-Male Sexual Contact (MMS) | 5 | (56) | 3 | (60) | 2 | (50) | 1 | (33) | 57 | (48) |
| Injecting drug use (IDU) | 2 | (22) | 1 | (20) | 1 | (25) | 1 | (33) | 12 | (10) |
| MMS/IDU | 0 | – | 0 | – | 0 | – | 0 | – | 1 | (1) |
| Heterosexual contact | 1 | (11) | 0 | – | 1 | (25) | 0 | – | 27 | (23) |
| Receipt of blood or tissue | 0 | – | 1 | (20) | 0 | – | 1 | (33) | 3 | (1) |
| Adult Hemophilia/coagulation disorder | 0 | – | 0 | – | 0 | – | 0 | – | 2 | (2) |
| Mother w/or risk for HIV infection | 0 | – | 0 | – | 0 | – | 0 | – | 2 | (2) |
| Pediatric hemophilia/coag. Disorder | 0 | – | 0 | – | 0 | – | 0 | – | 1 | (1) |
| Risk not specified | 1 | (11) | 0 | – | 0 | – | 0 | – | 14 | (12) |
| **Total** | **9** | | **5** | | **4** | | **3** | | **119** | |

[1] New HIV diagnoses reflects all residents of North Dakota diagnosed with HIV infection for the first time during the time period, regardless of AIDS status. Some also may be counted as AIDS cases if they received an AIDS diagnosis during the same period.

[2] New AIDS diagnoses reflect all residents of North Dakota who first met the criteria for AIDS during the time period, regardless of when their HIV infection was reported to the state.

[3] Living HIV and AIDS cases reflect people diagnosed with HIV or AIDS as a resident of North Dakota and were known to be living on June 30, 2004. All deaths may not have been reported.

## Cumulative Reported Cases

As of June 30, 2004, 336 cumulative HIV/AIDS cases have been reported the North Dakota Department of Health (NDDoH) since HIV/AID surveillance began in 1984. Of these, 36 percent are known to have died, 27 percent are kno to be living with AIDS, and 37 percent are known to be living with HIV but have not received an AIDS diagnosis. Cumulative reported cases include newly diagnosed cases of HIV infection and AIDS in North Dakota residents, and cases previously diagnosed in other states who reside in North Dakota during the reporting period.

Of the 336 reported cases:

- 85 percent were male; 15 percent female.
- 52 percent identified male-to-male sexual contact as a risk factor.
- 68 percent were between the ages of 20 and 39 at diagnosis.
- 78 percent (261) were white, 11 percent (37) were American Indian, 8 percent (28) were black, 3 percent (9) were Hispanic – any race, and 0.3 percent (1) were Asian/Pacific Islander.

It is important to note that a slight change in the number of reported HIV cases will result in significant changes in rates because of the relatively low numbers. In addition, all HIV/AIDS data are based on the best information available but are subject to change as more complete information is received.

## HIV/AIDS Diagnosis: Reportable Conditions

Accurately counting newly diagnosed HIV and AIDS cases impacts federal resources allocated to North Dakota for HIV/AIDS prevention, surveillance, and care and supportive services for North Dakota residents. Providers in North Dakota are required to report to the NDDoH anyone with HIV for whom they are providing care or services.

Effective July 1, 2004, the North Dakota State Health Council approved adding the CD4 T-lymphocyte test results to the reportable conditions list as a possible indicator of HIV diagnosis. Any of the following indicators are mandated to be reported to the NDDoH: a confirmed, positive HIV antibody screen, detectable and non-detectable viral loads results and any CD4 T-lymphocyte test result.

ND Medical Association
February 8, 2005

**PROPOSED AMENDMENT TO SB 2259**

Page 1, line 1, after "reenact" insert "subsection 7 of section 23-07.5-01 and"

Page 1, after line 3, insert:

"**SECTION 1. AMENDMENT.** Subsection 7 of section 23-07.5-01 of the 2003 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus.~~"

Renumber accordingly

**Testimony**

**Senate Bill 2259**

**Senate Human Services Committee**

**Tuesday, February 8, 2005; 9:30 a.m.**

**North Dakota Department of Health**

Good morning, Chairman Lee and members of the Senate Human Services Committee. My name is Larry Shireley, and I am director of the Division of Disease Control for the North Dakota Department of Health. I am here today to provide information on Senate Bill 2259.

Senate Bill 2259 amends N.D.C.C. 23-07.5 to remove the statutory requirement for an informed consent form, but does not remove the requirement for informed consent. The Department of Health does not object to the provisions of Senate Bill 2259.

As you are aware, Senate Bill 2252 also proposes amendments to N.D.C.C. 23-07.5. The department has worked with interested individuals to incorporate the proposed amendments in both Senate Bill 2259 and 2252 into a complete revision of N.D.C.C. 23-07.5.

Included in the department's proposed revisions is the following definition of informed consent to reinforce the intent of Senate Bill 2259: "The individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; and the relevant risks, benefits and potential alternatives for testing; and the individual has granted permission to be tested. Any such test must be conducted according to recommendations of the United States public health service." In addition, the department's proposed revisions address Senate Bill 2252 by developing a definition of health-care provider that includes Crime Lab personnel. The proposed revisions are attached for the committee's review.

The Department of Health does not object to either Senate Bill 2259 or 2252 but recommends the committee consider a complete revision of N.D.C.C. 23-07.5 incorporating the intent of both bills as presented in the attachment.

This concludes my testimony. I am happy to answer any questions you may have.

# DRAFT

PROPOSED AMENDMENTS TO SENATE BILL NO. 2252

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 23-07.3-01 and chapter 23-07.5 of the North Dakota Century Code, relating to notification of exposure to infectious diseases, and to bloodborne pathogen and human immunodeficiency virus testing.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

SECTION 1. Chapter 23-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**CHAPTER 23-07.5**

**EXPOSURE TO BLOODBORNE PATHOGENS ~~HUMAN IMMUNODEFICIENCY VIRUS TESTING~~**

**23-07.5-01. Definitions.** In this chapter and chapter 23-07.3, unless the context otherwise requires:

1. "Exposed individual" means a ~~human being who had a significant exposure with another individual who is subject to testing and who is~~ patient or an individual who is receiving treatment, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, ~~emergency medical technician, or~~ an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including ~~a person~~ an individual rendering aid under chapter 32-03.1, , and an employee, contract employee, student, or volunteer assisting any of these persons.

2. Exposure means a percutaneous injury (e.g., a needlestick or cut with a sharp object) or contact of mucous membrane or nonintact skin (e.g., exposed skin that is chapped, abraded, or afflicted with dermatitis) with blood, tissue, or other body fluids that are potentially infectious as determined under guidelines of the United States public health service.

3. "Health care provider" means any ~~person~~ individual licensed, certified, or otherwise authorized by the law of this state to provide health care services and also includes personnel of the state crime laboratory or any commercial or research laboratory that handles human blood, bodily fluid, or tissue.

~~3.~~ 4. "Health care ~~services~~" means any services included in the furnishing to any individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any ~~person~~ individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

~~4.~~ 5. ~~Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome~~ "Bloodborne pathogen" means a microorganism (a) that is present in human blood, or in other bodily fluid or tissue, (b) that can cause a disease in humans, including hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV), and (c) for which testing is recommended by the United States public health service.

~~5. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus.~~

6. "Informed consent for testing" means that a ~~written permission of an individual to be tested for the presence of the human immunodeficiency virus~~ the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; and the relevant risks, benefits and potential alternatives for testing; and the individual has granted

permission to be tested. Any such test must be conducted according to recommendations of the United States public health service.

~~7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus.~~

~~8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.~~

~~9. "Significant exposure" means:~~

~~a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;~~

~~b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or~~

~~c. Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.~~

~~10. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public~~

~~health service to prevent transmission of disease.~~

~~6.~~7. "Personal representative" means any person who has authority under applicable law to act on behalf of an individual or deceased individual in making decisions related to health care or health information."

**23-07.5-02. Informed consent for testing - Exception.**

1. Except when testing is otherwise ~~provided for~~ permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject ~~a person~~ an individual to a test for ~~a the presence of the human immunodeficiency virus~~ bloodborne pathogens unless the subject of the test, ~~the parent or legal guardian or custodian of a minor who is the subject of the test,~~ or the test subject's ~~legal guardian~~ personal representative if the subject is a minor or is incapacitated, first provides informed consent for testing ~~as provided under subsection 2~~.

~~2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:~~

~~a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.~~

~~b. A statement of explanation that the test results may be disclosed as authorized by law.~~

~~c. Space specifically designated for the signature of the person providing informed~~

~~consent for the testing and the date on which the consent is signed.~~

~~3.~~ 2. If an individual has had blood drawn that is available for testing, and the individual has refused to grant consent to have his or her blood tested for bloodborne pathogens, a health care provider or an ~~exposed~~ individual who had ~~a significant~~ an exposure with another individual may subject that individual's blood to a test for the presence of ~~the human immunodeficiency virus~~ bloodborne pathogens, without that individual's consent, if all of the following apply:

~~a. A blood sample of the individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.~~

~~b.~~ a. A physician or other qualified health care provider ~~The person physician of the individual exposed~~, based on available information ~~provided to the physician~~, determines and certifies in writing that the individual had ~~a significant~~ an exposure. ~~The certification must accompany the request for testing and disclosure.~~

~~c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.~~

b. ~~d.~~ Before testing, the test subject is informed~~, while competent and conscious,~~ that the test subject's blood may be tested for the presence of ~~human immunodeficiency virus~~ bloodborne pathogens; that the test results may not be disclosed ~~to no one~~ without the test subject's ~~consent~~ authorization, except to the exposed individual or the individual's health care provider, ~~the department~~, and any other ~~person~~ individual or agency as authorized or required by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other ~~person~~ individual except for the purpose of having the test performed; and that a record of the test results may be placed in the test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. Each

exposed individual who had ~~a significant~~ an exposure and to whom test results are disclosed must first sign a document indicating the exposed individual's understanding that the exposed individual may not disclose the ~~patient's~~ test subject's identity and that disclosing ~~the~~ this information constitutes a class C felony.

~~4.~~ 3. ~~A patient~~ If a health care provider or an individual rendering aid under chapter 32-03.1 has had blood drawn that is available for testing and he or she refuses to grant consent to have his or her blood sample tested for bloodborne pathogens, an individual who has received care from a health care provider, ~~emergency medical services provider,~~ or ~~a person individual rendering aid under chapter 32-03.1~~ individual rendering aid and who has had ~~a significant~~ an exposure ~~with~~ to the provider or individual rendering aid may subject the ~~provider's~~ blood of the provider or individual rendering aid to a test for the presence of ~~the human immunodeficiency virus~~ bloodborne pathogens, without the ~~provider's~~ provider or individual's consent, if all of the following apply:

~~a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.~~

a. ~~b.~~ A physician, based on information provided to the physician, determines and certifies in writing that the ~~patient~~ individual has had ~~a significant~~ an exposure. ~~The certification must accompany the request for testing and disclosure.~~

~~c. The provider or a person rendering aid under chapter 32-03.1 is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.~~

b. ~~d.~~ Before testing, the provider is informed~~, while competent and conscious,~~ that the provider's blood may be tested for the presence of ~~human immunodeficiency virus~~ bloodborne pathogens; that the test results may be disclosed to the provider, the individual who has had ~~a significant~~ an exposure, and any other ~~person~~ individual or agency as authorized or required by law; that if the ~~patient~~ individual who has had ~~a significant~~ an exposure knows the identity of the provider, that ~~patient~~ individual may not disclose the identity to any other ~~person~~ individual except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. Each ~~patient~~ individual who has had ~~a significant~~ an exposure and to whom test results are disclosed must first sign a document indicating the ~~patient's~~ individual's understanding that the ~~patient~~ individual may not disclose the provider's identity and that disclosing the information constitutes a class C felony.

~~5.~~ 4. If an individual who is the subject of ~~a significant~~ an exposure is ~~unconscious or~~ incapable of giving informed consent for testing under this section, that consent may be obtained ~~in accordance with section 23-12-13~~ from the individual's personal representative. If an individual who is the subject of ~~a significant~~ an exposure dies without an opportunity to consent to testing, collection of appropriate specimens and testing for the presence of bloodborne pathogens, ~~including human immunodeficiency virus, hepatitis B, and hepatitis C infection~~ must be conducted ~~within twenty-four hours~~ as soon as reasonably possible. ~~A licensed physician with expertise in infectious diseases shall make the determination of which tests are required.~~ Results of these tests must be provided to the physician providing care for the individual who experienced the ~~significant~~ exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person~~ deceased individual which are in the facility's control ~~within twenty-four hours~~ as soon as reasonably possible. If there are no testing results for bloodborne

pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the ~~person who died~~ deceased individual shall attempt to obtain testing results of bloodborne pathogens of the deceased individual within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the ~~significant~~ exposure.

5. Any testing done pursuant to subsection 2, 3, or 4, ~~or 5~~ must be conducted in a reasonably expedient manner. ~~An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an~~ A ~~appropriate~~ district court ~~for issuance of~~ in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing ~~another~~ the individual, patient, or provider with whom the individual had ~~a significant~~ an exposure to have blood drawn to be tested for ~~the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition~~ bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that a significant exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if it is based on evidence generally relied on by a provider, including statements from the provider's patient.

. The record of any court ~~hearing~~ proceeding conducted under this subsection is confidential. The court hall ~~may~~ issue an order requiring testing under this subsection ~~only~~ if:

~~a. The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the test subject's blood is not available to be used to test for the human immunodeficiency virus;~~

~~b.~~ a. The court finds probable cause to believe that the ~~person~~ individual petitioning for the testing had ~~a significant~~ an exposure with the test subject;

~~c.~~ b. The petition substitutes a pseudonym for the true name of the test subject;

~~d.~~ c. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

~~e.~~ d. The proceedings are conducted in camera ~~unless the subject of the test agrees to a hearing in open court~~; and

~~f.~~ e. The court imposes appropriate safeguards against unauthorized disclosure which must specify the ~~persons~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

~~7. An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter~~

~~8.~~ 7. A health care provider who subjects ~~a patient~~ an individual to ~~a significant~~ an exposure must notify the ~~patient~~ individual of the exposure. A health care provider witnessing ~~a significant~~ an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform a ~~patient~~ an individual of ~~a significant~~ an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

8. Any testing under this section must be at the expense of the exposed individual or in the case of an employee's workplace exposure, the worker's employer. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the individual to be tested to pay for the testing.

**23-07.5-03. Written consent to disclosure.** Repealed by S.L. 2003, ch. 211, § 27.

**23-07.5-04. Record maintenance.** A health care provider, blood bank, blood center, or plasma center that collects a specimen of body fluids or tissues for the purpose of testing for the presence of ~~an antibody to the human immunodeficiency virus~~ bloodborne pathogens ~~shall~~ must:

1. Obtain from the test subject~~; the subject's parent, legal guardian, or custodian if the subject is a minor;~~ or the test subject's ~~legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing, unless testing is otherwise authorized by law.

~~2. Maintain a record of the consent received under subsection 1.~~

~~3.~~ 2. Maintain a record of the test results obtained.

**23-07.5-05. Confidentiality of test results.** Repealed by S.L. 2003, ch. 211, § 27.

**23-07.5-05.1. Dislcosure of test results.** The results of a test for bloodborne pathogens may be disclosed only (1) to the individual who was tested, (2) to an individual for whom a test was conducted as provided by this chapter, and (3) as permitted under title 45, Code of Federal Regulations, part 164, section 512.

**23-07.5-06. Expanded disclosure of test results prohibited.** ~~A person~~ An individual to whom the results of a test for ~~the human immunodeficiency virus~~ bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as authorized by law.

**23-07.5-07. Civil liability.** Any ~~person~~ individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

**23-07.5-08. Penalty.** ~~A person~~ An individual who knowingly discloses the results of a blood test in violation of this chapter is guilty of a class C felony, if the offense is committed with intent to disclose the identity of the individual who was tested.

**SECTION 2.** Chapter 23-07.3-01 of the North Dakota Century Code is repealed.

Renumber accordingly

1

# HOUSE HUMAN SERVICES COMMITTEE

## NORTH DAKOTA MEDICAL ASSOCIATION
## SUPPORT FOR ENGROSSED SENATE BILL NO. 2259

## INFORMED CONSENT FOR HIV TESTING

## FEBRUARY 23, 2005

Chairman Price and members of the House Human Services Committee, my name is David Peske, Director of Governmental Relations for the North Dakota Medical Association. NDMA represents member physicians who are in active practice in all medical specialties, residents in training programs, students, and retired members from across the state. Thank you for this opportunity to provide information **in support of Engrossed Senate Bill 2259**.

Last September, the ND Medical Association House of Delegates passed a resolution, introduced by an infectious disease specialist from Fargo and a family physician from Valley City. The resolution (attached) seeks to update North Dakota law regarding testing for the human immunodeficiency virus (HIV) by removing the requirement that informed consent for the test be obtained in writing.

We are not aware of any other state law that requires a patient to sign a consent form prior to receiving a diagnostic test, and physicians agreed that the requirement serves now only to perpetuate the initial stigma associated with HIV and AIDS, common when this law was first enacted in 1989, and may also serve as a deterrent to those who should seek testing. Many national organizations, such as the Centers for Disease Control, the Institute of Medicine, the American College of Obstetrics and Gynecology, and the American Academy of Pediatrics, have adopted recommendations in support of "normalizing" the testing for HIV. Today, this disease is seen by the healthcare community as a public health issue rather than a civil rights and lifestyle issue, and it is now time to update our statutes to remove the unnecessary burden and stigma associated with the testing procedure for HIV.

North Dakota has not seen a large number of HIV and AIDS cases. The ND Department of Health *2004 HIV/AIDS Epidemiologic Update* (attached) indicates that 9 cases of HIV were diagnosed during the first half of 2004, and that a total of 336 cumulative cases of HIV/AIDS have been reported to the Department since surveillance began in 1984.

At our request, the Senate amended the bill to delete from the statute the definition of the "informed consent form", which will no longer be referenced in the law if SB 2259 is enacted. The Senate approved the amended bill by a vote of 44-1.

As you know, this committee substantially revised HB 1410, which also deals with this issue, before sending it to the Senate. The amendments we are seeking in SB 2259 are included in HB 1410. Our preference is that both bills remain as vehicles for these revisions at this time. **We respectfully request that the Committee support Engrossed SB 2259, and recommend a Do Pass to the members of the House.**

2

**Testimony**

**Senate Bill 2259**

**House Human Services Committee**

**Wednesday February 23, 2005; 2:30 p.m.**

**North Dakota Department of Health**

Good afternoon, Chairman Price and members of the House Human Services Committee. My name is Karin Mongeon, and I am manager of the HIV and AIDS Program for the North Dakota Department of Health. I am here today to provide information on Senate Bill 2259.

Senate Bill 2259 amends N.D.C.C. 23-07.5 to remove the statutory requirement for an informed consent form, but does not remove the requirement for informed consent. The Department of Health does not object to the provisions of Senate Bill 2259.

As you are aware, Senate Bill 2252 also proposes amendments to N.D.C.C. 23-07.5. The department has worked with interested individuals to incorporate the proposed amendments in both Senate Bill 2259 and 2252 into a complete revision of N.D.C.C. 23-07.5, which this Committee and the House approved as an amendment to House Bill 1410.

The Department of Health does not object to Senate Bill 2259 but suggests that the Committee delay acting on SB 2259 until the Senate has considered House Bill 1410.

This concludes my testimony. I am happy to answer any questions you may have.