



**House  
Legislative  
Analysis  
Section**

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**MEDICAL FIRST RESPONDERS: HIV  
TESTING OF ER PATIENTS**

House Bill 4348 as passed by the House  
Sponsor: Rep. Jan Dolan

House Bill 4658 as passed by the House  
Sponsor: Rep. Dennis Olshove

Committee: Public Health

Second Analysis (9-2-94)

***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) who act as "medical first responders" 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 "medical first responders" -- including police officers, fire fighters, and emergency medical workers -- to request that health facilities test certain emergency patients for HIV, and would require that health facilities perform these tests under certain circumstances.

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 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.

House Bills 4348 and 4658 (9-2-94)

**Requests for HIV tests of emergency patients.** The bill would amend this part of the health code (1) to allow emergency medical workers who were exposed in certain ways to the body fluids of emergency patients to request that the patients be tested for HIV and (2) to require health facilities, under certain circumstances, to perform the requested tests.

More specifically, 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 body fluids of an emergency patient would be allowed to request that the health facility test the emergency patient for HIV or hepatitis B (HBV), or both. The request would have to be in writing, before the patient left the health facility, and on a form provided by the Department of Public Health.

**Request forms.** The test request form would have to be dated and include at least the name and address of the person making the request and a description of his or her exposure to the emergency patient's blood or body fluids. The form couldn't contain information that would identify the emergency patient and would have to say that the person making the request was under health code confidentiality requirements.

**Testing requirements.** 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. If a health facility decided that it wasn't required to test for HIV or HBV because of the nature of the requestor's exposure (that is, if it decided that the exposure to the patient's body fluids wasn't through the requestor's skin, mucous membranes, or an open wound) or if the health facility wasn't able to test for HIV or HBV even though the relevant kind of exposure had taken place, then the facility would be required to say this on the request form and give a copy of the form to the person requesting the test.

**Notification requirements.** 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) -- or their primary care physicians or other designated health professionals -- 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. Notification required under this section of the health code couldn't identify the emergency patient.

**Civil and criminal immunity.** The bill would exempt anyone who made a notification as required under the bill from civil liability or criminal penalty. It also 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.

Tie-bar. Neither bill could be enacted unless each was enacted.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available. (8-16-94)

### **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.

#### **Response:**

The version of House Bill 4348 passed by the House (substitute H-4) specifies that the request form couldn't contain any information that would identify the emergency patient, which would seem to subvert the entire point of the bill. More specifically, the bill would say that "the request form shall not contain information that would identify the emergency patient." But how could medical first responders ask that certain patients they treated or transported be tested for HIV if the patients can't be identified? The bill needs to have a provision that would allow the emergency patient to be identified, if not by name then by some other method. For example, reportedly some medical first responders use numbered request forms that don't include the names of particular patients, but that nevertheless allow patients to be identified on the request forms without having to use the patients' names. However, not all numbering systems would necessarily allow patient identification. For example, if the only number available were an ambulance "run" number and more than one patient had been transported on that run, then there still would need to be some way to distinguish which patient or patients on that run might need to be tested.

### **POSITIONS:**

The Michigan State Medical Society supports the bills. (8-24-94)

The Michigan Fire Chiefs Association supports House Bill 4658 but cannot support House Bill 4348 without a provision allowing the identification of emergency patients. (8-25-94)

The Department of Public Health supports the concept of the bills. (9-2-94)

The Michigan Association of Emergency Medical Technicians supports House Bill 4658 but does not

support House Bill 4348 as passed by the House. (9-2-94)

The Michigan State Fire Fighters Union supports House Bill 4658 and supports the concept of House Bill 4348. (9-2-94)

The Michigan Fraternal Order of Police supports House Bill 4658 and would support House Bill 4348 if it were amended to allow identification of emergency patients on the request form. (9-2-94)