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ELIMINATE REVIEW PANEL FOR HIV TESTING

House Bill 4742 as enrolled
Public Act 37 of 2000
Second Analysis (7-21-00)

Sponsor: Rep. Rick Johnson
House Committee: Health Policy
Senate Committee: Health Policy

THE APPARENT PROBLEM:

Public Act 57 of 1997 amended the Public Health Code to authorize certain police officers, fire fighters, motor carrier officers, state property security officers, local correctional officers or other county employees, court employees, and individuals making a lawful arrest (such as security guards) who were exposed in certain ways to the blood or body fluids of an arrestee, correctional facility inmate, parolee, or probationer to request that the arrestee, etc. be tested for HIV, HBV (hepatitis B) infection, or HCV (hepatitis C) infection, or all three infections. If the test subject refused to undergo a requested test, the requester's employer can petition a circuit court to order the test or tests. Before ordering testing, the circuit court is required under the code to appoint a review panel consisting of three physicians (from a list submitted by the Department of Community Health) to review the need for testing the proposed test subject for HIV, HBV, or HCV infection (or all three), one of whom can be selected by the proposed test subject. At least two of the physicians have to have training and experience in the diagnosis and treatment of serious communicable diseases and infections. The review panel then has to review the record of the proceeding, interview the proposed test subject (or document why he or she wasn't interviewed), and recommend either that the individual be tested for HIV infection, HBV infection, or HCV infection, or all three, or not be tested for any, and document the reasons for the recommendation.

Reportedly, the requirement of a recommendation from a review panel before a court can issue an order for involuntary testing is proving to be a hardship for those workers who have been exposed to the body fluids of another person. According to the bill's sponsor, some rural counties are finding it difficult to assemble a panel with the necessary qualifications in a timely manner. Thus, both the testing procedure and the start of prophylactic or other medical treatment for those with an exposure to HIV, HBV, or HCV are delayed.

It has been suggested that, among other changes, the provision requiring a review panel be removed.

THE CONTENT OF THE BILL:

Currently, if an arrestee, correctional facility inmate, parolee, or probationer refuses to consent to HIV or hepatitis testing, the employer of the person who requested the test can petition the circuit court for the county in which the employer is located for an order requiring the arrestee, inmate, and so forth, to undergo testing. House Bill 4742 would amend the Public Health Code to eliminate the requirement that a circuit court appoint a review panel before ordering testing for HIV, HBV, or HCV infections. The bill also would allow petitions to be filed either in circuit court or the appropriate district court.

In addition, current law requires that the circuit court set a hearing on the allegations contained in the petition within 14 days from the date the petition was filed, and that notice of the petition be served personally on the proposed test subject at least three days before the hearing date. Instead, the bill would require the district or circuit court to schedule the hearing within 24 hours of the time and date the petition was filed. Notice of the petition and the time and place of the hearing would have to be served on both the proposed test subject and the petitioner within a time period that was reasonable under the circumstances. As is currently required, the notice would have to include information regarding the test subject's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel. Both the petitioner and the proposed test subject could waive notice of the hearing, and upon filing of the waiver in writing, the circuit or district court could hear the petition immediately.

Similarly to current law, an order for testing could be appealed. However, the appeal would have to be heard

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within 15 days, instead of 30 days as is current law. As under current law, an order would not be stayed pending appeal unless ordered by the appropriate appellate court (the circuit court for petitions originally filed in district court and the court of appeals for petitions originally filed in circuit court) on a motion for good cause. (Note: Provisions pertaining to a hearing on a petition regarding a person considered to pose a health threat to others, and an appeal of a court order issued in response to such a petition, would remain unchanged.)

MCL 333.5205

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would reduce, by an indeterminate amount, local costs related to the review panels. (6-16-00)

ARGUMENTS:

For:

Public Act 57 of 1997 was intended to create parity between city and county employees who were exposed to the body fluids of arrestees, probationers, parolees, and so on, and medical first responders and state correctional facility employees in regards to requiring tests for certain infectious diseases. Under Public Act 57, certain county or municipal employees including police officers, local corrections employees, fire fighters, and employees of county jails or courts and security guards can request that another individual be tested for HIV infection, HBV infection, and HCV infection if the employee was exposed to the other person's bodily fluids. If the person refuses to be tested, the worker's employer can petition the circuit court to order the appropriate tests. As part of the hearing process, the court has to assemble a three-person review panel of physicians with expertise in infectious diseases.

Unfortunately, since the act's effective date, it has become apparent that assembling such a panel, especially in rural areas, is lengthening the hearing procedure and delaying both the order of the tests and the start of prophylactic or other medical treatment, counseling, and testing for the affected county or city employee. Meanwhile, similar legislation requiring the testing of people who expose medical first responders, health care workers, and correctional facilities workers to blood and bodily fluids does not require such a review panel. Further, the bill would expand access to

timely court review by allowing petitions to be filed in either circuit or district court. Because of the seriousness of HIV, HBV, and HCV infections, it is imperative that exposed personnel receive the appropriate counseling and medical treatment in a timely fashion. The bill would expedite the hearing process both by eliminating the review panel and by allowing petitions to be filed in district court.

Against:

The elimination of the physician review panel removes an important element of a person's right to refuse testing. The physician review panel provided expert opinion on the medical necessity of forcing a person to be tested for HIV and hepatitis infections against his or her will. Without such a panel, the burden will fall heavily on the person who is the subject of a petition to quickly prove his or her contention that the allegations in the petition do not support an order for involuntary testing.

Against:

Under the bill, a court hearing would be held within 24 hours of when an exposed person files a petition to have a person involuntarily tested for possible HIV or hepatitis infections, and an appeal of an order for involuntary testing would have to be heard within 15 days. These shorter time frames further erode a person's due process rights and the right to contest the necessity for testing. Though the bill specifies that the subject of a petition would have the right to legal representation, he or she may not receive notice of the hearing until shortly before the hearing begins, leaving an insufficient amount of time to contact an attorney and arrange representation. Further, the exposure of another to bodily fluids would not be considered to be part of the crime a person was accused of; therefore, the issue would most likely be outside the scope of court-appointed attorneys. This has the effect of denying legal counsel to indigent persons, both at the trial and appellate levels.

To remove the physician review panel along with shortening the time line between the filing of a petition and the court hearing in effect strips the subject of a petition from any reasonable chance to mount an objection in his or her defense. Even if a person appeals an order for involuntary testing, the bill clearly specifies that an appeal does not stay the court order. Removing the physician review panel eliminated an important protection, but the shortened time frames take away all protections. The bill should be amended to reinstate the original time lines.

Against:

The bill is also problematic for the courts, which already face full dockets. Now, other cases, possibly involving more serious issues, could have to be delayed in order to meet the bill's time lines.

Analyst: S. Stutzky

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