

Legislative Analysis



HIV TESTING

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House Bill 4583 (Substitute H-2)

Sponsor: Rep. Roy Schmidt

Committee: Health Policy

First Analysis (3-24-10)

BRIEF SUMMARY: The bill would, among other things, revise the process by which physicians and health facilities order HIV tests, require that certain information be provided before testing, and allow informed consent to be given orally or in writing.

FISCAL IMPACT: A fiscal analysis is in process.

BACKGROUND INFORMATION AND DISCUSSION:

Currently, testing for HIV infection is treated differently from other medical tests. Certain information and counseling must be provided before and after the test, and the test subject must sign a consent form that he or she received the information and counseling and agrees to the test.

Some people have found the consent form and current process to be confusing. In addition, having a different process in place for HIV testing than what is typical practice for ordering other medical tests continues the stigma that attaches to HIV infections and AIDs. Considering how important it is for people to know their HIV status, many in the medical professions believe that the process needs to be changed. If physicians could order HIV testing in a manner more akin to that for other medical tests, more patients may agree to the testing.

Because of the serious nature of HIV infection, and the impact that a positive test result can have on an individual, it is important to provide more information and consent to HIV testing than what is necessary or appropriate to consent to a routine blood panel. Thus, the bill would accomplish the objective by replacing the current requirement of providing counseling and information and obtaining a signed consent form with the requirement to provide certain information and obtain either written or verbal consent. Some additional information would be added to that provided to test subjects.

In short, the bill would align HIV testing to CDC guidelines, ensure HIPAA confidentiality protections, and could go a long way to increasing HIV testing rates by decreasing the stigma that so often is associated with HIV infections and AIDS. As more people know their HIV status, appropriate treatments and precautions can be put into place – all of which will minimize the potential of infecting others, the impact of the infection on the patient's life, and costs to the health care system.

THE CONTENT OF THE BILL:

The bill would take effect September 1, 2010.

Informed consent to HIV testing. In general, under provisions of the Public Health Code, a physician or his or her designee is prohibited from ordering an HIV test for the purpose of diagnosing HIV infection without first providing counseling appropriate to the test subject both before and after testing and before receiving the written, informed consent of the test subject.

House Bill 4583 would amend this provision of the code to instead require that information be given to the test subject before and after testing, and prohibit an HIV test for the purposes of diagnosing an HIV infection unless first providing the test subject with pretest information appropriate to the test subject and receiving the informed consent of the test subject. The term “informed consent” would mean a written or verbal consent to the test by either the test subject or his or her legally authorized representative.

In addition, the bill would add a requirement that the physician or health facility document the provision of informed consent, including pretest information, and whether or not the test subject or his or her legally authorized representative declined the offer of HIV testing. The informed consent for HIV testing would have to be maintained in the patient’s medical file.

Nothing in the bill would prohibit a physician or a health facility from combining a form used to obtain informed consent for HIV testing with forms used to obtain consent for general medical care or any other medical tests or procedures if the forms made clear that the subject could consent to general medical care, tests, or medical procedures without being required to consent to HIV testing and, if applicable, that the subject could decline HIV testing at any time before the administration of the test.

Pretest information on HIV testing. Currently, the Department of Community Health is required to develop a pamphlet regarding HIV testing that must be given to a test subject by the physician ordering the HIV test. The pamphlet must contain a model consent form that contains certain information as prescribed in statute. The bill would instead require information substantially similar to what is currently contained in the pamphlet to be provided to test subjects, though some revisions would be made.

For instance, the model consent form currently must inform the test subject of the right to withdraw consent to the test at any time before the administration of the test. The bill would instead require the pretest information to inform the test subject of the right to decline the test at any time before the administration of the test and the circumstances under which the test subject would not have the right to decline the test. The bill would also require the pretest information to include an explanation of how HIV is transmitted, how HIV can be prevented, and the right to confidentiality of the test results (and to whom the results may be disclosed) under the health code and federal HIPAA regulations.

Bar to civil action. Currently, the code specifies that a test subject who executes a signed writing under subsection (2) of Section 5133 (i.e., the current model consent form), is barred from bringing a civil action based on failure to obtain informed consent for the HIV test against the physician who ordered the HIV test. The bill would apply this provision only to signed writings under subsection (2) as that subsection read before September 1, 2010.

Miscellaneous provisions. Numerous changes of a technical nature would be made to provide consistency of terms throughout the section being amended. For example, references to the counseling and information pamphlet required to be given to patients and physicians under current law would be replaced by the term “information”. Moreover, some provisions made obsolete by the bill’s changes would be deleted.

MCL 333.5133

POSITIONS:

A representative of Spectrum Health testified in support of the bill. (3-9-10)

A representative of ACLU of Michigan testified in support of the committee substitute. (3-9-10)

A representative of the Triangle Foundation testified in support of the committee substitute with changes. (3-9-10)

Medical State Medical Society (MSMS) indicated support for the bill. (3-9-10)

Michigan Association of Health Plans indicated support for the bill. (3-9-10)

Beaumont Hospitals indicated support for the bill. (3-9-10)

Michigan Chapter – American Academy of Pediatrics indicated support for the bill. (3-9-10)

Michigan Health & Hospital Association indicated support for the bill. (3-9-10)

Department of Community Health indicated support for the concept of the bill. (3-9-10)

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■ 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.