

104TH CONGRESS  
2D SESSION

# H. R. 3937

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.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 1996

Mr. COBURN (for himself, Ms. MOLINARI, Mr. DELAY, Mrs. FOWLER, Mr. WELDON of Florida, Mr. NORWOOD, Mr. HUTCHINSON, Mr. LARGENT, Mr. SOUDER, Mr. STOCKMAN, Mr. DORNAN, and Mr. HOSTETTLER) introduced the following bill; which was referred to the Committee on Commerce

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## 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 1996”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

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

13          (2) The medical, public health, political, and  
14          community leadership must focus on the full course  
15          of HIV disease rather than concentrating on later  
16          stages of the disease. Continual focus on AIDS rath-  
17          er than the entire spectrum of HIV disease has left  
18          our Nation unable to deal adequately with the epi-  
19          demic. Federal and State data collection efforts  
20          should focus on obtaining data as early as possible  
21          after infection occurs, while continuing to collect  
22          data on the symptomatic stage of the disease.

23          (3) Recent medical breakthroughs may enable  
24          doctors to treat HIV disease as a chronic disease  
25          rather than as a terminal disease. Early intervention

1 in the progression of the infection is imperative to  
2 prolonging and improving the lives of individuals  
3 with the disease.

4 (4) The Centers for Disease Control and Pre-  
5 vention has recommended partner notification as a  
6 primary prevention service. The health needs of the  
7 general public, and the care and protection of those  
8 who do not have the disease, should be balanced  
9 with the needs of individuals with the disease in a  
10 manner that allows for the infected individuals to re-  
11 ceive optimal medical care and for public health  
12 services to protect the uninfected.

13 (5) Individuals with HIV disease have an obli-  
14 gation to protect others from being exposed to HIV  
15 by avoiding behaviors that place others at risk of be-  
16 coming infected. Each of the States should have in  
17 effect laws that provide that the intentional or reck-  
18 less exposure of others to HIV is a felony, even if  
19 the infection is not transmitted.

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

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

24 (1) in section 1902(a)—

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

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

5 (C) by inserting after paragraph (62) the  
6 following paragraph:

7 “(63) meet the requirements of section 1930A  
8 (relating to the prevention of the transmission of the  
9 human immunodeficiency virus, commonly known as  
10 HIV).”; and

11 (2) by inserting after section 1930 the following  
12 section:

13 “PREVENTION OF TRANSMISSION OF HIV  
14 “SEC. 1930A. (a) For purposes of section  
15 1902(a)(63), a State plan meets the requirements of this  
16 subsection if the plan demonstrates to the satisfaction of  
17 the Secretary that the law or regulations of the State are  
18 in accordance with the following:

19 “(1) The State requires that, in the case of a  
20 health professional or other entity that provides for  
21 the performance of a test for HIV on an individual,  
22 the entity confidentially report positive test results  
23 to the State public health officer, together with any  
24 additional necessary information, in order to carry  
25 out the following purposes:

1           “(A) The performance of statistical and  
2           epidemiological analyses of the incidence in the  
3           State of cases of such disease.

4           “(B) The performance of statistical and  
5           epidemiological analyses of the demographic  
6           characteristics of the population of individuals  
7           in the State who have the disease.

8           “(C) The assessment of the adequacy of  
9           preventive services in the State with respect to  
10          the disease.

11          “(2)(A) The State requires that the public  
12          health officer of the State carry out a program to  
13          inform individuals that the individuals may have  
14          been exposed to HIV (referred to in this paragraph  
15          as ‘partner notification’). For purposes of this para-  
16          graph, the term ‘partner’ includes the sexual part-  
17          ners of individuals with HIV disease, and the part-  
18          ners of such individuals in the sharing of hypo-  
19          dermic needles for the intravenous injection of  
20          drugs.

21          “(B) The State requires that any information  
22          collected for purposes of partner notification be suf-  
23          ficient for the following purposes:

24                  “(i) To provide the partners of the in-  
25                  dividual with HIV disease with an appro-

1            appropriate opportunity to learn that the part-  
2            ners have been exposed to HIV.

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

5            “(iii) To provide the individual who  
6            has the disease with information regarding  
7            therapeutic measures for preventing and  
8            treating the deterioration of the immune  
9            system and conditions arising from the dis-  
10           ease, and to provide the individual with  
11           other preventive information.

12           “(iv) With respect to an individual  
13           who undergoes testing for HIV disease but  
14           does not seek the results of the testing, to  
15           recall and provide the individual with coun-  
16           seling, therapeutic information, and other  
17           information regarding preventative health  
18           services appropriate for the individual.

19           “(C) The State cooperates with the Director of  
20           the Centers for Disease Control and Prevention in  
21           carrying out a national program of partner notifica-  
22           tion, including the sharing of information between  
23           the public health officers of the States.

24           “(3) With respect to a defendant against whom  
25           an information or indictment is presented for a

1 crime in which by force or threat of force the per-  
2 petrator compels the victim to engage in sexual ac-  
3 tivity, the State requires as follows:

4 “(A) That the defendant be tested for HIV  
5 disease if—

6 “(i) the nature of the alleged crime is  
7 such that the sexual activity would have  
8 placed the victim at risk of becoming in-  
9 fected with HIV; or

10 “(ii) the victim requests that the de-  
11 fendant be so tested.

12 “(B) That if the conditions specified in  
13 subparagraph (A) are met, the defendant un-  
14 dergo the test not later than 48 hours after the  
15 date on which the information or indictment is  
16 presented, and that as soon thereafter as is  
17 practicable the results of the test be made avail-  
18 able to the victim; the defendant (or if the de-  
19 fendant is a minor, to the legal guardian of the  
20 defendant); the attorneys of the victim; the at-  
21 torneys of the defendant; the prosecuting attor-  
22 neys; the judge presiding at the trial, if any;  
23 and the principal public health official for the  
24 local governmental jurisdiction in which the  
25 crime is alleged to have occurred.

1           “(C) That, if the results of the test indi-  
2           cate that the defendant has HIV disease, such  
3           fact may, as relevant, be considered in the judi-  
4           cial proceedings conducted with respect to the  
5           alleged crime.

6           “(4)(A) With respect to a patient who is to un-  
7           dergo an invasive medical procedure that would  
8           place the health professionals involved at risk of be-  
9           coming infected with HIV, the State—

10           “(i) authorizes such health professionals to  
11           provide that the procedure will not be per-  
12           formed unless the patient undergoes a test for  
13           HIV disease and the health professionals are  
14           notified of the results of the test; and

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

18           “(B) The State authorizes funeral-services  
19           practitioners to provide that invasive procedures will  
20           not be performed unless the body involved undergoes  
21           a test for HIV disease and the practitioners are no-  
22           tified of the results of the test.

23           “(5) The State requires that, if a health care  
24           entity (including a hospital) transfers a body to a fu-  
25           neral-services practitioner and such entity knows



1 that the body is infected with HIV, the entity notify  
2 the funeral-services practitioner of such fact.

3 “(6) The State requires that, if a health profes-  
4 sional knows that the professional has HIV disease,  
5 the professional notify a patient of the professional  
6 before performing any invasive medical procedure on  
7 the patient.

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

12 (b) SENSE OF CONGRESS REGARDING HEALTH PRO-  
13 FESSIONALS WITH HIV DISEASE.—It is the sense of the  
14 Congress that, with respect to health professionals who  
15 have HIV disease and who perform invasive medical proce-  
16 dures on patients, the medical profession should develop  
17 guidelines to assist such professionals in complying with  
18 requirements established by the States pursuant to section  
19 1930A(a)(6) of the Social Security Act (as added by sub-  
20 section (a) of this section).

21 (c) APPLICABILITY OF REQUIREMENTS.—

22 (1) IN GENERAL.—Except as provided in para-  
23 graph (2), the amendment made by subsection (a)  
24 applies upon the expiration of the 120-day period be-  
25 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       (c) 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 individ-  
5 uals who know they have HIV disease, it is a felony for  
6 the individuals to engage in any behaviors that the individ-  
7 uals know will place others at risk of infection with the  
8 disease, regardless of whether the behaviors actually  
9 transmit the infection.

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

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

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