S T A T E O F N E W Y O R K

4437

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. FITZPATRICK, FINCH, BALL, CALHOUN, KOLB -- Multi-Sponsored by -- M. of A. McKEVITT, WALKER -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting health care professionals who are HIV positive from engaging in any activity which has a significant risk of transmission of the infection to any patients; and to repeal article 27-DD of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 27-DD of the public health law is REPEALED.

S 2. The public health law is amended by adding a new section 2782-a to read as follows:

S 2782-A. PROHIBITION OF INFECTED HEALTH CARE PROFESSIONALS. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "HEALTH CARE PROFESSIONAL" MEANS ANY PHYSICIAN, DENTIST, OPTOMETRIST, NURSE, LAB TECHNICIAN, ANESTHETIST, EMERGENCY MEDICAL PERSONNEL, DENTAL HYGIENIST OR OTHER HEALTH CARE PROFESSIONAL WHO HAS PHYSICAL CONTACT WITH PATIENTS DURING THE COURSE OF THEIR PROFESSIONAL ACTIVITIES.

B. "INVASIVE MEDICAL PROCEDURE" MEANS ANY PROCEDURE REQUIRING A SKIN OR MUCUS MEMBRANE INCISION PERFORMED BY A SURGEON IN AN OPERATING ROOM, ANY DENTAL PROCEDURE PERFORMED BY A DENTIST OR ORAL SURGEON WHICH PREDICTABLY RESULTS IN PATIENT BLEEDING, AND ANY OTHER PROCEDURE IN WHICH THERE IS SIGNIFICANT RISK OF PATIENT CONTACT WITH BLOOD, OR BODY FLUID, OF A HEALTH CARE PROFESSIONAL, SUCH AS, BUT NOT LIMITED TO, BLOOD TRANSFUSION AND BLOOD TESTING.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY HEALTH CARE PROFESSIONAL WHO HAS TESTED POSITIVE OR WHO HAS BEEN DIAGNOSED AS HAVING HIV INFECTION, AIDS, OR HIV-RELATED ILLNESS SHALL REPORT AND PROMPTLY DISCLOSE TO THE COMMISSIONER SAID DIAGNOSIS AND HEALTH STATUS IN A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD02985-01-9

MANNER AND FORM TO BE PRESCRIBED BY THE COMMISSIONER. FAILURE TO SO REPORT AND DISCLOSE SHALL CONSTITUTE GROUNDS FOR REVOCATION OF SAID HEALTH CARE PROFESSIONAL'S LICENSE.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY HEALTH CARE PROFESSIONAL WHO HAS TESTED POSITIVE, OR WHO HAS BEEN DIAGNOSED AS HAVING HIV INFECTION, AIDS, OR HIV-RELATED ILLNESS SHALL ABSTAIN FROM PERFORMING INVASIVE PROCEDURES WHICH POSE A SIGNIFICANT RISK OF TRANSMISSION AND SHALL RESTRICT HIS OR HER NORMAL PROFESSIONAL ACTIVITIES TO THOSE ACTIVITIES THAT POSE NO SIGNIFICANT RISK TO ANY PATIENT, UNLESS PRIOR TO PERFORMING AN INVASIVE MEDICAL PROCEDURE, THE HIV-INFECTED HEALTH CARE PROFESSIONAL DISCLOSES HIS OR HER SERO-POSITIVE STATUS AND PROCEEDS ONLY IF THERE IS WRITTEN INFORMED CONSENT FROM THE PATIENT IN A MANNER AND FORM TO BE PRESCRIBED BY THE COMMISSIONER.

4. ANY REPORT TO THE COMMISSIONER MADE PURSUANT TO HIS REVIEW OF HEALTH CARE PROFESSIONALS WHO ARE HIV POSITIVE, PURSUANT TO SUBDIVISION TWO OF THIS SECTION, AND ALL RECORDS OF EXAMINATIONS OF SUCH MEDICAL PROFESSIONALS SHALL NOT BE OPEN TO INSPECTION BY ANY PERSON OTHER THAN THE HEALTH AUTHORITIES OF THE STATE AND OF THE LOCAL HEALTH DISTRICT, AND SAID HEALTH AUTHORITIES SHALL NOT PERMIT ANY SUCH REPORT OR RECORD TO BE DIVULGED SO AS TO DISCLOSE THE IDENTITY OF THE PERSON TO WHOM IT RELATES.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided that the commissioner of health is authorized immediately to promulgate any and all rules and regulations necessary to the timely implementation of this act.