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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Senate Bill 579 (Substitute S-2 as passed by the Senate)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Health Policy

Date Completed: 7-24-90

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OCT 08 1990

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RATIONALE

Acquired Immune Deficiency Syndrome (AIDS) is caused by the Human Immunodeficiency Virus (HIV), which impairs the body's ability to fight certain kinds of illnesses and malignancies. The virus most commonly is passed from person to person through sexual contact or through the sharing of intravenous drug needles. Another means of transmission of the HIV infection is through the exposure of one person's uninfected system to another person's infected blood and body fluids. This mode of transmission is of real concern to health care providers who may be at some degree of risk of contracting the HIV infection through contact with a patient's HIV-infected body fluids. The Public Health Code currently prohibits a physician or his or her delegated authority from ordering an HIV test in order to diagnose HIV infection without first receiving the written, informed consent of the test subject. This requirement does not apply, however, to an HIV test performed on a patient in a health facility if the patient is informed in writing upon admission to the facility that an HIV test may be performed after a health professional or health facility employee sustained a percutaneous (effected or introduced through the skin, as by rubbing or injection), mucous membrane, or open wound exposure to the blood or other body fluids of the patient. Some people believe that there should be a further exception to the consent requirement for patients in health facilities when it is determined that a physician or other health professional participating in the certain procedures could be at significant risk to exposure to HIV during the procedure.

CONTENT

The bill would amend the Public Health Code to:

- Provide for an exception to the requirement of written consent to an HIV test for a patient in a health facility when the HIV test was performed in preparation for an incise or invasive procedure and if the physician in charge of the procedure determined that the physician or another health professional taking part in the procedure was at significant risk of exposure to HIV during the procedure.
- Prohibit a physician and a health facility from refusing to perform such procedures because the patient was HIV-infected, if the patient were admitted for emergency care and a physician-patient relationship had been established.
- Prohibit a test subject who had given written consent from bringing a civil action for failure to obtain informed consent against a health facility, if the HIV test were performed at a health facility.

In addition, for the exception to apply, the patient would have to be informed in writing upon admission to the health facility that an HIV test could be performed under certain circumstances without the required written consent.

MCL 333.5133

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

S.B. 579 (7-24-90)

ARGUMENTS

Supporting Argument

The bill would expand provisions in the Public Health Code creating an exception to the requirement of obtaining a patient's written consent prior to testing that patient for HIV infection. Currently, an HIV test may be performed on a patient without consent if the patient has been informed upon admission that an HIV test may be performed after a health professional or health facility employee sustains a percutaneous, mucous membrane, or open wound exposure to the patient's blood or body fluids. Under the bill, a test also could be performed without consent if it were in preparation for an incisive or invasive procedure and a health professional were at significant risk of exposure to HIV. Health care providers routinely come into contact with patients' blood and body fluids. A recent study conducted by researchers from Cedars-Sinai Medical Center, in Los Angeles, reportedly found that one pint of blood from a person who has AIDS contains enough virus to cause almost 2 million AIDS infections. Previously, scientists apparently believed that people infected with AIDS had the virus inside one of every 100,000 of their lymphocytes and monocytes, which are the white blood cells that are the chief targets of the HIV virus. The study evidently found that the level of virus is about 250 times higher. Many health care providers, especially those involved in surgical procedures, come into contact with a patient's blood. Thus, it is important that health care providers be able to determine whether a patient is HIV-positive in order to protect themselves when treating such individuals. The identification of infected patients could result in the implementation of special infection-control precautions or improve compliance with standard precautions, thus, reducing the risk of exposure.

Opposing Argument

Hospitals already are required under the Federal Occupational Safety and Health Act (OSHA) to follow certain universal precautions to reduce the risk of exposure of health care workers to highly infectious agents. According to the Special Office on AIDS Prevention in the Department of Public Health's (DPH's) Center for Health Promotion, occupational groups that may come into contact with body fluids in the

course of their work have been advised to take special precautions to guard against AIDS, Hepatitis B, and other infectious agents. Health care workers should follow universal infection control procedures to prevent transmission of blood-borne viruses. These precautions include: taking special care in handling and disposing of used needles; guarding against needle sticks, cuts, and other injuries; notifying supervisors of any direct exposure to blood, semen, or other body fluids; disposing of body fluids in sealed containers; and, wearing protective clothing (gloves, gowns, goggles) if there is any danger of splashing body fluids. Furthermore, an article in "The New England Journal of Medicine", June 21, 1990, noted that the practices of double-gloving and the increased use of waterproof garments and face shields aided in the prevention of mucocutaneous exposures to blood. Entitled "Risk of Exposure of Surgical Personnel to Patients' Blood During Surgery at San Francisco General Hospital", the article concluded that the surgical personnel at San Francisco General Hospital had a low risk of exposure during operations because they recognized the high prevalence of blood-borne pathogens in surgical patients and practiced a high standard of infection control. The authors also noted that the results of this study did not support the use of HIV testing prior to operations to enhance awareness of the risk of HIV as an effective infection-control intervention at the San Francisco hospital. Researchers concluded that, "No evidence was found to suggest that preoperative testing for HIV infection would reduce the frequency of accidental exposures to blood... If, as we believe, surgical personnel at the hospital maintain a high standard of infection control for all patients, regardless of perceived HIV risk status, no benefit with respect to infection control would be expected from preoperative HIV testing."

Opposing Argument

The Report of the Ad Hoc AIDS Legal Committee to the DPH's Center for Health Promotion noted that in health care work settings, if HIV testing is performed, it should be done with informed consent, including notice of persons to whom the results may be released. If testing is done, however, there is no guarantee that the test will reveal that the person is HIV-infected since there is a period

after exposure to the virus during which the antibodies produced by the body, which indicate infection, cannot be detected. There could be instances when an HIV test was performed, under the bill, and the patient tested negative, when in fact he or she was infected.

as suspect as patients' behavior.

Legislative Analyst: L. Arasim
Fiscal Analyst: P. Graham

Opposing Argument

It is not clear what criteria would be applied to determine that a physician or health care provider would be at significant risk of exposure to HIV if he or she participated in an incisive or invasive procedure. The bill does not provide uniform criteria for making this determination. In addition, the bill does not define the term "incisive or invasive procedure". It is not certain whether this would mean surgical procedures only, or would include other procedures such as the intravenous administration of medication. The legislation is based on fear, especially since the DPH reports that nationwide there are approximately 26 health care workers who have been exposed to the HIV virus and have developed AIDS. Rather than risking discrimination against certain patients or denying them access to health care, it would be better to encourage the counseling of patients on the risk of exposing health care personnel to HIV, call for a more thorough taking of patients' medical histories to determine HIV status, and enforce adherence to precautions that should be taken by health care personnel to prevent infection.

Response: It should be noted that the bill would prohibit a physician or health facility from refusing to perform incisive or invasive procedures because the patient was HIV-infected, if the patient were admitted for emergency care and a physician-patient relationship had been established. Furthermore, in cases of elective procedures, physicians are not required to take a case and may choose to do so based on their expertise.

Opposing Argument

Proponents of the bill contend that a health care worker has a right to know a patient's HIV status in order to take precautions against infection. Patients, too, have a right to know a health care provider's HIV status. If a physician cuts his or her finger with a scalpel, for example, the doctor's blood could come into contact with the patient's wound. Thus, there could be inoculation from the physician to the patient. Health care workers' behavior can be

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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.