



**House  
Legislative  
Analysis  
Section**

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**HIV-INFECTED HEALTH PROS.**

**House Bill 5291**

**Sponsor: Rep. David M. Gubow  
Committee: Public Health**

**Complete to 1-21-92**

**A SUMMARY OF HOUSE BILL 5291 AS INTRODUCED 10-24-92**

The bill would amend the Public Health Code to address the issue of health care providers infected with human immunodeficiency virus (HIV). The bill would:

- \* require licensed health professionals and employees of health facilities to use "universal precautions," that is, to treat all bodily fluids as though they carried HIV;
- \* require HIV-infected health professionals who wish to perform certain kinds of invasive procedures to get permission from the Department of Public Health and to notify their patients before performing the procedure;
- \* require health facilities to "accommodate" their HIV-infected employees and provide them with "opportunities to continue appropriate patient care activities;"
- \* set up a complaint procedure for the failure of a licensed health professional or health facility's employee to use universal precautions; and
- \* allow the Department of Public Health to fine or suspend the license of any licensed health professional or health facility that violates the bill's provisions.

"Universal precautions." The bill would define "universal precautions" as a method of infection control that treats all human blood and potentially infectious material (including semen, vomit, feces, urine, saliva, and a number of other bodily fluids) as capable of transmitting HIV, hepatitis B virus, or other blood-borne pathogens (i.e. disease-producing microorganisms). The Department of Public Health would be required to develop rules defining "universal precautions," and to hold a public hearing on the proposed rules within 60 days of the bill's effective date. Within 30 days of the bill's effective date, licensed health professionals and health facilities or agencies would have to use (or require its employees who may come into contact with bodily fluids to use) universal precautions. Licensees also would have to, at least annually, train their employees in the use of universal precautions.

Infected health professionals. Licensed health professionals who knew that they were HIV-infected could not perform certain kinds of invasive surgical procedures without prior approval of the Department of Public Health (DPH). (The bill defines "exposure prone invasive surgical procedure" to mean a surgical procedure that involves "the digital [i.e. finger] palpitation of a needle tip in a body cavity or the simultaneous presence of a licensee's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic state.") If an HIV-infected health professional wished to continue to perform such procedures, he or she would have to notify the department immediately in writing. The licensee would have to notify his or her patients that the licensee was HIV-infected when the patient consulted the licensee regarding any of the invasive surgical procedures allowed by the DPH.

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**Expert review panel.** Within 15 days of receiving such a notice, the department would have to appoint an expert review panel to decide whether or not the infected licensee could safely perform such invasive surgical procedures. The panel members would consist of the licensee's personal physician, an infectious disease specialist with expertise in the epidemiology of HIV infection, one or more health professionals with expertise in the proposed invasive surgical procedure, a state or local public health official, and a representative of the licensee's professional association or bargaining unit. As soon as was practical, the panel would have to schedule a hearing, notify the licensee, and, at the hearing, decide which invasive surgical procedures the licensee could or could not safely do. The panel would have to notify the director of the DPH of their recommendations. The director would make the final decision, and could accept, reject, or change any of the panel's findings.

The findings of the expert review panel would be confidential, and hearings would not be open to the public. The members of the panel would serve only until they had made their proposed decision, but would be subject to a hearing or rehearing, if there were any.

**Health facilities or agencies.** Health facilities or agencies would have to require their employees who came into contact with bodily fluids to use universal precautions and to provide their employees with annual training in universal precautions.

Health facilities and agencies would have to "accommodate" healthcare workers who had to modify their practices because of HIV infection or hepatitis B infection, and would have to allow these workers opportunities to continue appropriate patient care. The facility or agency would have to make sure that career counseling and job reassignment of infected workers promoted the continued use of the worker's talents, knowledge, and skills. The facility or agency also would have to periodically reevaluate each hepatitis B infected worker to decide whether his or her infected status had changed, either because of treatment or because the infection had been resolved.

**Complaint procedures.** The Department of Public Health would have to develop a complaint form that identified the process by which someone could file complaints with the department against licensed health providers or facilities failing to use universal precautions. Within 60 days of the bill's effective date, the department would have to provide these complaint forms to each licensed health provider who might, in the course of practice, come into contact with bodily fluids. Licensed health professionals in private practice would have to make complaint forms available by displaying copies in their offices.

Individuals could file complaints with the Department of Public Health (and, in the case of licensed health professionals, with the Department of Labor) for the failure of a licensed health professional or health facility to use universal precautions. The department would have to investigate each complaint it received and, in the case of licensed health professionals, report its findings to the appropriate board.

**Penalties.** Individual licensed health practitioners who violated the bill's provisions would be subject to license suspensions and administrative fines. In addition, they would be guilty of a misdemeanor punishable, for a first offense, by imprisonment of at least 90

days and a fine of up to \$100. Subsequent violations would be punishable by imprisonment for at least 90 days but not more than six months, and a fine of \$200 to \$500.

Health facilities or agencies violating the bill's provisions would be subject to having their licenses denied, limited, suspended, or revoked, and, in addition, could be fined by the Department of Public Health.

MCL 333.16221 et al.