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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 1041

Sponsor: Senator William Sederburg

Committee: Health Policy

Mich. State Law Library

Date Completed: 11-17-88

SUMMARY OF SENATE BILL 1041 as introduced 11-10-88:

The bill would amend the Public Health Code to repeal most of Part 52, on hazardous communicable diseases, and replace this part with provisions on: testing for HIV; reporting of positive tests; optional anonymous testing; contact tracing; counseling for marriage license applicants; furnishing and expense of care for persons suspected of having a "serious communicable disease or infection"; examination of persons charged with prostitution-related offenses; confidentiality and disclosure of reports and data on a "serious communicable disease or infection" including Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS), and AIDS-Related Complex (ARC); requiring informed consent before testing for HIV, with certain exceptions for surgical patients; procedures for handling persons considered a "health threat to others" including temporary detention; and, informing emergency personnel who assisted a person who tested positive for an "infectious agent". The bill is tie-barred to House Bill 4980, which would require testing for HIV in organ and sperm donations, and to House Bill 5759, which would permit an insurer to ask an applicant for life, accident, or health insurance questions related to the applicant's exposure to HIV, and to require an applicant to undergo testing for HIV or an HIV antibody.

Communicable Disease (Sec. 5101 & 5111)

The bill would include HIV infection, AIDS, and ARC within the Code's current definition of "communicable disease". The bill also would define "serious communicable disease or infection" as a communicable disease that was designated as serious by the Department of Public Health (DPH). The DPH could promulgate rules that required a licensed health professional or facility to submit to the Department a report on the occurrence of a communicable disease, infection, or disability. The rules could require that a report on a serious communicable disease or infection be submitted to the DPH not more than 24 hours after it was determined that a person had a serious communicable disease or infection. Rules also could be promulgated to designate communicable diseases or infections, including but not limited to tuberculosis and venereal disease, for which local health departments were required to furnish care.

Reporting Positive Tests (Sec. 5114(1))

Except for a licensed clinical lab, a person or governmental entity that obtained a positive test for HIV or HIV antibody would be required to report to the DPH certain information regarding the test and test subject.

Optional Anonymous Test (Sec. 5114(2))

Upon request, a test for HIV or HIV antibody administered at a DPH-designated testing site, staffed exclusively by DPH or local health department employees, would have to be administered anonymously or under the condition that the test subject not be identified. The staff would be required to follow procedures for contact tracing, as outlined in the bill (Sec. 5114a).

Physician Testing (Sec. 5114(4))

Before ordering or administering a test for HIV, a physician would have to notify the test subject that if he or she tested positive, the physician would be required to notify the local health department. The test subject would be required to make an appointment with the local health department for an interview. If the person did not make or keep an appointment, the physician would have to give the local health department the name, address, and phone number of the test subject. The local health department would be required to proceed with contacting the individual's sexual and/or needle- or drug-sharing contacts, as outlined in the bill (Sec. 5114a).

Counseling (Sec. 5114(6))

A person or governmental entity that administered an HIV test would be required, before and after the test, to provide the test subject with counseling regarding HIV testing and infection.

Contact Tracing (Sec. 5114a)

If the DPH received a positive test report, it would be required to attempt to interview the test subject and offer to contact his or her sexual contacts and, if applicable, hypodermic needle-sharing or drug-sharing contacts to inform them of possible exposure to HIV. If the person were infected with HIV in utero, the DPH would have to try to interview the person's parent or legal guardian. The Department would be required to provide each person interviewed and contacted with information on HIV tests, ways to avoid HIV transmission, and other appropriate information. If the person declined to reveal his or her contacts, the DPH would have to give that person information on testing and avoiding transmission of HIV.

The Department's reports, records, and data would be retained indefinitely by the DPH and could be used to conduct epidemiological and statistical studies. Information acquired by the DPH under these provisions would be exempt from the Freedom of Information Act and would be confidential, and could be released only pursuant to the bill's provisions (Sec. 5131) or if a report were required under the Child Protection Law.

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Report to Legislature (Sec. 5114a(8))

The DPH would be required to report to the Legislature on the Department's efforts to monitor and control HIV infection.

Furnishing Care (Sec. 5115 & 5117)

The DPH could establish procedures for health officers and others relating to the discovery and care of a person having or suspected to have a "serious communicable disease or infection". If a local health department knew that an individual who had a "serious communicable disease or infection" including, but not limited to, tuberculosis (TB) or venereal disease (VD), regardless of the person's domicile, was in the local health department's jurisdiction and required care, the local department would be required immediately to furnish the necessary care in accordance with Department established requirements. Financial liability would be determined in accordance with the bill's provisions on expense of care (Sec. 5301). (These provisions would be essentially the same as existing provisions related to "hazardous communicable disease".)

Marriage Licenses (Sec. 5119 & 5121)

A person applying for a marriage license would have to be counseled by a physician or local health department officer on the transmission and prevention of VD and HIV infection, and would have to be offered tests for VD or HIV. The county clerk would be required to distribute to each applicant materials on VD, HIV transmission, and prenatal care. A clerk would be prohibited from issuing a marriage license to an applicant who did not file a certificate indicating that he or she received counseling on VD and HIV and had been offered testing. It would be a misdemeanor for a clerk to issue a license to a person who did not present the required certificate, for a person to disclose that the license applicant was tested and the results of the test, and for a physician knowingly and willfully to make a false statement in the certificate.

Testing Pregnant Women (Sec. 5123)

A physician or person authorized by law to provide medical treatment to a pregnant woman would be required, at the time of the woman's initial examination to take test specimens for VD testing, except when medically inadvisable. (This would be similar to current testing requirements that the bill would repeal (MCL 333.5251).)

Infant Care (Sec. 5125)

A licensed health professional in charge of the care or in charge at the birth of a newborn infant would be required to treat the infant's eyes with one or more of the prophylaxes approved by the DPH within one hour after the infant's birth or as soon after the birth as the professional was present and report specified symptoms within a certain time. (These requirements are similar to those the bill would repeal (MCL 333.5254).)

Treatment of Minor (Sec. 5127)

The bill would reinstate current provisions on the treatment of a minor (MCL 333.5257) and apply them to cases in which a minor was or professed to be infected with HIV. These provisions would be subject to the bill's requirement that counseling be provided before an HIV test was administered.

Prostitution-Related Offenses (Sec. 5129)

A person charged with various prostitution-related offenses, or charged with violating a local ordinance prohibiting prostitution or engaging or offering to engage the services of a prostitute, could be examined at the discretion of the local health department to determine if the person had VD or was HIV-infected.

Confidentiality and Disclosure (Sec. 5131)

All reports and data pertaining to care, treatment, and research associated with a "serious communicable disease or infection" including HIV, AIDS, and ARC would be confidential and could be released only pursuant to the bill or if a report were required under the Child Protection Law. Test results and the fact that the test was ordered would be subject to the physician-patient privilege. Disclosure of information pertaining to a serious communicable disease or infection in response to a court order and subpoena would be limited to certain cases and subject to certain restrictions. Exceptions for disclosure would include disclosing information: to the DPH, a local health department, or health care provider in order to protect an individual's health, to prevent further transmission, and to diagnose and care for a patient; to a known contact of the test subject in order to prevent a reasonably foreseeable risk of further transmission; to a school district employee to prevent transmission to pupils in the school district; when disclosure is authorized in writing by the person who is the subject of the information; and, to certain emergency personnel who assisted and/or transported to a health facility an emergency patient who tested positive for an "infectious agent". The bill would establish penalties for violations of these provisions.

Informed Consent (Sec. 5132(2))

A physician or the physician's delegated authority would be prohibited from ordering an HIV test without first obtaining the written, informed consent of the test subject. The consent would have to consist of a written agreement on a form provided by the DPH that included: an acknowledgement that the test subject received information on the physical and psychological health benefits and risks of taking the HIV test, a description of persons to whom the test results could be disclosed, and an explanation of the test and test subject's rights. If a person underwent a test anonymously, as provided in the bill, consent would have to be given using a coded system. These provisions would not apply to an HIV test performed for research, as long as the test subject's identity was not revealed to the researcher and the test results were not made known to the test subject.

Department Contracting for Testing (Sec. 5133(4))

The Department would be required to promulgate rules that established requirements for local health departments and other health care providers who performed HIV testing under contract or other arrangement with the Department. The rules would have to provide for appropriate counseling procedures that would encourage the test subject to undergo the HIV test on a nonanonymous basis, the written consent form, a coded system for obtaining consent from an anonymous test subject, and a requirement that certain information be presented orally as well as in writing.

Testing and Surgical Patients (Sec. 5133(6) - Sec. 5135)

The bill's provisions on providing counseling before an HIV test was performed and on informed consent would not apply to: an HIV test performed on a patient in a health facility in preparation for an incise or invasive surgical procedure, if the test were performed as part of a standard

protocol for all patients admitted to the health facility for that type of surgery; or, to an HIV test performed on a patient in a health facility, if the test were performed after a health professional or employee of the facility sustained a "percutaneous, mucous membrane, or open wound exposure to the blood or other bodily fluids of the patient". If the test result were positive, the health facility would be required to inform the patient of the test results and provide appropriate counseling regarding HIV infection, AIDS, and ARC. A person who knew that he or she was HIV-infected would be prohibited from knowingly seeking or receiving health services involving incise or invasive surgical procedures unless the person informed the health professionals giving the care of his or her HIV infected status. Violation of this provision would be a felony.

Insurers (Sec. 5137)

The bill's provisions on testing, counseling, informed consent, contact tracing, etc. as proposed in Part 51 would not apply to an "insurer" or to a test performed to assess a person's eligibility for insurance benefits.

Health Threat to Others (Sec. 5203)

A DPH representative or local health officer who determined that a person was a "carrier" and was a "health threat to others", could issue a warning notice requiring the individual to cooperate with the DPH or local health department in the prevention or control of the transmission of "serious communicable diseases or infections". The warning also could require the person to participate in education, counseling, or treatment programs and to undergo medical tests to verify the person's status as a carrier. The notice would have to include a statement that unless the person took the action requested in the notice, the Department representative or local health officer would be required to seek an order from the probate court.

Court Order (Sec. 5205 & 5207)

If a DPH representative or local health officer knew or had reasonable grounds to believe that an individual failed or refused to comply with a warning notice, the representative or officer could petition the probate court for a court order. The court could order that the person participate in education, counseling, or treatment programs; undergo tests to verify the person's status as an HIV carrier or for diagnosis; cease and desist conduct that was a health threat to others; live part- or full-time in a supervised setting; or be committed to an appropriate facility for the period and conditions set by the court, which could not exceed six months unless the facility's director showed good cause for continued commitment. The court could not issue a commitment order unless it considered the recommendation of a commitment review panel. The probate court also could order an individual believed to be a carrier and a health threat to others taken to an emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment, and temporary detention. A person could not be detained for more than 72 hours without a court hearing. The court could order detention continued for up to five days if the person would pose a health threat to others if released.

Expense of Care (Sec. 5301, 5303, 5305, & 5307)

The bill would reinstate current provisions on the expense of care, including the responsibility of the county where an individual has a domicile to bear the costs,

reimbursement by the State, and contested claim of domicile (MCL 333.5231-333.5234).

Emergency Patients (Sec. 20191)

If an emergency patient were assisted or transported to a health facility by a police officer, fire fighter, ambulance attendant, or emergency medical technician and the patient tested positive, by the health facility as part of the treatment, for an "infectious agent", the health facility would be required to notify the emergency personnel that they could have been exposed and inform them of the appropriate infection control precautions to be taken. Notice would have to be given within two days after test results were obtained by the health facility. The notice could not contain information that would identify the patient.

MCL 333.5101 et al. Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate impact on State and local public health department expenditures. The fiscal implications are related to the following provisions:

Reporting and partner notification of HIV-infected individuals:

The estimates provided below are based on the partner notification experience in the Sexually Transmitted Disease (STD) Clinic of a single, mid-sized local health department.

It was estimated that approximately 50% of the persons who test positive for the presence of STD provide, on average, the names of 3.3 contacts. It was also estimated that approximately 10 hours of staff time per primary case are required to interview the primary case and to locate persons named as contacts. Assuming that the contact notification experience in an STD clinic is applicable to an HIV contact notification program, estimates of the potential costs of this bill in the first year are given in the following table:

| Percent of Primary Cases Providing an Average 3.3 Contacts: | 25 | 50 | 75 | 100 |
|----------------------------------------------------------------|------------------|------------------|------------------|--------------------|
| Cost of primary case interview and contact follow-up | 175,000 | 350,000 | 525,000 | 700,000 |
| Cost of counseling and testing contacts | 127,300 | 254,700 | 382,000 | 509,400 |
| TOTAL Cost: | \$302,300 | \$604,700 | \$907,000 | \$1,209,400 |

The above information is also based on the following underlying assumptions:

- The number of reported cases of HIV infection in the first year would be 3,500. This figure is based on FY 1988 experience and assumes no change in current testing policies or demand.
- The average staff cost would be \$20 per hour.
- The average cost of counseling is \$40 per case.
- The average cost of a preliminary ELISA test is \$2.50 per test.
- Approximately 5% of the contacts would be positive for the presence of the HIV antibody by the ELISA test and would be tested by the confirmatory, Western Blot assay at a cost of \$32 per test.
- 100% of the notified contacts would seek AIDS counseling and testing at a local health department or State AIDS counseling and testing program.

Pre-marital venereal disease and HIV counseling:

If it is assumed that: marriage license applicants are at low risk for HIV infection and would primarily visit private health care providers for pre-marital health counseling; and that minimal time would be required to include HIV counseling with the existing pre-marital venereal disease examination, then this provision would have no significant impact on State or local public health expenditures. If, on the other hand, there were a shift to local health departments AIDS counseling and testing centers for pre-marital health counseling, then the maximum cost would be \$2 million annually. This is based on the following assumptions.

- There would be 80,000 marriages per year.
- 100% of marriage license applicants would choose to receive AIDS counseling and testing through a local health department program.
- Marriage license applicants would be at low risk for HIV infection and therefore the average cost of counseling would be approximately \$10 per person.
- 100% of the tests would be performed by the State Department of Public Health.
- The cost of the preliminary ELISA test is \$2.50 per test.
- Approximately 0.1% would be positive for the presence of HIV antibodies by the ELISA test and would require the confirmatory Western Bolt assay at a cost of \$32 per test.

Examining persons arrested for violations of statutes related to prostitution, solicitation:

The cost of this provision would depend on the degree to which the option to examine individuals for the presence of HIV was exercised. Given that the bill would require that pre- and post-counseling accompany any HIV testing, then the maximum cost of this provision would be \$330,000 per year. This estimate is based on the following assumptions:

- Approximately 7,500 persons are arrested annually for the covered offenses.
- 100% of those arrested would be ordered tested.
- All testing and counseling would be done through State and local health department AIDS programs.
- A preliminary ELISA test would cost \$2.50 per test.
- Approximately 5% of those tested would be positive for the presence of HIV antibodies and would require the confirmatory Western Bolt test at a cost of \$32 per test.

Providing written informed consent for HIV testing:

If it is assumed that some degree of informed consent is currently provided through local health department AIDS counseling and testing programs, then the requirement for formal written informed consent would have no fiscal impact on local health department or State AIDS counseling and testing programs. Some have indicated, however, that providing written informed consent to persons requesting an HIV test could require an additional 20-30 minutes of staff time. If it is assumed that approximately 12,000 persons request HIV tests through State and local health department AIDS programs and an average staff cost, including fringe benefits, is \$20 an hour, then this provision at a maximum, could cost an additional \$120,000.

Procedures for handling persons who pose a health threat to others:

In the event the State Department of Public Health declared HIV infection a "serious communicable disease or infection", there could be additional costs associated with handling recalcitrant HIV-infected individuals. The magnitude of the

cost would depend on the number of recalcitrant individuals with HIV infection; the degree to which local health officers used the petition process; the type of remedy ordered by the courts; the length of time the remedy was in effect; and the degree to which the cost of the remedy could be recovered from the individual. In a case in which a person was ordered to be committed, the following are some potential average costs in various secured facilities:

State Mental Facility..... \$200 per day

State Corrections Facility 53 per day

Fiscal Analyst: P. Graham

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.