

AMENDING HIV REPORTING AND TESTING REQUIREMENTS

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House Bills 6016 and 6017 as reported
from committee

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Sponsor: Rep. Edward J. Canfield, D.O.

House Bill 6018 (H-1) as reported
Sponsor: Rep. Hank Vaupel

House Bill 6022 (H-3) as reported
Sponsor: Rep. John Bizon, M.D.

House Bill 6019 as reported
Sponsor: Rep. Abdullah Hammoud

House Bill 6023 as reported
Sponsor: Rep. Kevin Hertel

Committee: Health Policy
Complete to 9-26-18

BRIEF SUMMARY: House Bills 6016 to 6019, 6022, and 6023 would amend various sections of the Public Health Code to update the terminology and applicable testing and reporting for those infected with HIV. The bill package was requested by the Division of HIV and STD Programs within the Michigan Department of Health and Human Services (DHHS). Each bill would take effect 90 days after its enactment.

FISCAL IMPACT: The bills may provide minor savings for DHHS and local public health departments resulting from the reduction of statutory directives regarding pretest information, data retention, and reporting requirements. DHHS estimates about \$25,000 of savings related to pretest information materials. There will be a modest increase in Medicaid costs for adding third-trimester tests for HIV and syphilis, but these tests will likely result in reduced cases of mother-to-child transmission of HIV and congenital syphilis and consequently less health care costs over the long term.

THE APPARENT PROBLEM:

According to committee testimony, several of the laws to be amended were passed when there was no effective treatment for HIV and when fear of and discrimination against HIV-infected individuals were widespread. With the passage of time, increased knowledge of sexually transmitted infections, and treatments that make HIV a chronic condition, some feel that Michigan's laws need to be updated accordingly. This bill package represents a step in that direction.

THE CONTENT OF THE BILLS:

House Bill 6016 would amend the definition of *HIV infection* or *HIV infected* in the Public Health Code to mean the status of an individual who is infected with HIV, as evidenced by any of the following:

- An HIV test, or a combination of tests, that is considered a confirmatory diagnostic test according to prevailing medical technology and algorithms or guidance from the federal Centers for Disease Control and Prevention (CDC).
- An HIV test that is approved by DHHS.

MCL 333.5101

House Bill 6017 would remove the time frame for document retention as well as the requirement for biennial reports to the House and Senate Health Policy standing committees. The requirement that documents be retained for only 90 days predated later initiatives that linked regular reporting and maintenance of information to federal funding from the CDC. Likewise, DHHS currently produces statewide and local annual reports on HIV,¹ so the requirement of biennial reporting on the same data may be less necessary.

MCL 333.5114a

House Bill 6018 would remove specific requirements for HIV pre- and post-test counseling mandated of providers.

Additionally, it would rewrite the requirement for informed consent before an HIV test. Currently, the Code prohibits a physician (or individual to whom the physician has delegated authority) from ordering an HIV test for the purpose of diagnosing HIV infection without first providing the test subject with pretest information and receiving the informed consent of the test subject. Instead, the bill would consider a general informed consent for medical care as consent to an HIV test without a separate consent form. However, it still would require the provider to inform the subject that an HIV test would be performed unless declined and to offer the subject the opportunity to ask questions and decline the test.

Finally, in addition to the current requirement that a person determined to be HIV-infected be provided appropriate counseling on HIV and AIDS, the bill would require that the health facility provide referrals to expedite HIV treatment and services.

MCL 333.5133

House Bill 6019 would remove the term “serious communicable disease” and state that a physician or local health officer disclosing information as provided in the Code may only disclose the minimum information necessary to accomplish the intended purpose of the disclosure. [According to DHHS, the term “serious communicable disease” currently prevents medical providers from sharing behavioral, substance abuse, and comorbidity data in a health information technology environment.]

MCL 333.5131

¹ July 2018 DHHS HIV statistics and data reports: https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2955_2982_46000_46003-35962--00.html#current

House Bill 6022 would amend the requirement that pregnant women be tested for certain sexually transmitted diseases. Currently, a physician or otherwise authorized person must submit a pregnant woman’s test specimens taken at the time of her initial examination for testing for sexually transmitted infection (STI), HIV or an antibody to HIV, and hepatitis B. The bill would retain that requirement, but instead provide that the testing be for HIV, syphilis, and hepatitis B. It would also add a requirement that HIV, hepatitis B, and syphilis testing be completed during the woman’s third trimester of pregnancy, in accordance with guidelines established by the CDC.

Currently, a woman who appears at a health care facility to deliver or receive immediate postpartum care is also subject to testing if no record of previous testing is readily available. The bill would retain this requirement for syphilis, HIV, and hepatitis B testing.

Under current law, this testing is not required if it is medically inadvisable in the professional opinion of the physician or other person or if the woman does not consent to be tested. The bill would remove the phrase “or other person.”

[According to DHHS, third-trimester testing would bring testing requirements into compliance with current DHHS and CDC guidelines.]

MCL 333.5123

House Bill 6023 would remove the requirement that a person or governmental agency who obtains a test result confirming or monitoring an HIV infection must report that finding to the local health department (or DHHS, if requested by the local health department) within 7 days after receiving a diagnostic test result. Instead, under the bill, test results would need to be reported to the local health department (or DHHS) within a time frame determined by DHHS. [According to DHHS, the 7-day requirement is no longer necessary, as electronic laboratory reporting results in much faster reporting.]

MCL 333.5114

ARGUMENTS:

For:

Proponents argue that the bills would stem unintended consequences of the current law by doing all of the following:

- Removing reference to outdated tests that are no longer recommended.
- Aligning state and local health department reporting time frames with current practice.
- Removing requirements that are burdensome to the health care industry, which discourages routine HIV testing.
- Breaking down barriers that currently prevent medical providers from sharing critical health information.
- Aligning state statutes around testing with national guidelines to protect vulnerable populations.

Additionally, they argued that HB 6022 would require third-trimester testing for HIV in addition to the test administered during the initial examination of a pregnant woman, which could greatly reduce the likelihood of transmission of HIV to an infant. With the required antiretroviral and obstetric interventions, a woman who knows of her HIV infection early in pregnancy can reduce the chance of delivering an HIV-infected child from 25% to 1%. Supporters stated that, given our ability to prevent it, an instance of mother-to-child transmission today would be a failure of public health. It is hoped that the addition of third-trimester testing would reduce its incidence.

POSITIONS:

The following organizations support the bills (5-23-18):

Michigan State Medical Society

Michigan Association of Health Plans

Michigan Primary Care Association

American Civil Liberties Union

Community AIDS Resource and Education Services (CARES)

Michigan HIV/AIDS Council

American College of Obstetricians and Gynecologists

Michigan Academy of Family Physicians

The Michigan Council for Maternal and Child Health supports HB 6022. (9-5-18):

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.