

By Mr. Stefanini of Framingham, petition of John A. Stefanini and another relative to health care workers and HIV infection. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT RELATIVE TO HEALTH CARE WORKERS AND HIV INFECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Amend section one of G.L.M. Chapter 111
2 Definition— by adding a new paragraph following line 30:
3 “Health care worker,” for the purpose of sections 111D, 111E,
4 and 111F only, shall include, but not be limited to: licensed physi-
5 cian, dentist, registered nurse, licensed practical nurse, physician
6 assistant, psychologist, social worker and other health pro-
7 fessional worker; nurses aide, orderly, laboratory technician,
8 emergency medical technician, surgical technician, medical or
9 surgical assistant, dental hygienist, dental assistant, licensed thera-
10 pist, therapy assistant, psychiatric aide and other health care
11 service provider; housekeeper, janitor, food service aide,
12 transportation aide, security officer and other ancillary personnel.

1 SECTION 2. Amend the G.L.M. Chapter 111 by adding the
2 following new sections:

3 Section 111D. Protection of health care workers in public
4 employment; HIV infection. The department shall adopt the
5 Occupational Safety and Health Administration (OSHA) Blood
6 Borne Disease Standard published December 2, 1991, to cover all
7 health care workers employed in any state, county or local entity
8 providing health care services in the Commonwealth not presently
9 covered by said OSHA Standard.

10 Section 111E. Health care worker; exposure; standards. Any
11 health care worker who, while acting in his or her professional
12 capacity, attends or assists a person or deceased person in a health
13 care facility licensed under this chapter; in any state, county, or
14 local entity providing health care services; or in any other setting
15 where health care services are provided subject to any law of the
16 Commonwealth, including but not limited to clinics, hospices,
17 schools and home health care service agencies, sustains any expo-
18 sure to blood or bodily fluids which may be reasonably believed
19 to be carrying blood borne pathogens capable of transmitting HIV
20 shall provide to his or her employer a report of said exposure
21 which report shall remain confidential. The department shall pre-
22 pare and distribute, or the health care facility or agency may
23 prepare and distribute in the failure of the department to do so, a
24 standard form for reporting such exposure which shall include but
25 need not be limited to the name of the person who believes he or
26 she has had such exposure and the manner in which such exposure
27 occurred. After receiving such a report the employer shall then
28 follow the Occupational Health and Safety Administration
29 (OSHA) Standard on Blood Borne Pathogens published
30 December 2, 1991 regarding reports of exposure to bloodborne
31 pathogens as follows:

32 A. Following the confidential report of an exposure incident,
33 the employer must make immediately available to the exposed
34 employee, at the employer's expense, a confidential medical eval-
35 uation and follow-up, including at least:

36 1. documentation of the route(s) of exposure and circumstances
37 under which the exposure incident occurred.

38 2. identification and documentation of the source individual,
39 unless the employer can establish that identification is prohibited
40 by section seventy of this chapter.

41 B. The source individual's blood must be tested after written
42 consent pursuant to the provision of section seventy of this
43 chapter, without cost to that individual, and as soon as feasible to
44 determine HIV infectivity. If consent is not obtained, the
45 employer shall establish that legally require consent cannot be
46 obtained.

47 C. If consent is obtained test results of the source individual's
48 blood shall be made available to the exposed employee, provided,

49 however, that the identity of the patient suspected of having such
50 disease shall not be released in such response, and shall be kept
51 confidential in accordance with the provisions of section seventy,
52 and the employee shall be informed of the applicable laws and
53 regulations concerning disclosure of the identity and infectious
54 status of the source individual.

55 D. The exposed employee's blood shall be collected as soon as
56 feasible and tested after his or her consent is obtained. Subsequent
57 to such baseline blood collection and testing, the employer, at his
58 expense, shall collect and test the exposed employee's blood at
59 intervals to be determined by an infectious disease specialist. All
60 collection, testing and related matters shall be done in such a way
61 as to protect the privacy of the employee.

62 E. If the employee consents to baseline blood collection, but
63 does not give consent at that time for HIV serologic testing, the
64 sample shall be preserved for at least 90 days. If within 90 days of
65 the exposure incident the employee elects to have the baseline
66 sample tested, such testing shall be done as soon as feasible and in
67 such a way as to protect the privacy of the employee.

68 F. The employer must, at his expense, provide the employee
69 with post-exposure prophylaxis, when medically indicated, as
70 recommended by the U.S. Public Health Service, appropriate
71 counseling and evaluation of reported illnesses.

72 G. The employer shall ensure that the healthcare professional
73 evaluating an employee after an exposure incident is provided:

74 1. a copy of the OSHA Blood Borne Standard.

75 2. a description of the exposed employee's duties as they relate
76 to the exposure incident.

77 3. documentation of the route(s) of exposure and circumstances
78 under which exposure occurred.

79 4. results of the source individual's blood testing, if available
80 under section seventy of this chapter;

81 5. all medical records relevant to the appropriate treatment
82 of the employee, which are the employer's responsibility to
83 maintain.

84 H. The employer shall provide the employee with a copy of the
85 evaluating healthcare professional's written opinion within 15
86 days of the completion of the evaluation.

87 I. The healthcare professional's written opinion for post-
88 exposure evaluation and follow-up shall be limited to the
89 employee who has been:

90 1. informed of the evaluation results.

91 2. told about any medical conditions resulting from exposure to
92 blood or other potentially infectious materials which require fur-
93 ther evaluation or treatment.

94 J. All other findings or diagnosis shall remain confidential and
95 shall not be included in the written report.

1 SECTION 3. Amend G.L.M. Chapter 32 – Civil Service, by
2 adding new sections:

3 Section 94C. Disability or death caused by AIDS or HIV infec-
4 tion; health care workers in public employ; presumption.

5 Section 94C(1). Notwithstanding the provision of any general
6 or special law to the contrary, any condition of AIDS or HIV
7 infection resulting in disability or death to a health care worker
8 employed by any state, county or local entity shall, if he or she
9 consented to a baseline collection for HIV serologic testing under
10 section 111E of G.L.M. Chapter 111 which tests negative for HIV,
11 but subsequent collection tests positive for HIV, be presumed to
12 have been suffered in the course of his or her employment. The
13 provision of this section shall apply only if the disabling or fatal
14 condition is a type which may, in general, result from exposure to
15 known or suspected bloodborne pathogens as determined by the
16 Federal Center for Disease Control (CDC).

17 (2) Nothing herein shall preclude a health care worker for
18 applying for and receiving benefits under any other provisions of
19 the General Laws related to work-incurred injuries and diseases.

20 Section 94D. Extension of benefits for health care workers suf-
21 fering from work related infection of AIDS, or HIV. A health care
22 worker employed by state, county or local entity who is deter-
23 mined to be infected with AIDS or HIV shall have the right to
24 continue to work as long as his or her attending physician believes
25 there is no danger to the health care worker or his or her patient,
26 with no loss in salary, seniority status, grade or benefits,
27 including, but not limited to health insurance. Nor shall there be
28 any discrimination by the employer against the employee. The

29 employee already protected by the Americans with Disabilities
30 Act of 1990 shall be further protected by G.L.M. Chapter 6,
31 Section 56, and sections 75 to 84 inclusive.

32 Section 94E. Supplementary Employer Payments for Certain
33 Workers. When a health care worker employed by state, county or
34 local entity has been found to be disabled due to personal injuries,
35 as defined in section 1 (7A) of this Chapter, as a result of HIV
36 infection arising out of his employment, as determined in
37 Section 111D of Chapter 111, and Section 94C(1) of this Chapter,
38 the employer shall supplement any workers compensation estab-
39 lished under this chapter by an amount equal to the difference
40 between this amount and the worker's average weekly salary.

41 Section 94F. Special Disability Insurance for HIV Infected
42 Health Care Workers. Each employer in Massachusetts shall pro-
43 vide a minimum of \$500,000 of special disability insurance to any
44 health care worker in his employ who is found to be HIV infected
45 from a work-related exposure. All policies regarding the establish-
46 ment of diagnosis of HIV infection shall follow the Standards on
47 Blood Borne Pathogens of the federal Occupational Safety and
48 Health Administration (OSHA) as published on December 2, 1991
49 and section 111D of G.L.M. chapter 111.

50 Section 94G. Special life insurance for HIV infected health
51 care workers. Each employer of a health care worker in
52 Massachusetts found to be infected by HIV as a result of a work-
53 related exposure as determined by the Standard on Blood Borne
53 Pathogens of the federal Occupational Safety and Health
55 Administration and section 111E of G.L.M. chapter 111 shall pro-
56 vide him or her with a life insurance policy equal to twice the
57 worker's most recent annual salary and to include so called
58 reverse-life provisions when available.

1 SECTION 4. Chapter 152 is amended by adding the following
2 new sections:

3 Section 75C. Disability or death caused by AIDS or HIV infec-
4 tion; health care workers; presumption.

5 (1) Notwithstanding the provision of any general or special law
6 to the contrary, any condition of AIDS or HIV infection resulting
7 in disability or death to a health care worker shall, if he or she
8 consented to a baseline collection for HIV serologic testing under

12 section 111E of G.L.M. Chapter 111 which tests negative for HIV,
13 but subsequent collection tests positive for HIV, be presumed to
14 have been suffered in the course of his or her employment. The
15 provision of this section shall apply only if the disabling or fatal
16 condition is a type which may, in general, result from exposure to
17 known or suspected bloodborne pathogens as determined by the
18 Federal Center for Disease Control (CDC).

19 (2) Nothing herein shall preclude a health care worker from
20 applying for and receiving benefits under any other provisions of
21 the General Laws related to work-incurred injuries and diseases.

22 Section 75D. Extension of benefits for health care workers
23 suffering from work related infection of AIDS, or HIV. A health
24 care worker who is determined to be infected with AIDS or HIV
25 shall have the right to continue to work as long as his or her
26 attending physician believes there is no danger to the health care
27 worker or his or her patient, with no loss in salary, seniority status
28 or benefits, including, but not limited to health insurance. The
29 employer shall continue to pay his share of the employee's health
30 insurance premium after the employee can no longer work due to
31 AIDS or HIV infection. Nor shall there be any discrimination by
32 the employer against the employee. The employee already pro-
33 tected by the Americans with Disabilities Act of 1990 shall be
34 further protected by G.L.M. Chapter 6, Section 56, and sections
35 75 to 84 inclusive.

36 Section 75E. Supplementary Employer Payments for Certain
37 Workers. When a health care worker has been found to be
38 disabled due to personal injuries, as defined in section 1 (7A) of
39 this Chapter, as a result of HIV infection arising out of his
40 employment, as determined in Section 111E of Chapter 111, and
41 Section 75C of this Chapter, the employer shall supplement any
42 workers compensation established under this chapter by an
43 amount equal to the difference between this amount and the
44 worker's average weekly salary.

45 Section 75F. Special Disability Insurance for HIV Infected
46 Health Care Workers. Each employer in Massachusetts shall pro-
47 vide a minimum of \$500,000 of special disability insurance to any
48 health care worker in his employ who is found to be HIV infected
49 from a work-related exposure. All policies regarding the establish-
50 ment of diagnosis of HIV infection shall follow the Standards on

51 Blood Borne Pathogens of the federal Occupational Health and
52 Safety Administration (OSHA) as published on December 2, 1991
53 and section 111E of G.L.M. chapter 111.

54 Section 75G. Special life insurance for HIV infected health
55 care workers. Each employer of a health care worker in
56 Massachusetts found to be infected by HIV as a result of a work-
57 related exposure as determined by the Standard on Blood Borne
58 Pathogens of the federal Occupational Safety and Health
59 Administration and section 111E of G.L.M. chapter 111 shall
60 provide him or her with a life insurance policy equal to twice the
61 worker's most recent annual salary and to include so-called
62 reverse-life provisions when available.

