North Carolina's New AIDS Discrimination Protection: Who Do They Think They're Fooling?

Angela Sue Bullard
NORTH CAROLINA'S NEW AIDS DISCRIMINATION PROTECTION: WHO DO THEY THINK THEY'RE FOOLING?

On June 5, 1981, the federal Centers for Disease Control (CDC) reported that an unnamed condition had resulted in a collapse of the immune systems of five previously healthy homosexual men.¹

Since AIDS was first "discovered" on June 5, 1981, over 121,000 people in the United States have developed the disease.²

Of those over 121,000 diagnosed with AIDS since 1981, over 72,000 have died.³

The Public Health Service has projected that as of November, 1987 there were approximately 945,000 to 1.4 million Americans infected with HIV; only about 20% of those knew that they were infected.⁴

By 1992, experts estimate that there will be over 250,000 cases of AIDS in the U.S.; in 1991 alone, 54,000 people may die from it.⁵

Through February 28, 1990, 1,209 AIDS cases were reported in North Carolina, and of those persons 679 had died.⁶

The number of AIDS cases in North Carolina doubles every 15 months; at that rate there may be over 2500 cases of AIDS in North Carolina by mid-1991.⁷

One new case of AIDS is diagnosed in the U.S. every 14 minutes.⁸

3. Id.
8. Chase, As Many As 380,000 in U.S. Are Expected to have AIDS by 1992, Researcher Says, Wall St. J., June 14, 1988 at, 8 col. 2.
"AIDS." The acronym for Acquired Immune Deficiency Syndrome is now universally recognized and virtually synonymous with the word fear. The "leprosy of the 1980s" has raised troubling medical, legal, social and economic issues for an already overburdened society. But unlike lepers, AIDS victims are not always easily identified. There is no way of knowing with certainty who is infected or who is infectious. People transmitted leprosy indiscriminately by direct contact. In most cases, people transmit AIDS by "high risk behaviors" upon which the majority of society frowns. The result has been sharp, violent, emotional and largely irrational societal reaction of discrimination against persons known or even suspected to be infected with AIDS, HIV, or ARC.

In the record-breaking legislative session of 1989, the North Carolina General Assembly at least attempted to address directly the issue of AIDS discrimination. The General Assembly's surprising answer was to amend the North Carolina Communicable Disease Act [NCCDA]. This legislation reflects the intense lobbying

10. Id.
11. Id.
12. See infra text accompanying notes 23 & 49.
13. See infra text accompanying notes 31-35.
14. The 1989 legislative session was billed as the longest in N.C. history. Barnes, Change, Achievement Mark Long Session, Oct./Nov. 1989 BARNOTES 1.
15. N.C. GEN. STAT. § 130A-148(h)-(j) states:
   (h) The Commission may authorize or require laboratory tests for AIDS virus infection when necessary to protect the public health.
   A test for AIDS virus infection may also be performed upon any person solely by order of a physician licensed to practice medicine in North Carolina who is rendering medical services to that person when, in the reasonable medical judgment of the physician, the test is necessary for the appropriate treatment of the person; however, the person shall be informed that a test for AIDS virus infection is to be conducted, and shall be given clear opportunity to refuse to submit to the test prior to it being conducted, and further if informed consent is not obtained, the test may not be performed. A physician may order a test for AIDS virus infection without the informed consent of the person tested if the person is incapable of providing or incompetent to provide such consent, others authorized to give consent for the person are not available, and testing is necessary for appropriate diagnosis or care of the person.
   An unemancipated minor may be tested for AIDS virus infection without the consent of the parent or legal guardian of the minor when
efforts of diverse groups and the necessary resulting compromise.

the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infection or that the child has been sexually abused.

(i) Except as provided in this section, no test for AIDS virus infection shall be required, performed or used to determine suitability for continued employment, housing or public services, or for the use of places of public accommodation as defined in G.S. § 168A-3(8), or public transportation.

Further it shall be unlawful to discriminate against any person having AIDS virus or HIV infection on account of that infection in determining suitability for continued employment, housing, or public services, or for the use of places of public accommodation, as defined in G.S. § 168A-3(8), or public transportation.

Any person aggrieved by an act or discriminatory practice prohibited by this subsection relating to housing shall be entitled to institute a civil action pursuant to G.S. § 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory practice prohibited by this subsection other than one relating to housing may bring a civil action to enforce rights granted or protected by this subsection.

The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury. Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization.

In a civil action brought to enforce provisions of this subsection relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this subsection. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable. In any civil action brought under this subsection, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as a part of costs.

A civil action brought pursuant to this subsection shall be commenced within 180 days after the date on which the aggrieved person became aware or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct.

Nothing in this section shall be construed so as to prohibit an employer from:

(1) Requiring a test for AIDS virus infection for job applicants in preemployment medical examinations required by the employer;
(2) Denying employment to a job applicant based solely on a confirmed positive test for AIDS virus infection;
(3) Including a test for AIDS virus infection performed in the course of an annual medical examination routinely required of all employees by the employer; or
(4) Taking the appropriate employment action, including reassign-
The substantive provisions of the NCCDA protect health care providers and employers more than they protect AIDS victims. The amendments actually seem to restrict the rights of infected persons in those areas. Above all, the legislation seems to raise as many issues as it solves, serious issues that might only be resolved through judicial interpretation or later legislative clarification.

This Comment's primary purpose is to examine the substantive provisions of the 1989 amendments to the NCCDA. First, the

ment or termination of employment, if the continuation by the employee who has AIDS virus or HIV infection if his work tasks would pose a significant risk to the health of the employee, coworkers, or the public, or if the employee is unable to perform the normally assigned duties of the job.

(j) It shall not be unlawful for a licensed health care provider or facility to:

(1) Treat a person who has AIDS virus or HIV infection differently from persons who do not have that infection when such treatment is appropriate to protect the health care provider or employees of the provider or employees of the facility while providing appropriate care for the person who has the AIDS virus or HIV infection; or

(2) Refer a person who has AIDS virus or HIV infection to another licensed health care provider or facility when such referral is for the purpose of providing more appropriate treatment for the person with AIDS virus or HIV infection.


17. Id. (emphasis on note 100 and accompanying text).
18. See infra text accompanying notes 74-99.
19. N.C. GEN. STAT. § 130A-148(h)-(j) provides:

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Comment briefly examines background information, including: (1) the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infection or that the child has been sexually abused.

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(3) Including a test for AIDS virus infection performed in the course of an annual medical examination routinely required of all employees by the employer; or
(4) Taking the appropriate employment action, including reassign-
medical and statistical facts about AIDS and related infections; (2) the causes, history and significance of AIDS discrimination; and (3) pre-existing or alternate protections available to persons discriminated against on the basis of AIDS, HIV or ARC. Second, the Comment proceeds with a provision-by-provision evaluation of the NCCDA amendments. It analyzes the amendments in light of the above mentioned background information, as well as existing authority on the various issues addressed by the amendments. The analysis includes questions raised by the NCCDA amendments as well as pertinent criticism of some provisions.  

Third, the Comment expresses concern for the ability of the amendments to achieve their stated but dubious objective—the protection of HIV-infected persons from discrimination.

BACKGROUND

A. Medical Facts and Statistics

Human Immunodeficiency Virus (HIV) causes AIDS. HIV attacks the antibody producing and disease fighting T-helper lymphocytes. People transmit HIV in three known ways: (1) sexual contact; (2) direct exposure to infected blood products through an


20. See infra text accompanying notes 74-103.
22. Id.
opening in the skin, i.e. blood transfusions or drug-user needle sharing; and (3) passage from infected mother to child before, during or after birth.\textsuperscript{23}

Once infected with HIV, individuals eventually develop antibodies detectable with ELISA (enzyme-linked immunosorbent assay) and western blot tests.\textsuperscript{24} ELISA tests are the most conventional.\textsuperscript{26} Unfortunately, no one knows how long the antibodies take to develop in different individuals.\textsuperscript{26} HIV could remain "hidden" or "silent" for as long as 35 months before anyone could detect measurable levels of antibodies.\textsuperscript{27} Recent research indicates that neither ELISA nor western blot tests are entirely effective in identifying all HIV-infected persons.\textsuperscript{28} No one knows whether presence of the virus itself, without detectable antibodies, can cause the virus to be passed to others.\textsuperscript{29} Mere presence of antibodies does not necessarily mean that the individual will get AIDS or even that the person continues to harbor the HIV.\textsuperscript{30}

An HIV-infected person may fall into one of three categories.\textsuperscript{31} The first category includes those persons considered "seropositive."\textsuperscript{32} These persons are infected with HIV but show no sign of illness.\textsuperscript{33} The second category includes persons with "AIDS-Related Complex," or "ARC," who have minor symptoms but continue to function.\textsuperscript{34} The third category includes persons with "active" or "full-blown" AIDS.\textsuperscript{35} AIDS initially manifests itself with symptoms such as fatigue, diarrhea, night sweats, and enlarged lymph nodes.\textsuperscript{36} AIDS victims are susceptible to any number of

\textsuperscript{23} Medical information about AIDS is widespread enough to be termed "common knowledge." See generally Id.; Carey and Arthur, \textit{supra} note 1, at 284.


\textsuperscript{25} Id.

\textsuperscript{26} Id.

\textsuperscript{27} Id.

\textsuperscript{28} Id.

\textsuperscript{29} Id. at 1461.

\textsuperscript{30} "Estimates suggest that an individual exposed to the virus has a 20% risk of developing 'full-blown AIDS' and a 25% risk of developing a related condition." Carey and Arthur, \textit{supra} note 1, at 287 n.11.

\textsuperscript{31} King, \textit{supra} note 21, at 588.

\textsuperscript{32} Id.

\textsuperscript{33} Id.

\textsuperscript{34} Id.

\textsuperscript{35} Id. at 589.

\textsuperscript{36} Id.
“opportunistic infections” which would not otherwise invade the human body but for a severely weakened immune system. The AIDS victim eventually succumbs to one of those infections, rather than HIV itself. AIDS may not surface until many years after HIV infection.

There is no cure for AIDS. Of the persons diagnosed with AIDS at its discovery in 1981, 92% have already died. The overall mortality rate for AIDS patients thus far is almost 60%. AIDS is always fatal.

B. History, Causes, And Significance Of AIDS Discrimination

Ever since AIDS was “discovered” in 1981, society has reacted with fear.

There are many horror stories: people with AIDS and HIV infection have been fired from their jobs, kicked out of their homes, barred from school, thrown out of doctors’ offices, forced away from their children, denied bail, tested against their will, physically attacked.

Obviously, these “horror stories” involve deprivation of the rights of HIV infected persons. These rights include what are known as “subsistence-related opportunities.” These opportunities include employment, housing, health care, education, marriage, travel and military service. Thus, persons infected with HIV are not only forced to face a life-threatening disease and all its implications, but also the inability to accomplish some of life’s most necessary functions.

The causes of AIDS discrimination are easy to articulate, but difficult to eliminate. “People discriminate because they’re afraid.” AIDS is a new, mysterious disease. AIDS is contagious.

37. Id.
38. Id.
39. Id.
41. The U.S. AIDS Program, Center for Infectious Diseases, Centers for Disease Control, HIV/AIDS SURVEILLANCE REPORT, February 1990 at 13.
44. Quade interviewing Rubenfeld, Treating AIDS with Due Process, 16
"The AIDS virus is transmitted by the kind of behavior that most people do not engage in or approve of."\(^{45}\) Above all, AIDS is deadly. Thus, society has reacted naturally, but irrationally, with fear, hostility and discrimination.

The issue of AIDS discrimination is important for at least three reasons. First and foremost, discrimination in any form is morally wrong. Second, the discrimination against HIV-infected persons is irrational, unfounded, and unnecessary. The great weight of medical evidence indicates that AIDS cannot be spread by casual contact.\(^{46}\) Third, discrimination against HIV-infected persons is a threat to society as a whole in terms of both public health and personal liberty. The United States Centers for Disease Control have made it clear that HIV-infected persons are more likely to participate in testing and counseling if they are assured that they will avoid discrimination in employment, housing and health services.\(^{47}\) The Director of the World Health Organizations AIDS Program observed:

How societies treat AIDS virus infected people will not only test fundamental values but will likely make the difference between

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45. Koop, supra note 40, at 490.
46. Carey and Arthur stated in note 5:
   The Centers for Disease Control (CDC), a branch of the United States Public Health Service, published guidelines discussing the transmittal of AIDS: AIDS is not spread by the kind of "nonsexual person-to-person contact that generally occurs among workers and clients or consumers in the workplace," including such settings as offices, schools, factories, and construction sites. CENTERS FOR DISEASE CONTROL, SUMMARY: RECOMMENDATIONS FOR PREVENTING TRANSMISSION OF INFECTION WITH HUMAN T-LYMPHOTROPIC VIRUS TYPE III/LYMPHADENOPATHY-ASSOCIATED VIRUS IN THE WORKPLACE, reprinted in 34 MORBIDITY AND MORTALITY WEEKLY REP. 681, 682, 694 (Nov. 15, 1985). Workers known to be infected with the AIDS virus should not be restricted from work on this account, nor should they be restricted from using telephones, office equipment, toilets, showers, eating facilities, and water fountains. Id. at 694. In the case of accidents in the work setting, equipment that is contaminated with blood or other body fluids from any worker, known to be infected or not, should be cleaned with soap and water or a detergent. Id. A disinfectant or a fresh solution of household bleach, as described in the guidelines, should be used to wipe the area after the cleaning.
47. Schatz, supra note 42, at 45 n.2, (citing Public Health Service Guidelines for Counseling and Antibody Testing to Prevent HIV Infection and AIDS, 36 MORBIDITY AND MORTALITY WEEKLY REPORT 509, 514 (1987)).
success and failure of AIDS control strategies at the national level. To the extent that we exclude AIDS-infected persons from society, we endanger society; while to the extent we maintain AIDS-infected persons within society, we protect society. 48

Unfortunately, the lifestyles of most HIV-infected persons make them susceptible to discrimination at the outset. Homosexuals, drug users, and prostitutes have already experienced discrimination based solely on their behavior patterns; they are well aware that the revelation of HIV infection could completely isolate them. 49

Achievement of public health goals of controlling the spread of HIV infection by reaching high-risk populations and affording them education and the means to protect themselves and others, will not be advanced simply by enacting promises of confidentiality. . . More is likely to be gained by enacting and enforcing protection against discrimination in crucial areas for those affected persons whose identities are likely to become known. 50

Widespread, involuntary testing of segments of the population evidences the erosion of civil liberties. And make no mistake—an erosion of freedom for one portion of the population is a threat to all members of society. Authorities recognize that “cornerstones of AIDS policy must be protection of privacy and freedom from discrimination.” 51

C. Preexisting/Alternate AIDS Discrimination Protections

The advent of AIDS forced victims, their advocates and attorneys to seek redress of new and unique legal issues. The law has responded slowly to AIDS issues, including AIDS discrimination. Thus, attorneys initially approached AIDS discrimination in light of preexisting or alternate legal actions. A discussion of some preexisting/alternate AIDS discrimination protections follows.

1. The Rehabilitation Act Of 1973

Congress intended the Rehabilitation Act of 1973 (Rehab Act) to protect the rights and interests of handicapped Americans and

48. Schatz, supra note 42, at 45 n.1.
50. Id.
to protect their access to programs/projects funded by the federal government.\textsuperscript{52} Section 504 of the Rehab Act prohibits recipients of federal funds from discriminating against otherwise qualified handicapped persons.\textsuperscript{53} The 1987 decision in \textit{School Board of Nassau County v. Arline}\textsuperscript{54} indicated that communicable diseases may be handicapping conditions under Section 504.\textsuperscript{55} The issue was

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\item 54. 480 U.S. 273 (1987).
\item 55. 29 U.S.C.A. § 794 states:
\begin{itemize}
\item (a) Promulgation of rules and regulations
\begin{itemize}
\item No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.
\end{itemize}
\item (b) "Program or activity" defined
\begin{itemize}
\item For the purposes of this section, the term "program or activity" means all of the operations of —
\begin{itemize}
\item (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
\item (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
\item (2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or
\item (B) a local educational agency (as defined in section 2891(12) of Title 20) system of vocational education, or other school system;
\item (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship —
\begin{itemize}
\item (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
\item (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
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whether HIV infection qualified as a “handicap” under Section 504. However, the Arline court refused to address the AIDS issue, noting that a person who poses a risk of communicating an infectious disease to others would not be “otherwise qualified” for discrimination protection. The American Medical Association recommended that a determination of whether a person is or is not “otherwise qualified” should rest on

[findings of] facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm.

The Arline court adopted the AMA Recommendation.

An amendment to Section 504’s “handicapped” definition codified the Arline implication.

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers; exception

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.


56. Arline, 480 U.S. at 282-86. Arline was dismissed from her teaching job at a Florida elementary school because of her battles with tuberculosis. The Supreme Court rejected her employer’s defense that the discrimination was justified by fear of the disease. The Court recognized that “society’s accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from the actual impairment.” Id. at 284. For an in-depth analysis of Arline, see Note, Civil Rights—Rehabilitation Act of 1973 - Individual Affected with Contagious Disease Held “Handicapped” and Entitled to Protection of Section 504 (29 U.S.C. § 794). School Board of Nassau County v. Arline, ___ U.S. ___, 107 S.Ct. 1123, 94 L. Ed. 2d 309 (1987), 19 ST: MARY'S L.J. 231 (1987).


58. Id.
For the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health and safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. 59

The judiciary appears willing to interpret expansively Section 504. Relying on current medical knowledge, courts have repeatedly applied the Arline analysis and found HIV infection a handicap under Section 504, and HIV-infected persons to be "otherwise qualified" for discrimination protection. 60 Yet Section 504 protections only apply to entities receiving federal funds. Section 504 does not impact private parties.

[T]he protection provided by section 504 stops where the federal funds stop. Therefore, section 504 does not speak to private interest opportunities, and protection from unfair private interest discrimination obliges individuals diagnosed with HIV to rely upon state-level 504 analogs. Unfortunately, these statutes vary considerably from state to state in the protection that they offer. 61

2. The NC Handicapped Persons Protection Act (NCHPPA)

The NCHPPA 62 is similar to section 504, but varies from it in several significant aspects. First, employers with less than 15 employees are not subject to the NCHPPA's provisions. 63 Second, the


60. See Hollowell and Eldridge, supra note 53, at 565-66. Chalk v. United States Dist. Court, 832 F.2d 1158 (9th Cir. 1987) (applying Section 504 to a teacher diagnosed with AIDS); Thomas v. Atascadero Unified School Dist., 662 F. Supp. 376 (C.D. Cal. 1987) (a kindergarten-aged child diagnosed with AIDS is a Section 504 handicapped individual); Ray v. School Dist. of Desoto County, 666 F. Supp. 1524 (M.D. Fla. 1987) (HIV seropositive school-aged children are handicapped individuals under Section 504); Kohl v. Woodhaven Learning Center, 672 F. Supp. 1226 (W.D. Mo. 1987) (asymptomatic active carriers of a contagious disease are handicapped individuals for Section 504 purposes). See also Trageser v. Libbie Rehabilitation Center, Inc., 590 F.2d 87 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979) (Medicaid and Medicare reimbursements are federal financial assistance for Section 504 purposes, indicating that health care employees are subject to Section 504 provisions).

61. Hollowell and Eldridge, supra note 53, at 566.


63. Id. at § 168A-3(2).
NCHPPA exempts sexual preferences and active drug addiction/abuse from its definition of physical or mental impairment precluding their consideration as a handicapping condition.64 (Nonetheless, it seems that it is the sexual preference or drug abuse which is excluded, rather than contracting HIV via such behavior.)65 Third, the NCHPPA provides that it is not discriminatory for an employer to “fail to hire, transfer, or promote, or to discharge a handicapped person because the person has a communicable disease which would otherwise disqualify a non-handicapped person from similar employment.”66 Obviously, the discrimination protection afforded to AIDS/HIV-infected persons by the NCHPPA is vague and limited at best and nonexistent at worst.67

3. Other Discrimination Protection

a. ERISA and COBRA

Two federal laws may prohibit at least some employers from discharging AIDS/HIV-infected employees in an attempt to avoid covering their medical cost on the employer’s health plan. ERISA (the Employee Retirement Income Security Act) prohibits any employer from firing or discriminating against employees to deprive them of company health benefit plans.68

64. Id. at § 168A-3(4).
68. 29 U.S.C.A. § 1140 states:
   It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C.A. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare
COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1986) requires employers of 20 or more employees to continue group plan insurance coverage for certain employees who leave work for any of six reasons and who elect to continue paying their part of the group premiums. COBRA applies even if the

and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.


69. 29 U.S.C.A. §§ 1161 & 1162 state:

§ 1161. Plans must provide continuation coverage to certain individuals
(A) In general
The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.
(B) Exception for certain plans
Subsection (a) of this section shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year. Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of Title 26 (relating to employers under common control) shall apply for purposes of this subsection.

§ 1162. Continuation coverage
For purposes of section 1161 of this title the term "continuation coverage" means coverage under the plan which meets the following requirements:
(1) Type of benefit coverage
The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.
(2) Period of coverage
The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:
(A) Maximum required period
(i) General rule for terminations and reduced hours. - In the case of a qualifying event described in section 1163(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.
(ii) Special rule for multiple qualifying events. - If a qualifying event
(other than a qualifying event described in section 1163(6) of this title) occurs during the 18 months after the date of a qualifying described in section 1163(2) of this title, the date which is 36 months after the date of the qualifying event described in section 1163(2) of this title.

(iii) Special rule for certain bankruptcy proceedings. - In the case of a qualifying event described in 1163(6) of this title (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 1167(3)(C)(iii) of this title), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(iv) General rule for other qualifying events. - In the case of a qualifying event not described in section 1163(2) or 1163(6) of this title, the date which is 36 months after the date of the qualifying event.

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare eligibility

The date on which the qualified beneficiary first becomes, after the date of the election -

(i) covered under any other group health plan (as an employee or otherwise), or

(ii) in the case of a qualified beneficiary other than a qualified beneficiary described in section 1167(3)(C) of this title, entitled to benefits under title XVIII of the Social Security Act [42 U.S.C.A. § 1395 et seq.].

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium -

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified bene-
employee is individually uninsurable. COBRA even requires employers to give those employees the option of converting to individual coverage when group benefits expire.

b. Federal And State Laws Prohibiting Sex, Race, National Origin Or Sexual Orientation Discrimination

Title VII of the Civil Rights Act of 1964 and most similar state and local statutes prohibit discrimination on the basis of sex, race, national origin or sexual orientation. If an employer's action impacts a group in a given class, he may risk violation of such laws.

c. Tort Claims

Wrongful actions against AIDS/HIV-infected persons may give rise to tort actions for defamation, invasion of privacy, negligent and intentional infliction of emotional distress and/or assault and battery.

ANALYSIS

The North Carolina Communicable Disease Act (NCCDA) now serves as the state's protection against HIV or AIDS-based discrimination. Late in the 1989 session the General Assembly agreed on a package of amendments to the NCCDA which purport to protect the rights of persons with AIDS or HIV infection. The amendments cover the areas of health care, employment, housing, public services, accommodations and transportation. This Comment individually addresses each provision below.

A. Health Care Provisions

1. Patient Testing

The new NCCDA amendments allow North Carolina physicians to perform HIV infection tests on their patients when, in the physician's reasonable medical judgment, such test is necessary for

ficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

70. Id. at § 1162(5).
71. Id. at § 1162(5).
73. N.C. GEN. STAT. § 130A-148(h)-(j) (as amended 1989).
appropriate treatment of the patient. However, the physician must inform the patient of the proposed testing and give him an opportunity to refuse "informed consent." The NCCDA does not elaborate on "informed consent," so presumably North Carolina's preexisting informed consent statute controls. Even so, the statu-

74. Id. at § 130A-148(h).
76. N.C. Gen. Stat. § 90-21.13 states:

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or the patient's spouse, parent, guardian, nearest relative or other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.

(c) A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of Article 7 of Chapter 35 and Articles 1A and 19 of Chapter 90, the provisions of those Articles shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4.)

tory provisions leave many questions and concerns unanswered. How will the physician's decision that testing is necessary for appropriate treatment of the patient be measured, and by whom? What constitutes adequate disclosure to obtain informed consent for HIV testing purposes? Are medical assurances of safety alone enough, or should the patient be apprised of potential discrimination or confidentiality issues regarding medical record privacy? 77 Who decides when or if disclosure was adequate or informed con-

77. Medical record information confidentiality is addressed in N.C. GEN. STAT. § 130A-143(1986); this section apparently still controls the issue:

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;
(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;
(3) Release is made to health care personnel providing medical care to the patient;
(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;
(5) Release is made pursuant to other provisions of this Article;
(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case.
(7) Release is made by the Department or a local health department to a court or a law enforcement officer for the purpose of enforcing the provisions of this Article pursuant to Article 1, Part 2 of this Chapter.
(8) Release is made by the Department or a local health department to another state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;
(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;
(10) Release is made pursuant to G.S. § 130A-144(b); or
(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS. (1983, c. 891, s. 2; 1987, c. 782, s. 13.)

sent actually obtained?

Two exceptions exist to the informed consent for HIV testing requirement. First, the physician may perform HIV tests on a patient who is incompetent to give or incapable of giving informed consent if others authorized to give consent are unavailable and the testing is necessary for appropriate diagnosis or care of the patient. Again, the NCCDA leaves many questions yet unanswered. When will a patient be deemed incapable of giving or incompetent to give informed consent? Does the physician decide? May the physician take into consideration the AIDS-related mental decay associated with progression of the disease? How hard must the physician try to obtain consent from others authorized by the patient to give it? When will those authorized others be deemed "unavailable"?

The second exception to the informed consent requirement relates to unemancipated minors. Physicians may test unemancipated minors for HIV infection without the consent of parents or legal guardians, even if the parent or legal guardian has refused consent, if there is a reasonable suspicion that the minor has AIDS or HIV or that the child has been sexually abused. This exception leaves many concerns unmet. Who must harbor the suspicion?

78. N.C. GEN. STAT. § 130A-148(h) provides:

(h) The Commission may authorize or require laboratory tests for AIDS virus infection when necessary to protect the public health.

A test for AIDS virus infection may also be performed upon any person solely by order of a physician licensed to practice medicine in North Carolina who is rendering medical services to that person when, in the reasonable medical judgment of the physician, the test is necessary for the appropriate treatment of the person; however, the person shall be informed that a test for AIDS virus infection is to be conducted, and shall be given clear opportunity to refuse to submit to the test prior to it being conducted, and further if informed consent is not obtained, the test may not be performed. A physician may order a test for AIDS virus infection without the informed consent of the person tested if the person is incapable of providing or incompetent to provide such consent, others authorized to give consent for the person are not available, and testing is necessary for appropriate diagnosis or care of the person.

An unemancipated minor may be tested for AIDS virus infection without the consent of the parent or legal guardian of the minor when the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infection or that the child has been sexually abused.


79. Id.
When is it "reasonable"? Who decides that it is "reasonable"? What legal consequences might result from the exercise of such tremendous discretion?

The NCCDA gives treating physicians considerable leeway in the testing of patients. This amendment does not seem to have patient rights protection as its intent so much as physician or health care worker (HCW) protection. One might question whether additional HCW protection is necessary, particularly at a patient's expense. Consider that out of a health care workforce of approximately seven million people, less than one dozen have been HIV infected as a result of exposure while on the job. In each of those cases, the infection resulted from a relaxation of protective measures such as the guidelines issued by the Centers for Disease Control.

It might be best to analyze the NCCDA testing provisions in light of recommendations by groups such as the American Medical Association and the Centers for Disease Control. Comparison of

80. Koop, supra note 40, at 492.
81. Id.
   1. To identify infected persons and to offer treatment where possible to protect uninfected third parties.
   2. To offer education and counseling that would modify high risk behavior.
   3. To solicit patient cooperation for location and referring sex partners.
   4. To obtain broadened epidemiological statistics on the prevalence of HIV infection in the population.

Id. at 145, (citing Am. Med. Ass'n, Prevention and Control of AIDS—An Interim Report, Rep. YY (A-87), at 8-9 (undated)). The CDC recommends that any developed testing programs include the following principles:

1. Obtaining consent for testing.
2. Informing patients of test results, and providing counseling for seropositive patients by properly trained persons.
3. Assuring that confidentiality safeguards are in place to limit knowledge of test results to those directly involved in the care of infected patients or as required by law.
4. Assuring that identification of infected patients will not result in denial of needed care or provision of suboptimal care.
5. Evaluating prospectively 1) the efficacy of the program in reducing the incidence of parenteral, mucous-membrane, or significant cutaneous exposures to healthcare workers to the blood or other body fluids of HIV-infected patients and 2) the effect of modified procedures on patients.
the NCCDA and such recommendations reveals that while the NCCDA provisions are not necessarily violative of patient’s rights, neither are the NCCDA provisions especially patient-protective. There is certainly a potential for abuse in the NCCDA patient testing provision amendments.

2. Treatment Of AIDS/HIV Infected Patients

The NCCDA amendments allow a licensed health care provider or facility to treat AIDS/HIV-infected patients “differently” from persons not infected when such treatment is appropriate to protect the health care providers while providing appropriate care to the patient.83 Notice that the health care providers themselves are given the power to determine whether and/or when to treat AIDS/HIV-infected patients “differently” for the health care provider’s own protection.84 Also, the NCCDA nowhere defines the “different” treatment allowed. To what horrors might a physician subject an AIDS/HIV-infected patient in light of legally sanctioned “different” treatment?

Furthermore, the NCCDA amendments allow health care providers/facilities to refer an AIDS/HIV-infected patient to another health care provider or facility when such referral is for the purpose of providing more appropriate treatment for that patient.85 With this amendment North Carolina has tacitly allowed a practice known as “patient dumping” to persist. The result is an

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83. N.C. GEN. STAT. § 130A-148(j)(1) provides:

   (j) It shall not be unlawful for a licensed health care provider or facility to:

   (1) Treat a person who has AIDS virus or HIV infection differently from persons who do not have that infection when such treatment is appropriate to protect the health care provider or employees of the provider or employees of the facility while providing appropriate care for the person who has the AIDS virus or HIV infection.


84. Id.

85. Id. § 130A-148 (j)(2) provides:

   (2) Refer a person who has AIDS virus or HIV infection to another licensed health care provider or facility when such referral is for the purpose of providing more appropriate treatment for the person with AIDS virus or HIV infection.

effective denial of treatment to AIDS/HIV infected persons as they are shuttled from one health care provider/facility to another. The one doing the "dumping" can simply claim that their purpose is more appropriate care for the infected patient.

The practices enumerated in these amendments fly in the face of the physician's ethical duty to treat, as that duty is understood by several leading medical groups, such as the American Medical Society, the American College of Physicians, the Infectious Diseases Society of America and the American Nurses' Association. Apparently, North Carolina physicians are unwilling to follow their idealistic and admirable lead. In the words of former U.S. Surgeon General C. Everett Koop,

Physicians and hospital administrators who turn away AIDS patients are also worthy of our contempt and condemnation. For three millennia, the healing arts and sciences have reached out to all who have needed attention. This is hardly the time, and AIDS is hardly the reason, for anyone to reverse the course of this noble history.

86. In December of 1987, The American Medical Association adopted a policy stating unequivocally that "a physician may not ethically refuse to treat a patient whose condition is within the physician's current realm of competence solely because the patient is seropositive. Persons who are seropositive should not be subjected to discrimination based on fear of prejudice."

Similarly, the American College of Physicians and the Infectious Diseases Society of America adopted a joint "position paper" on AIDS in January of 1988. Its first "position" says that "[P]hysicians, other health care professionals, and hospitals are obligated to provide competent and humane care to all patients, including patients with AIDS and AIDS-related conditions, as well as HIV-infected patients with unrelated medical problems. The denial of appropriate care to patients for any reason is unethical." Further along in the document, such behavior by a physician is called "morally and ethically indefensible."

And finally, the American Nurses' Association, in June of 1987, reaffirmed its "commitment to protecting the civil and human rights of persons affected with AIDS as well as those of the caregivers." In the same context, the A.N.A. House of Delegates also reaffirmed "the commitment of the nursing profession to all people in need of nursing services, regardless of the illness or the severity of that illness."

Koop, supra note 40, at 492-93.

87. Id. at 491.
B. Employment Provisions

Amendments to the NCCDA prohibit the requirement, performance, or use of AIDS testing to determine suitability for continued employment. The NCCDA also prohibits discrimination

88. N.C. GEN. STAT. § 130A-148(i) provides:

(i) Except as provided in this section, no test for AIDS virus infection shall be required, performed or used to determine suitability for continued employment, housing or public services, or for the use of places of public accommodation as defined in G.S. § 168A-3(8), or public transportation.

Further it shall be unlawful to discriminate against any person having AIDS virus or HIV infection on account of that infection in determining suitability for continued employment, housing, or public services, or for the use of places of public accommodation, as defined in G.S. § 168A-3(8), or public transportation.

Any person aggrieved by an act or discriminatory practice prohibited by this subsection relating to housing shall be entitled to institute a civil action pursuant to G.S. § 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory practice prohibited by this subsection other than one relating to housing may bring a civil action to enforce rights granted or protected by this subsection.

The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury. Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization.

In a civil action brought to enforce provisions of this subsection relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this subsection. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable. In any civil action brought under this subsection, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as a part of costs.

A civil action brought pursuant to this subsection shall be commenced within 180 days after the date on which the aggrieved person became aware or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct.

Nothing in this section shall be construed so as to prohibit an employer from:

(1) Requiring a test for AIDS virus infection for job applicants in preemployment medical examinations required by the employer;

(2) Denying employment to a job applicant based solely on a confirmed positive test for AIDS virus infection;

(3) Including a test for AIDS virus infection performed in the course of an annual medical examination routinely required of all employees by
against an AIDS/HIV-infected individual on account of that infec-
tion to determine suitability for continued employment. A person
aggrieved by such an act or discriminatory practice may bring a
civil action to enforce the rights granted or protected by this sub-
section. The problem comes in determining what, if any, rights
are granted or protected by the NCCDA. The amendments ex-
pressly allow employers to (1) require a test for AIDS virus infec-
tion for job applicants in preemployment medical examinations re-
quired by the employer; (2) deny employment to a job applicant
based solely on a confirmed positive test for AIDS virus infection;
(3) include an AIDS test in annual medical examinations routinely
required of all employees by an employer; and (4) take appropri-
ate employment action, including reassignment or termination, if
continuation of employment of an AIDS/HIV-infected employee
would pose a significant risk to the health of the employee, co-
workers or the public, or if the employee is unable to perform the
normally assigned duties of the job. Thus, even the one slight
protection rendered to AIDS/HIV-infected employees, that is, con-
tinuation of employment, is dubious in light of this last provision.
To add insult to injury, the NCCDA exempts restaurants from the
provisions regarding continuation of AIDS/HIV-infected employ-
ees until July 1, 1991.

The NCCDA provisions regarding employment discrimination
are contrary to the weight of legal authority, the mandate of mo-
rality, and the call of common sense. Prior to the enactment of

the employer; or

(4) Taking the appropriate employment action, including reassign-
ment or termination of employment, if the continuation by the employee
who has AIDS virus or HIV infection of his work tasks would pose a
significant risk to the health of the employee, coworkers, or the public, or
if the employee is unable to perform the normally assigned duties of the
job.

89. Id.
90. Id.
91. Id. at § 130a-148 (i)(1).
92. Id. at § 130a-148 (i)(2).
93. Id. at § 130a-148 (i)(3).
94. Id. at § 130a-148 (i)(4).
95. Id.
96. "Session Laws 1989, c. 698, s.2 provides that restaurants issued a permit
pursuant to § 130A-248 shall be exempted from § 130A-148(i), as it applies to
suitability for continued employment, until July 1, 1991." N.C. GEN. STAT.
these amendments, scholars largely agreed that its present provisions would be unlawful.\textsuperscript{97} No doubt it is wrong as well as unnecessary to discharge a person infected with HIV solely on the basis of that infection, when medical knowledge assures us that AIDS is not transmitted through casual, workplace contact.\textsuperscript{98} Again, in the words of Dr. Koop:

An employer who summarily dismisses a worker with AIDS is plain wrong. I have told many audiences of business people that the only reason they have for dismissing someone with AIDS is if the routine work of their companies involves anal intercourse or "shooting" drugs. If that is the case, then by all means, they should dismiss the offending employee. But they ought to take a look at the rest of the place, too, because they have got much more trouble than just AIDS.\textsuperscript{99}

Unfortunately, it again seems that the NCCDA amendments are designed to protect someone other than the AIDS victim. In this case, it is the employer who controls and benefits.

\textsuperscript{97} In virtually all cases, your company may not discriminate against any employee on the grounds that he has AIDS, has tested positive for AIDS or AIDS-related complex, has tested positive for the AIDS virus, or is suspected of having AIDS. That discrimination is not permitted in hiring, firing, promotions, demotions, transfers, job assignments, compensation, or any other employment-related decision.

\textsuperscript{98} Under both the federal and state handicap statutes it is probably unlawful to test employees for the AIDS virus for the purpose of making employment decisions. On the other hand, it is proper to request an employee to "undergo a medical examination . . . for the purpose of determining the person's ability or capacity to safely and satisfactorily perform the duties" of the job in question. A blood test measuring seropositivity for the AIDS virus, unless symptomatically indicted, arguably does not measure the ability to perform a job satisfactorily, but is probably not unlawful if the results are not used to make hiring or retention decisions.

\textsuperscript{99} If AIDS is a protected handicap, then an employer may not directly ask an applicant whether he or she has AIDS. Courts are likely to view such inquiries as evidence of an employer's intent to discriminate.
C. Housing; Public Services, Accommodations And Transportation Provisions

The NCCDA amendments prohibit the use of an HIV infection test to determine suitability for housing, public services, accommodation or transportation.\(^{100}\) Also, it is unlawful for anyone to discriminate on the basis of AIDS/HIV infection to determine suitability for access to the abovementioned activities.\(^{101}\) The NCCDA amendments do not provide any express guidelines in these areas, but do provide a private right of action under the State Fair Housing Act\(^{102}\) or the NCCDA itself.\(^{103}\) Obviously, the areas of housing, public services, accommodations, and transportation are fraught with potential for discrimination against HIV-infected persons. The NCCDA amendments simply do not begin to address the multitude of imaginable issues.

CONCLUSION

Although the North Carolina General Assembly may have enacted the AIDS anti-discrimination amendments to the NCCDA with the best of intentions, the result is actually a restriction of rights rather than an expansion or protection of rights.\(^{104}\) Physicians, health care providers, and facilities now have tremendous discretion to test patients for HIV infection and to refer (read that “dump”) AIDS/HIV patients right out of medical care.\(^{105}\) Employers can do anything short of firing a present employee discovered to have HIV infection.\(^{106}\) Employers can probably terminate that employment with one of the neat justifications provided by the “antidiscrimination” statute itself.\(^{107}\) The NCCDA purports to prohibit discrimination in the housing, public services, accommodations, and transportation arenas,\(^{108}\) but provides not one real guideline as to violations or prescribed acts. The failures of the NCCDA amendments, coupled with the already vulnerable position of AIDS/HIV-infected persons (who are unlikely to avail

\(^{100}\) N.C. GEN. STAT. § 130A-148(i) (1989).
\(^{101}\) Id.
\(^{102}\) N.C. GEN. STAT. § 41A-7 (1989).
\(^{103}\) N.C. GEN. STAT. § 130A-148(i)(1989).
\(^{104}\) See supra text accompanying note 97.
\(^{105}\) See supra text accompanying notes 74-87.
\(^{106}\) See supra text accompanying notes 91-95.
\(^{107}\) See supra text accompanying note 94.
\(^{108}\) See supra text accompanying notes 100-103.
themselves of the law in the first place) render this meager legislative attempt virtually worthless. The NCCDA amendments do not protect AIDS/HIV-infected individuals. If anything, the amendments harm the people originally sought to be protected by strengthening the positions of those who control the very lives of AIDS victims: their physicians and their employers. The only good thing to be said about the 1989 NCCDA amendments is that they are a start. North Carolina is at least willing to recognize the problem of AIDS discrimination, even though it has yet to legislate a solution.

Angela Sue Bullard