

Maine

Analysis

The Maine Department of Health and Human Services may quarantine, isolate, or mandate treatment for people living with a sexually transmitted infection (STI), including HIV.

The Maine Department of Health and Human Services has broad power to define and control communicable diseases, including STIs.¹ For example, upon a court finding, based on clear and convincing evidence, that a public health threat exists, the Department can commit someone to a facility to “provide appropriate diagnosis, care, treatment, or isolation.”² However, there is no case law interpreting what may be considered a “public health threat,” although there are assurances that “the least restrictive measures shall be utilized to . . . limit the spread of the notifiable disease or condition,”³ and that the state abide by guidelines found in the American Public Health Association’s *Control of Communicable Diseases Manual*.⁴

Important note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, should not be used as a substitute for legal advice.*

¹ ME. REV. STAT. ANN. tit. 22, §§ 801, 802, 804, 807, 1241 (2016); 10-144-258 ME. CODE R. §§ 1(WW), 9(D) (2016). For the purposes of this regulation, STIs include HIV and AIDS, chancroid, chlamydia, gonorrhea, viral hepatitis, and syphilis. 10-144-258 ME. CODE R. §§ 2(l) (2016).

² ME. REV. STAT. ANN. tit. 22, § 812(1)(F) (2016).

³ 10-144-258 ME. CODE R. § 9(D)(2) (2016).

⁴ 10-144-258 ME. CODE R. § 9 (2016). APHA’s manual and be accessed at <https://www.apha.org/ccdm>.

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*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

TITLE 22, HEALTH AND WELFARE

ME. REV. STAT. ANN. TIT. 22, § 801 (2016)

Definitions

- (1) Commissioner. “Commissioner” means the Commissioner of Health and Human Services.
- (2) Communicable Disease. “Communicable disease” means an illness or condition due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host.
- (4) Department. “Department” means the Department of Health and Human Services.
- (E) Exposure. “Exposure” means direct contact or interaction with an environmental hazard or toxic agent affecting or being taken into the body.
- (5) Infected Person. “Infected person” means a person who is diagnosed as having a communicable disease or who, after appropriate medical evaluation or testing, is determined to harbor an infectious agent.
- (7) Notifiable Disease or Condition. “Notifiable disease or condition” means any communicable disease, occupational disease or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 821 or 825 or section 1493.
- (8)
- (A) Prescribed Care. “Prescribed care” means isolation, quarantine, vaccination, medical care or treatment ordered by the department or a court pursuant to section 820.
- (10) Public Health Threat. “Public health threat” means any condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a notifiable disease or condition.
- (A) A condition poses a public health threat if an infectious or toxic agent or environmental hazard is present in the environment under circumstances that would place persons at significant risk of an adverse effect on a person’s health from exposure to or infection with a notifiable disease or condition.
- (B) Behavior by an infected person poses a public health threat if:
- (1) The infected person engages in behavior that has been demonstrated epidemiologically to create a significant risk of transmission of a communicable disease;

- (2) The infected person's past behavior indicates a serious and present danger that the infected person will engage in behavior that creates a significant risk of transmission of a communicable disease to another;
 - (3) The infected person fails or refuses to cooperate with a departmental contact notification program; or
 - (4) The infected person fails or refuses to comply with any part of either a cease and desist order or a court order issued to the infected person to prevent transmission of a communicable disease to another.
- (C) Behavior described in paragraph (B), subparagraphs (1) and (2) may not be considered a public health threat if the infected person demonstrates that any other person placed at significant risk of becoming infected with a communicable disease was informed of the risk and consented to it.

ME. REV. STAT. ANN. TIT. 22, § 802 (2016)

Authority of department

(1) Authority. To carry out this chapter, the department may:

- (A) Designate and classify communicable, environmental and occupational diseases;
- (D) Establish procedures for the control, detection, prevention and treatment of communicable, environmental and occupational diseases, including public immunization and contact notification programs.

(3) Rules. The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection, unless otherwise indicated, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

ME. REV. STAT. ANN. TIT. 22, § 804 (2016) **

Penalties

(1) Rules enforced. All agents of the department, local health officers, sheriffs, state and local law enforcement officers and other officials designated by the department are authorized to enforce the rules of the department made pursuant to section 802 to the extent that enforcement is authorized in those rules.

(2) Refusal to obey rules. Any person who neglects, violates or refuses to obey the rules or who willfully obstructs or hinders the execution of the rules, may be ordered by the department, in writing, to cease and desist. This order shall not be considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act, Title 5, chapter 375. In the case of any person who refuses to obey a cease and desist order issued to enforce the rules adopted pursuant to section 802, the department may bring an action in District Court to obtain an injunction enforcing the cease and desist order or to request a civil fine not to exceed \$ 500, or both. Alternatively, the department may seek relief pursuant to section 810 or 812. The District Court shall have jurisdiction to determine the validity of the cease and desist order whenever an action for injunctive relief or civil penalty is brought before it under this subsection.

ME. REV. STAT. ANN. TIT. 22, § 807 (2016)

Control of communicable diseases

The department may establish procedures for agents of the department to use in the detection, contacting, education, counseling and treatment of individuals having or reasonably believed to have a communicable disease. The procedures shall be adopted in accordance with the requirements of this chapter and with the rules adopted under section 802.

For purposes of carrying out this chapter, the department may designate facilities and private homes for the confinement and treatment of infected persons posing a public health threat. The department may designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility. Designated institutions must have necessary clinic, hospital or confinement facilities as may be required by the department. The department may enter into arrangements for the conduct of these facilities with public officials or persons, associations or corporations in charge of or maintaining and operating these institutions.

ME. REV. STAT. ANN. TIT. 22, § 812 (2016)

Public health measures

(1) Court Order. If, based upon clear and convincing evidence, the court finds that a public health threat exists, the court shall issue the requested order for treatment or such other order as may direct the least restrictive measures necessary to effectively protect the public health. These measures include, but are not limited to:

(F) Commitment to a facility that will provide appropriate diagnosis, care, treatment or isolation of the individual without undue risk to the public health, for a period not to exceed 30 days and under conditions set by the court;

(2) Time Limits. Orders issued pursuant to subsection 1, paragraphs A to E shall not exceed 180 days without further review as provided by section 813, subsection 1. If commitment pursuant to subsection 1, paragraph F, is sought by the department beyond the original 30 days, the department shall file a motion for review pursuant to section 813, subsection 2.

(3) Appeals. Orders issued pursuant to this chapter may be appealed to the Superior Court.

(A) The order of the District Court shall remain in effect pending appeal, unless stayed by the Superior Court.

(B) The Supreme Judicial Court shall, by rule, provide for expedited appellate review of cases appealed under this chapter.

ME. REV. STAT. ANN. TIT. 22, § 1241 (2016)

Definitions

(1) Department. “Department” means the Department of Health and Human Services, Maine Center for Disease Control and Prevention.

(4) Sexually transmitted disease. “Sexually transmitted disease” means a bacterial, viral, fungal or parasitic disease determined by rule of the department to be sexually transmitted, to be a threat to the

public health and welfare and to be a disease for which a legitimate public interest will be served by providing for its regulation and treatment.

Code of Maine Rules

AGENCY 10, DEPARTMENT OF HEALTH AND HUMAN SERVICES

10-144-258 ME. CODE. R. §§ 1, 7, 9 (2016)

Control of notifiable diseases and conditions

SUMMARY: These rules repeal and replace the Department's existing Rules for the Control of Notifiable Conditions, 10-144 CMR Ch. 258, which govern the reporting of certain diseases, clusters of unusual cases of a disease or outbreaks of a disease, epidemics, and extreme public health emergencies. Amendments were made in order to add new notifiable disease entities to the list of notifiable conditions, and to update existing rules to reflect recent developments in disease investigation and interventions. Pursuant to 22 M.R.S.A. §820 and 37-B M.R.S.A. §742, the Department has adopted a new section in these rules to become operational only in the event of an extreme public health emergency as declared by the Governor.

Section 1. Definitions.

GG. Isolation: The separation, for the period of communicability, of an infectious person or animal from others in places and under conditions to prevent or limit the direct or indirect transmission of the infectious agent to those who are susceptible or who may spread the agent to others.

JJ. Non-Compliant Person: An individual who does not comply with prescribed care.

KK. Notifiable Disease or Condition: Any communicable, occupational or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the Department pursuant to Title 22, Chapter 250, Sections 821-825, or Chapter 259-A, Section 1493.

TT. Public Health Threat: Any condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a communicable disease or condition.

VV. Quarantine: The limitation, by the Department, of freedom of movement of individuals or contacts who have been exposed to a communicable disease or condition, for a period of time equal to the longest incubation period of the disease or condition to which they have been exposed, for the purpose of preventing exposure of other individuals.

WW. Sexually Transmitted Infection (STI): Diseases that are transmitted primarily by sexual contact and that the Department, by rule, may designate and require to be reported.

Section 7. Exposures that Create a Significant Risk of HIV Transmission.

For purposes of 5 M.R.S.A., Section 19203-C, a significant risk of HIV infection shall be defined as an exposure to any of the following potentially infectious body tissues or body fluids: blood, semen, vaginal fluid, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, or amniotic fluid, which results from:

- A. Sexual intercourse, including vaginal, oral or anal contact;
- B. Mucous membrane contact (splash to the eye or mouth);
- C. Parenteral inoculation (needle stick or cut); or
- D. Cutaneous exposure involving large amounts or prolonged contact on nonintact skin.

Section 9. Duties of the Department for Disease Investigation and Intervention.

A. The Department's Division of Infectious Disease shall routinely make current information available to practicing health care providers regarding the distribution of notifiable diseases and conditions in Maine and the prevention and control of notifiable conditions. In addition, the Division shall use all reasonable means to:

Confirm, in a timely manner, any case or suspected case of a notifiable disease or condition;

Ascertain, so far as possible, all sources of infection and exposures to the infection;

Identify exposures to environmental hazards;

Institute control measures for notifiable diseases and conditions consistent with the currently accepted standards as found in the Control of Communicable Diseases Manual 18th Edition, published in 2004, which is the official report of the American Public Health Association, unless specified otherwise by the State Epidemiologist. Copies of the manual may be obtained from the American Public Health Association, 800 I Street NW, Washington, DC 20001-3710;

Determine whether isolation and/or quarantine measures may be necessary.

D. Non-Compliant Persons

1. Background

Nothing in any of these rules shall be construed to deny persons the right to rely solely upon exercise of their moral, philosophical, religious or other personal reasons to prevent or cure disease, if that reliance is based upon sincere religious or conscientious objection to standard treatment and/or public health interventions and if alternative public health measures, even if more restrictive, are available to address the public health threat posed by the infectiousness. If such persons endanger the public through their infectiousness or through their behaviors while infected, the Department may use public health disease control methods, up to and including involuntary confinement, isolation and medical treatment, as necessary to protect the public, as authorized by 22 M.R.S.A., sections 807 et seq. and in these rules.

2. Treatment

Treatment of those persons who have either contracted or been exposed to a notifiable disease or condition or that poses a public health threat, may be imposed on an involuntary basis pursuant to 22 M.R.S.A. §810 and §812 in the event such persons refuse appropriate countermeasures or public health interventions as indicated above in C. 3 or conduct themselves in a manner which constitutes a public health threat. Persons who have either contracted or been exposed to notifiable diseases and conditions who knowingly expose others to the danger thereof, are to be considered as acting in a manner that is a public health threat. These persons are considered non-compliant.

Either the Department, acting through its Commissioner, or his or her designee, the Governor, or a court of competent jurisdiction may subject a non-compliant person to involuntary medical treatment and other public health measures, in accordance with applicable law.

Treatment shall be in accord with the most current treatment recommendations/standards of care for the notifiable disease or condition. In imposing treatment and related public health disease control measures on an individual, the least restrictive measures shall be utilized to assure effective medical treatment of the disease or condition and to limit the spread of the notifiable disease or condition or other infectious disease, which pose a threat to public health. The Department shall adopt step-wise medical treatment and public health disease control strategies as described in this rule whenever practical and as long as doing so does not unreasonably increase the threat to the public health.