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NOTIFY FOSTER PARENTS OF HIV STATUS

House Bill 5131 as enrolled
Second Analysis (1-11-90)

RECEIVED

Sponsor: Rep. John D. Pridnia
House Committee: Public Health
Senate Committee: Health Policy Mich. State Law Library

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THE APPARENT PROBLEM:

Public Act 488 of 1988 made it unlawful to discuss or report the fact that someone had a communicable disease, unless the individual — or, in the case of minors, the child's parent — gave permission. If the individual (or the parent) refused permission, disclosure could be sought by petitioning for a court order.

Public Act 174 of 1989 amended Public Act 488 of 1988, narrowing the scope of the act's confidentiality provisions to people who test positive for human immunodeficiency virus (HIV) or who have acquired immunodeficiency syndrome (AIDS) or acquired immunodeficiency syndrome related complex (ARC).

Thus as the law now stands, without prior parental permission or a court order, it is unlawful to discuss or report the fact that a child has tested positive for HIV or has AIDS or ARC, even to foster parents of HIV-infected children. To protect both HIV-infected children and their foster families, legislation has been proposed to allow foster parents to be told when a child placed with them tested positive for HIV, without first having to obtain parental consent or a court order.

THE CONTENT OF THE BILL:

The bill, in effect, would allow agencies placing children in licensed child care (including day care centers, nursery schools, day care homes, camps, and private family homes for foster care or for adoption) to inform the care provider of a child's HIV infection without first having to obtain parental consent or a court order.

The bill would do this by amending the Public Health Code to add a new exemption to the list of exemptions from the code's confidentiality requirements for information regarding HIV infection, AIDS, and ARC. The bill would specifically exempt from these confidentiality requirements information about someone's HIV status disclosed by the Department of Social Services, the Department of Mental Health, the probate court, or a child placing agency in order to care for a minor and to place the child with a licensed child care organization. The information could be disclosed only to the director of the child care organization or, in the case of private homes, to the person who held the child care license.

Anyone receiving such information under this new provision would be subject to the code's confidentiality requirements and penalties for violations.

"Child placing agency" and "child care organization" would be defined as they are in the child care licensing act, Public Act 116 of 1973. (Under this act, "child placing agency" means agencies that place children in private family homes for adoption or for foster care, while "child care organization" includes "organizations commonly

described as child caring institutions, child placing agencies, children's camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or day care homes.") MCL 333.5131

FISCAL IMPLICATIONS:

A Department of Social Services analysis reports that the bill would result in a small savings to the department in terms of staff time saved as a result of not having to go to court to obtain the necessary information. (11- 8-89)

ARGUMENTS:

For:

The bill is necessary for the protection both of HIV infected children and of the foster care families caring for such children. The immune systems of children with HIV infection are weakened so that otherwise normal childhood diseases and infections — and even immunizations — can be fatal. But since someone who tests positive for HIV does not necessarily show any symptoms of being sick, it is possible to care for an HIV infected child without being aware of the child's infection. Foster parents responsible for the medical care of these children need to know about the children's HIV infection in order to provide the children with appropriate health supervision and medical care. In addition, in order to take the necessary reasonable precautions when caring for an HIV infected child foster families need to know of the child's HIV status. Caring for children, and for young children in particular, means that the care provider is more likely to be exposed to bodily fluids than in the case of caring for adults, and foster care parents need to have this information in order to be able to take the necessary precautions.

When children must be placed outside their families, the parents involved often are unavailable (as in cases of abandonment) or uncooperative. In the case of children infected with HIV, the courts, upon petition, have ordered that the child's HIV status be disclosed. However, reportedly, such court ordered disclosure has not always been timely, with some children having been placed before the court order could be obtained. In addition, many children must be placed in foster care in the evening or on weekends, when courts are not readily available.

The need for foster parents to know the health and medical status of children placed in their care is reflected in the Child Placing Agency Licensing Rule (R400.679[2]), which requires that foster parents be given a copy of "the current physical examination and medical history" of children placed in their care. Out of fairness both to foster children and their foster families, and in the best interests of both, the bill is needed.

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For:

There already is a shortage of qualified foster families, and as the incidence of infants born with HIV infections rises, the need for families to care for such children will only increase. Reportedly some foster care families are deciding that the risks to their families and to the foster children are too great to accept foster children with HIV, AIDS, or ARC unless the family can be told of the child's positive status prior to placement. In addition, some existing foster care families have expressed concern about whether or not they might be held legally liable for unknowingly exposing non-family members (such as babysitters and housekeepers) to HIV infected children. Without the bill, not only will some families withdraw from the foster care system, it also will become increasingly difficult to recruit new families because of concerns that they would not be given necessary medical information about children to be placed with them.

Against:

It remains unclear whether or not yet another exception to the health code's HIV confidentiality requirements needs to be made, since the number of cases mentioned in testimony before the House Committee on Public Health ranged from three to less than a dozen. Moreover, the liability concerns raised in committee suggest both that people in the community are unaware of existing law (unlawful disclosure of someone's HIV status is a misdemeanor) and that some of the fears themselves reflect the kind of prejudice against people with HIV infections that the law is meant to minimize. Again, by increasing the number of exceptions to the confidentiality requirements, the likelihood of widespread dissemination of confidential information — and the possibilities of social ostracism of the child and worse — is greatly increased, despite the law's prohibition against unlawful disclosure. If a foster parent tells a babysitter or housekeeper that a child is HIV infected, does anyone really believe that the disclosure will stop there, even though "legally" the babysitter or housekeeper is bound by the same confidentiality requirements as the foster parent (and everyone else, for that matter)? The concerns of foster parents do need to be addressed, but it is not clear that the bill will do this in a way that will best protect the interests of everyone involved.