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The President's Health Security Act and the HIV Epidemic

Kristine M. Gebbie, R.N., M.N.
National AIDS Policy Coordinator

For people with HIV or other serious medical conditions, the security of comprehensive health coverage is essential. Today, an estimated 30 percent of people living with HIV are uninsured. Another 40 percent depend on the Medicaid program for coverage. Many of the 30 percent with private health coverage live in day-to-day fear that their insurance will disappear and their coverage is often inadequate to meet the very real needs of their health status.

For all Americans, but especially for those with a life-threatening condition like HIV/AIDS, the President's Health Security Act will provide the peace of mind and financial protection of private coverage that can never be taken away.

The Health Security Act guarantees every American private coverage for a comprehensive package of benefits. For those with HIV, that will mean coverage of the cost of doctor visits, hospitalization, laboratory tests, and prescription drugs. Coverage of mental health services and substance abuse prevention treatment also are included as is hospice care.

The private insurance market will be reformed in a comprehensive manner to eliminate the inequities of the current system. Health plans will no longer be able to deny or curtail coverage to people with pre-existing medical conditions, including HIV. Plans could not "red-line" communities by refusing to sell or market their coverage in areas perceived to be at high risk for expensive care. Plans will be prohibited from placing annual, lifetime, or disease-specific limits on coverage, and there will be an annual limit on patients' out-of-pocket costs to prevent a medical catastrophe like HIV from becoming a financial catastrophe for individuals or families.

For those who move in and out of the work force, the Health Security Act provides portability of benefits that could be taken from job to job, from employment to unemployment or to self-employment. Individuals, not their employers or the government, will have the power to choose a plan that best suits their needs and to keep that plan if it meets those needs. Consumer input will allow plans to identify problems with the delivery of services.

A new federal/state program will provide assistance to the severely handicapped to obtain home and community-based long term care.

Finally, the Health Security Act protects the vital network of HIV/AIDS service organizations that have so ably served people with HIV. All private health plans will be required to have arrangements with such organizations as "essential community providers." This will prevent any disruption of patient-provider relationships, including Ryan White recipients and community health centers.

Kristine M. Gebbie

THE WALL STREET JOURNAL.

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Disabilities Law, Health Hazard

By James Bovard

The movie "Philadelphia," portraying a law firm's discrimination against an AIDS-infected lawyer, won two Academy Awards Monday night. While the movie is generating sympathy for people with AIDS, little attention is being paid to the people whose lives are being endangered by federal policies that increasingly prevent companies from protecting employees or customers from contagious fatal diseases. Few people realize how expansive the Americans With Disabilities Act is, and how it can threaten their own health.

The Supreme Court laid the groundwork for a broad protection of the rights of contagious people in a 1987 decision that a school board wrongfully fired a teacher with tuberculosis. Under the ADA, passed in 1990, "any physiological disorder or condition which substantially limits one of a person's 'major life activities' " can be classified as a handicap that employers are prohibited from discriminating against. Since contagious diseases are physiological disorders—voila!—discriminating against people with contagious disease can be a federal crime.

Employers are now required to hire people with contagious diseases unless they can prove that the person poses a large risk to other workers or their customers. The Equal Employment Opportunity Commission, in its implementing regulations for the ADA, announced: "Determining whether an individual poses a significant risk of substantial harm to others must be made on a case by case basis." "Significant risk" was defined in congressional reports authorizing the law as a high probability of substantial harm.

REGULATORY CHOKEHOLD

Restaurants are now obliged to give the benefit of the doubt to potentially contagious job applicants. James Coleman, an attorney for the National Council of Chain Restaurants, observed in 1992, "What we were told in no uncertain terms was 'We [Congress] are going to use the restaurant industry as a vehicle for forcing a change in public attitude with respect to AIDS. If it costs you money, too bad.' "

It is extremely unlikely that someone could contract AIDS as a result of eating a meal prepared by an AIDS-infected person, but such individuals often are hit by other illnesses—such as tuberculosis—that are contagious.. A Farmington, Conn., restaurant was sued by the state Commission on Human Rights and Opportunities after the restaurant refused to rehire an AIDS-infected waiter who had taken a leave after coming down with double pneumonia. (The Hartford Courant noted that the waiter "started losing weight and became sluggish and weak. He left food under the warmers too long, and his hands shook so much that he couldn't carry cocktail trays.")

The presumptions created in the ADA can turn every decision about the job and work assignments of a contagious individual into a court battle. Civil-rights policy concerning contagious diseases is influencing firefighting. In a path-breaking case last December, federal judge Joyce Hens Green ruled that the District of Columbia fire department violated an infectious firefighter's civil rights because he was specifically prohibited from doing mouth-to-mouth resuscitation. But the firefighter had hepatitis B, which infects 300,000 people and kills 7,000 people a year.

The biggest impact of the new discrimination-contagion philosophy is on health care. The federal Department of Health and Human Services penalized a Westchester County, N.Y., hospital in 1992 because it prevented an HIV-positive pharmacist from preparing intravenous solutions, even though the hospital did offer the pharmacist another position where there was far less danger of transmitting the disease.

Hospital, the journal of the American Hospital Association, noted that the Westchester hospital "justified its stance by noting its large number of very ill patients and that pharmacists often stick themselves accidentally and must break glass vials in order to prepare IV solutions. In a worst-case scenario . . . pharmacists could stick themselves with a fine-gauge needle and be unaware of it. That needle would then be inserted in a bag with solutions, contaminate the solution, and then infect a patient." But federal officials ruled that the hospital violated the rights of the infectious pharmacist. The hospital was forced to pay him $330,000 for, among other things, the "emotional damage" it had inflicted on him.

Federal regulations are resulting in a cloak of secrecy being imposed on what may be life-or-death information to patients. The ADA gave health care workers the right to continue performing invasive surgery without disclosing to patients that there is a risk that they could contract AIDS from the health care provider.

There are roughly 7,000 HIV-positive physicians in the U.S. A 1992 Centers for Disease Control study observed that, under one set of assumptions, "the estimated probability that [an HIV-infected] surgeon will transmit HIV at least once during the rest of his/her career is 8.1%."

Even if a doctor with HIV lies to his patients and claims not to be infectious, he is still entitled to full protection under the ADA. Philip Benson, a Minneapolis physician, continued delivering babies and doing invasive genital and rectal examinations for nearly a year after he came down with AIDS; the Minnesota Board of Medical Examiners in September 1990 permitted him to continue practicing even after he had open sores on his hands and arms as long as he wore double gloves. Dr. Benson reportedly lied to his patients when they asked questions about his sores and his sharp weight loss, and also allegedly failed to wear gloves during some examinations.

While many HIV-infected surgeons voluntarily cease practicing, others are not so inclined. In late 1992, an AIDS-infected orthopedic surgeon, sued Mercy Catholic Medical Center of Philadelphia for revoking his hospital privileges. The hospital offered to allow the surgeon to continue practicing if his patients signed consent forms stating that they had been informed of the doctor's HIV status. The surgeon sued. American Medical News noted, "Advocates for people with HIV insist that requiring notification [of patients] is tantamount to revoking [hospital] privileges." The suit is still pending.

The failure of policies that indulge infectious surgeons was made stark in a recent investigation of a UCLA surgeon who spread hepatitis B to 18 patients undergoing heart surgery in 1991-92. Amazingly, the hospital had tested the surgeon, discovered he was infected, and yet still permitted him to continue operating without warning patients of the additional deadly risks they faced. The hepatitis was apparently spread to patients through tiny holes in surgical gloves. The New York Times noted yesterday that "the hospital's decision to allow the surgeon to keep on operating even after he was found to be infected . . . is in compliance with federal guidelines."

The UCLA case makes a mockery of the CDC's universal precautions—which, if followed, supposedly protect patients from infected doctors and dentists. Yet, studies in recent years have found that as many as 47% of gloves suffer from defects, punctures or leaks during surgery.

The ADA is also restricting how health care workers may protect themselves

from contagious patients. (The CDC has identified 120 cases of documented or possible occupational transmission of AIDS/HIV to health care workers, and hepatitis B kills over 200 health care workers a year.) The official news magazine of the American Dental Association warned dentists last November that "dentists should be . . . aware that they could be charged with discrimination for using 'extra precaution'" while treating HIV patients.

Unfortunately, federal policy toward contagious diseases seems increasingly simply a question of clout in Washington. In 1990, the International Association of Fire Fighters—a politically powerful union—succeeded in persuading Congress to include a provision in a law requiring that emergency response employees be notified when they had been exposed to airborne infectious disease.

It is peculiar to see how far federal law goes to protect firefighters, infected or otherwise. Firefighters must be notified when they have been exposed to the plague—even though "person-to-person transmission of plague has not been documented since 1924," as a Federal Register notice observed Monday. Firefighters and emergency medical technicians have a federal right to be notified any time they are in the same vehicle with a person with TB—yet hospital patients have no right to be notified when their surgeon is HIV positive, despite the CDC study showing that there could be an 8% chance that an HIV-infected surgeon will effectively kill one of his patients by spreading HIV.

Federal policy makers act as if it is more important to minimize prejudice against people with infectious diseases than to minimize the spread of the diseases themselves. The Americans with Disabilities Act is creating a "civil right" that is the antithesis of individual rights—of freedom of contract—and of the right of informed consent. Maybe someday someone will make a movie about it.

Mr. Bovard writes often on public policy.

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Comments: For our conversation, what are the facts in DDP and cases involving MKS? Is some type of response possible? warranted?

Thanks

THE WHITE HOUSE

WASHINGTON

April 1, 1994

Wall Street Journal
Editorial Page
VIA FAX

Dear Editor:

The Americans with Disabilities Act is compatable with good public health practices. Unfortunately, John Bovard's opinion piece last week, "Disabilities Law, Health Hazard", March 23 is full of inaccuracies. In his article, Mr. Bovard makes the case that the Americans with Disabilities Act endangers people by exposing them to the hazards of HIV transmission. To date, there has been only one documented instance of caregiver-to-patient HIV transmission in America; this case was reported in Florida a few years ago. On the other hand, the ADA has kept thousands of Americans with disabilities working and leading healthy and productive lives. Mr. Bovard, however, discounts those benefits and instead incites erroneously fear in many readers and attempts to falsely lead them to believe that the government is doing the country a disservice by implementing the ADA.

In one instance, Mr. Bovard tells the story of a District of Columbia court which ruled that a D. C. fire fighter was denied his rights by not being allowed to perform mouth-to-mouth resuscitation, because he had Hepatitis B. The ADA requires employers to reach reasonable accommodations with employees to allow them to continue working. Reasonable accommodations include the use of flexible schedules, special facilities, and mechanisms that will allow the employees to continue in their task without unduly burdening the employers. In the case of the fire fighters, there are two simple devices that most Emergency Medical Services (EMS) use that can easily solve that problem: the first is a mechanical respiratory assistance device that allows the EMS worker to avoid mouth-to-mouth contact completely, and the second is a mouth piece that was developed years ago to prevent mouth-to-mouth contact between the EMS worker and the person he or she is serving. As these reasonable accommodations can be made without endangering the health of the public or co-workers, the employer is required to allow the employee to continue working.

Later in his article, Mr. Bovard states that there are 7,000 HIV positive physicians practicing in the USA. This is a gross inaccuracy. According to the best figures, the highest accurate estimate of the number of practicing HIV positive physicians is 2,300. I think that the number used by Mr. Bovard actually refers to the total number of cases of HIV infection amongst physicians since the epidemic began. Most of those 7,000 infections were contracted outside the workplace, and of that number, most of the infected physicians have already died. Mr. Bovard continues by saying that the chance of an HIV positive doctor infecting a patient is 8.1%. Probability arguments tend to be confusing. However, let me state that after more than a decade of dealing with HIV, we only have one documented instance of provider to patient transmission.

HIV transmission is preventable, and we have the tools and the knowledge to keep people safe and healthy. Health care workers must be particularly careful not only because of risk exposure to HIV but other diseases such as hepatitis B, which may be as dangerous as HIV. However, the key to dealing with this serious issue is not to discriminate or incite hysteria. We must be certain that universal precautions against blood-born pathogens are applied consistently and correctly in places where risk of occupational exposure may be greater. Regardless of whether a person is a physician, dentist, nurse, or patient, it is not always possible to know in advance if he or she is HIV positive. For the safety of everyone involved, all caregiving situations must be treated with the same degree of caution. Health care workers and patients should be cautious and safe...every time. This is entirely consistent with the Americans with Disabilities Act.

Sincerely,

Kristine M. Gebbie, R.N., M.N.
National AIDS Policy Coordinator

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Comments: Clear w/ Carlos Falls
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Message:

Here is the final letter.
Thanks for your help!