



House
Legislative
Analysis
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ER WORKERS: HIV NOTIFICATION

House Bill 4348 (Substitute H-3)
Sponsor: Rep. Jan Dolan

House Bill 4658 (Substitute H-1)
Sponsor: Rep. Dennis Olshove

Committee: Public Health

First Analysis (5-19-94)

THE APPARENT PROBLEM:

Currently, HIV tests can be done on patients in health facilities without the patient's prior written consent if a worker in the health facility is exposed to the patient's blood or body fluids. However, emergency workers (police officers, fire fighters, emergency medical workers) cannot request that emergency patients be tested for HIV even when the emergency worker is exposed to the patient's blood or body fluids in the course of helping the patient or bringing him or her into a health facility. Legislation has been introduced that would address this issue.

THE CONTENT OF THE BILLS:

The bills would amend the Public Health Code (Public Act 368 of 1978) to allow emergency workers -- including police officers, fire fighters, and emergency medical workers -- to request that emergency patients to whose body fluids the workers had been exposed be tested for HIV.

More specifically, the bills would amend the Public Health Code as follows:

House Bill 4348. Currently, the health code (MCL 333.20191) has certain provisions regarding the testing of emergency patients for infectious agents and the notification of potentially exposed emergency workers when an emergency patient tests positive for an infectious agent. (The Department of Public Health defines "infectious agent" by rule, and currently includes AIDS or HIV infection, any type of viral hepatitis, and syphilis.)

If, as part of the treatment provided by a health facility, an emergency patient is tested for an infectious disease and the test indicates that the patient is infected, then the health facility is

required to provide certain notification to potentially exposed emergency workers and is prohibited from telling those workers when the infectious agent is HIV except upon written request from the worker.

The health facility must notify potentially exposed emergency workers that they "may have been exposed to an infectious agent," the approximate date of the potential exposure, and the appropriate infection control precautions to be taken, though the health facility cannot identify the particular emergency patient. The people eligible to be notified are either (a) police officers, fire fighters, and licensed emergency medical workers; or (b) someone who demonstrates in writing to the health facility that he or she (i) was exposed to the blood or body fluids, "or airborne agents" of the emergency patient; (ii) participated in providing treatment to the emergency patient, or (iii) participated in transporting the emergency patient to the health facility. Notification must occur within two days after the health facility gets either the test results or a written request for notification from an emergency worker.

However, if an emergency patient tests positive for an infectious agent in the course of his or her treatment, and if that infectious agent turns out to be HIV, the health code explicitly prohibits the health facility from telling potentially exposed emergency workers unless the facility had received a written request for notification from a potentially exposed emergency worker.

The bill would amend this part of the health code to allow police officers, fire fighters, licensed emergency medical workers, or anyone else who was exposed (through their skin, mucous membranes, or an open wound) to the blood or

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body fluids of an emergency patient to request that the patient be tested for HIV or hepatitis B (HBV), or both.

Health facilities would be required to provide certain notification whenever police officers, fire fighters, licensed emergency medical workers, or anyone else helped or brought an emergency patient to a health facility and the patient either (1) tested positive for an infectious agent or (2) tested positive or negative for HIV or hepatitis B.

If the test results for an infectious agent were positive, the facility would continue to be required to notify potentially exposed emergency workers (including police officers and fire fighters) that they may have been exposed to an infectious agent. In addition, if the test results from an HIV or HBV test requested by a potentially exposed emergency worker were negative, the health facility would have to tell that to the potentially exposed worker.

In addition to allowing potentially exposed emergency workers to request that patients be tested for HIV and HBV, the bill would specify the form and content of such requests. Requests would have to be in writing, on a form provided by the Department of Public Health, and would have to be made before the patient was discharged from the facility. The request, at a minimum, would have to include the requestor's name and address and a description of his or her exposure to the patient's blood or body fluids. When a health facility received such a request and determined that the exposure was of the appropriate kind (that is, through the requestor's skin, mucous membrane, or open wound), the facility would be required to test the patient for HIV, HBV, or both. If the cost of the requested test wasn't paid for by the requestor's health care plan, the health facility could charge the requestor for the cost of the test.

Finally, the bill would allow required notification to be made, upon the request of the potentially exposed individual, to his or her primary care physician or other designated health professional; would exempt from civil liability or criminal penalty anyone who made a good faith effort to comply with a request that a patient be tested for HIV or HBV but who failed to test the patient; and would exempt from the misdemeanor penalties for violations of the act the disclosure of information regarding a serious communicable disease or infection if the

disclosure was required by other parts of the health code or rules promulgated by the department.

House Bill 4658. Currently, under the Public Health Code (MCL 333.5133), a physician or health facility that orders or does an HIV test on a patient must first get the patient's written informed consent and must provide counseling both before and after the test. However, the written prior consent and the counseling requirements are not required in certain situations: (1) when the HIV test is done for research purposes and the researcher doesn't know who the test subject is and the test subject isn't given his or her test results; (2) if the patient can't sign the consent form (if, for example, he or she is unconscious); or (3) if a worker in the health facility is exposed (through his or her skin, mucous membranes, or an open wound) to the patient's body fluids and the patient had been told on admission that an HIV test might be done without his or her written consent if a worker was exposed to the patient's body fluids.

House Bill 4658 would amend this part of the health code to exempt HIV testing of patients from the code's written prior consent and counseling requirements if the patient was told, upon admission (whether for inpatient or outpatient care), that an HIV test could be done without the patient's written consent under one of two circumstances:

- (1) The test was done after certain health care workers (health professionals, health facility employees, police officers, fire fighters, medical first responders, emergency medical technicians, emergency medical technician specialists, or paramedics) were exposed (through their skin, mucous membranes, or an open wound) to the patient's blood or other body fluids (whether in the health facility, while treating the patient before moving him or her to the facility, or while moving the patient to the facility); or
- (2) The test was done at the request of a police officer, fire fighter, or licensed emergency medical worker who had been exposed (through his or her skin, mucous membranes, or an open wound) to the body fluids of an emergency patient before or during transport to a health facility.

FISCAL IMPLICATIONS:

Fiscal information is not available. (5-18-94)

ARGUMENTS:***For:***

Police officers, fire fighters, and other emergency medical workers respond to all calls for help, and although they do wear protective gear and take reasonable safety precautions when assisting and transporting injured people, they inevitably are exposed to the blood and other body fluids (including, frequently, the vomitus) of people who have been severely injured in chaotic situations, such as car wrecks, building fires, and crime scenes. Yet even when these emergency workers are exposed in the course of their jobs to people who may be infected with fatal or potentially fatal infections, such as HIV and hepatitis, they cannot ask that these people they have helped be tested for these infections. Instead, they have to endure the uncertainty and anguish of not knowing whether they have been exposed, and decide whether or not to take the chance of possibly exposing their families to these infections. Not only is this unfair to workers on the frontlines of emergency medical care, it can serve as a disincentive for people to become involved with such work in the first place. Police officers, fire fighters, and emergency medical workers provide invaluable services to society, and should be supported and encouraged to continue to do so. The bill would do this by allowing them, like hospital workers, to request that patients they help and to whose blood or body fluids they have been exposed, be tested for HIV and hepatitis B, and be told the results of these tests. The bill not only will greatly ease the minds of these workers and protect their families, it will benefit society at large by allowing and encouraging these vital services.

POSITIONS:

The following groups offered testimony in support of House Bills 4348 and 4658 in earlier, slightly different versions:

- * The Michigan Fire Chiefs Association
 - * Michigan Fraternal Order of Police
 - * The Michigan State Medical Society
 - * The Michigan Hospital Association
 - * The Michigan Municipal League
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- * The Department of Public Health
 - * The Michigan Association of Ambulance Services
 - * The Michigan Association of Emergency Medical Technicians
 - * The Michigan State Fire Fighters Union
 - * The Michigan State Fireman's Association