



**House
Legislative
Analysis
Section**

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AIDS TRACKING

House Bill 4103 (Substitute H-4)
First Analysis (6-7-88)

RECEIVED

Sponsor. Rep. Thomas G. Power
Committee: Public Health

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THE APPARENT PROBLEM:

Currently, when a physician or health agency tests persons for acquired immunodeficiency syndrome (AIDS), there is no state law stipulating whether or not the Department of Public Health should be notified. Since the scientific community is in general agreement that AIDS is transmitted primarily through sexual contact, exchange of blood, and maternal-fetal routes, it is important that persons who have been in sexual contact with — or who have shared intravenous drug equipment with — AIDS infected persons, be warned of the possibility of infection. The Department of Public Health at present has in place procedures for reporting cases of venereal disease, and for tracing the partners of those who have been found to have certain venereal diseases. To aid the state in surveillance of the AIDS disease, it is felt that the Public Health Code should be amended to allow the department to use these same tactics to help fight the spread of AIDS.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to require individuals, health facilities, certain licensees under the code, and government entities (with the exception of the Department of Corrections and licensed clinical laboratories) to report the names and addresses of people who test positive for the presence of the Human Immunodeficiency Virus (HIV) — the AIDS virus — or for an antibody to HIV, within seven days after obtaining the test result. After receiving such a report the Department of Public Health (DPH) or a local health department would have fourteen days to contact the test subject for a voluntary interview, offer to contact his or her sexual partners and, where applicable, intravenous drug use partners. Under the bill, the report would contain the name, address and telephone number of the test subject, unless administered by a private physician or at a department designated testing site. Within 35 days of receiving the report, the DPH would privately, confidentially, and in a discreet manner, contact the test subject's sexual or intravenous drug use partners and inform them, without revealing the test subject's identity, of the partner's possible exposure to AIDS, along with information on tests available for AIDS (or antibodies to HTLV-3) and how to avoid transmitting the virus. Should the test subject refuse to reveal his or her sexual and drug partners, the DPH would give the test subject information to distribute to his or her partners. The DPH would also be required to make a determination as to the probable validity as a sexual or hypodermic needle-sharing or drug-sharing partner of each individual named as such a contact, and the feasibility of contacting each individual. The DPH could elect not to attempt to contact an individual if it determined that the probability was very low, or zero, or that it was not feasible to contact the individual. If the test subject were determined to have been infected with HIV in utero, the department would attempt to interview his or her parent or legal guardian, or both.

Mich. State Law Library

Under the bill, tests for the presence of HIV or an antibody to HIV administered at DPH designated testing sites would be administered on an anonymous basis or under the condition that the test subject not be identified. If the subject tested positive for the presence of HIV or the antibody to HIV, the testing site's staff would report only the test subject's age, race, sex, county of residence, previous positive HIV test results, probable method of transmission, and purpose of the test. Further, the testing site staff would be required to contact the test subject and his or her contacts, in the same manner as outlined above. Physicians who tested individuals in their private office for the presence of HIV or an antibody to HIV, or physicians and health facilities that provided artificial insemination, blood transfusion, or organ transplantation services, and — as required by the provisions of House Bill 4980 — tested either the donor or the donated specimen for the presence of HIV or an antibody to HIV, would maintain patient confidentiality but would be required to notify the test subject prior to testing that certain procedures would be taken if he or she tested positive. If the test were positive, the physician would notify the test subject, and then, within seven days, notify the local health department. The local health department would assign the subject a numerical code, and he or she would have seven days to make an appointment with the department for an interview, after which the local health department would attempt to contact the subject's sexual and drug partners, as outlined above. Patient confidentiality would be maintained unless the subject did not make or keep the appointment for an interview with the local health department, in which case the physician would be required to immediately disclose the subject's name, address, and telephone number.

Under the bill, validation requirements for tests for the presence of HIV or an antibody to HIV would be a double positive enzyme-linked immunosorbent assay (ELISA) test, combined with a positive western blot assay test. In addition, the department would accept as valid all HIV tests considered reliable for medical purposes by the federal Centers for Disease Control. The bill would also require all individuals or government entities that administered tests to provide test subjects with appropriate and relevant counseling regarding HIV testing and HIV infection, both before and after the test. Pretest counseling would emphasize the benefits and advantages of HIV testing to the test subject, the family of the test subject, and society. The department could use data, reports, and records pertaining to information acquired through AIDS tests to conduct epidemiological and statistical studies, would be required to retain the information indefinitely, and would be required to promulgate rules pertaining to time periods for the retention and destruction of reports, data, and records containing the names of or identifying contacts. Until these rules were promulgated, the names of the contacts would be retained until the person was interviewed, or for a period of not less than six months, whichever came first.

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DPH or local health department reports, records, and data on test subjects, and the results of HIV test results acquired under the bill, would be subject to the confidentiality requirements and penalty provisions of House Bills 5026 and 5189, respectively. The bill would not limit the department's existing powers to monitor and control HIV infection or other communicable diseases.

Information acquired by DPH under the bill would be exempt from disclosure under the Freedom of Information Act.

The department would be required to report annually to the House and Senate committees on public health on the effect of the bill in efforts to monitor and control the AIDS virus, including statistics on the number of contacts named by test subjects and the number of those contacts reached by the department.

The bill would take effect six months after its enactment, and is tie-barred to both House Bill 5026, which would provide the mechanism for dealing with recalcitrant AIDS patients, and House Bill 5189, which would require confidential AIDS test results and prior, written, informed consent from patients.

MCL 333.2638

FISCAL IMPLICATIONS:

According to the Department of Public Health, it takes seven hours to interview each reported HIV infected person, at a cost of \$15 per hour, or \$105 per interview. Based on current estimates that 30,000 individuals are now HIV infected, the total cost for these interviews would be \$450,000. Contact notification would cost \$2,700,000, assuming that each primary case (those who test positive for the presence of HIV or an antibody to HIV) identifies two contacts, and that it would require three hours to conduct field investigations to locate, refer, and counsel each contact, at \$15 per hour. The department estimates that it would cost \$2,400,000 for pre- and post-test counseling sessions, at a cost of \$40 per partner. The total cost, then, would be \$5,550,000, excluding costs for development, printing and dissemination of report forms for the presence of HIV or an antibody to HIV. (6-1-88)

The House Fiscal Agency includes costs based on Ingham County Health Department estimates in its analysis. Ingham County estimates that one-half of the primary cases (those who test positive) provide contacts; of these, each identifies 3 contacts and requires 9.6 hours per interview at a cost of \$20.28 per hour, for a total cost of \$195 per interview. The agency estimates that between 3,500 and 4,000 individuals will test positive. It would therefore cost between \$341,300 to \$420,000 for contact interviews and field investigations, using Ingham County estimates of \$195 per interview at the lower range of the scale and Department of Public Health estimates of \$105 per interview at the upper range ($3,500 \times 1/2 = 1,750 \times \195) to ($4,000 \times \$105$). Similarly, total costs for pre- and post-test counseling would range from \$232,000 to \$320,000, using Ingham County estimates at the lower range and department estimates at the upper range ($1,750 \times 3.3 = 5,800 \times \40) to ($4,000 \times 2 \times \$40$) and department estimates of \$40 per partner. With the inclusion of laboratory tests, ranging from \$18,000 to \$29,600, in its estimate, the agency estimates first year costs of \$591,300 to \$769,600, but emphasizes that these costs are subject to many unknown conditions. (6-1-88)

ARGUMENTS:

For:

It is of primary importance in the control of AIDS that the partners of AIDS-contaminated persons be notified of the possibility that they may have been exposed to the AIDS virus, and that they receive counseling. The bill would provide for a uniform system of HIV reporting and contact notification. It is also of primary importance, if "at risk" persons are to be reached, that anonymous and confidential HIV reporting and partner notification provisions be established, that these persons trust their public health departments, and that word get out in the street that anonymous tests are available. The bill would protect anonymity while reporting, unless the HIV infected individual failed to show up for an interview with the local health department.

Against:

The Department of Public Health, as the agency that would implement the requirements of the bill, supports the principles of anonymous and confidential HIV reporting and partner notification proposed in the bill, and feels that this anonymity is important to assure access to counseling and testing for "at risk" persons. The department, however, has concerns about the amount of detail involved in the bill's reporting requirements with respect to both cost and amount of work involved. The department suggests amendments which would mainly require that HIV testing be anonymous in certain department designated testing sites and confidential in other agencies, with the exception of private doctors' offices if they agreed to carry out notification requirements (see SUGGESTED AMENDMENTS).

Against:

The bill requires only that department designated testing sites and physicians in private offices follow reporting procedures that maintain confidentiality of a patient's identity. Hospitals and governmental entities, with the exception of the Department of Corrections and licensed clinical laboratories, would be allowed to maintain records containing the names of those who have tested positive for the presence of HIV, or an antibody to HIV. Recent news articles have indicated that at least 75 cases of AIDS-related breaches of confidentiality — mainly by hospital staff members — and 233 acts of AIDS-related discrimination have been reported. When a breach of confidentiality occurs, the results are often tragic to the victim, and can involve expulsion from school, loss of a job, ostracism by friends and neighbors, an inability to get medical care, and disruption of family life. The bill should require a uniform system of reporting for all facilities and physicians.

Against:

The bill requires hospitals or governmental entities that administer HIV tests to provide the test subject with counseling regarding HIV testing and infection, both before and after the test. Emphasis is to be made during the pretest counseling on the benefits and advantages of HIV testing. This emphasis would only discourage potential test subjects, especially when they are faced with the possibility of loss of jobs and disruption of their personal lives should the test results be positive.

Response: It is important that test subjects be psychologically prepared for positive HIV test results. Pretest counseling does this, and reinforces the importance of taking HIV tests. Besides, most patients have already wrestled with the problem of HIV positivity before they

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enter the clinic or doctor's office, and some patients never come back after they've had the test.

Against:

The bill would place private physicians in a dilemma as far as disclosure requirements are concerned. On the one hand, if they reveal the identity of a patient who has tested positive for the presence of HIV or an antibody to HIV then they will have violated physician-patient confidentiality. On the other hand, if they do not follow required reporting procedures, then they will be in violation of the law.

Response: When a physician knows the sexual or needle-sharing partners of an HIV-infected person, then he or she has a moral obligation to inform those partners of the risks involved. Physicians should be granted statutory immunity from liability in such cases.

SUGGESTED AMENDMENTS:

The Department of Public Health suggests amendments to:

- require that department designated testing sites follow anonymous reporting procedures, without personal identifiers, and interview HIV infected individuals and offer to notify the individual's sexual or needle-sharing partners;
- require confidential reporting with personal identifiers in private physicians' offices, clinics, and hospitals, and in local health department clinics (other than department designated testing sites), and require local health departments to contact HIV infected individuals to interview and offer assistance in partner notification;
- require private physicians, clinics, hospitals and local health departments (other than department designated testing sites) to provide anonymous reporting of HIV infected individuals without personal identifiers if the physician or clinic agrees to carry out the interview and offer of assistance in partner notification;
- add HIV infections to the list of reportable diseases and infections, and authorize the department to provide the forms required to report physician and health agency information on patients who test HIV positive, and to establish time frames for submission of these forms; and
- provide a uniform set of confidentiality requirements to apply to all communicable diseases, and require that reports of HIV infection be subject to these requirements (at present there are three House bills which propose three different sets of confidentiality requirements.)

POSITIONS:

The Michigan Association for Local Public Health supports the bill. (5-31-88)

The Michigan Hospital Association supports the bill, but questions the need for three different reporting procedures, and is not certain that reporting with identifiers is the best approach if HIV testing is to be encouraged. (6-1-88)

The Michigan State Medical Society supports the concept of health departments doing contact tracing, and the availability of anonymous tests for the AIDS virus, as proposed in the bill. However, the society has concerns about the proposed reporting mechanism for physicians' offices. (6-1-88)

The Department of Public Health supports the concept of the bill, but has reservations as outlined above. (6-1-88)

The Hemophilia Foundation of Michigan has no position on the bill. (5-31-88)

The State Bar of Michigan has no position on the bill, but would support legislation allowing a physician to give the patient the opportunity to contact his or her sexual, drug-sharing, or hypodermic needle-sharing contacts directly before disclosing the patient's identity to the department. (5-31-88)

The American Civil Liberties Union opposes name reporting, unless 1) the option of using an anonymous testing site and voluntarily notifying contacts is uniformly provided, which House Bill 4301 does not do, and 2) strong protections for confidentiality, with penal sanctions, are provided. (6-1-88)