



**House
Legislative
Analysis
Section**

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

House Bill 4348 as enrolled
Public Act 419 of 1994
Sponsor: Rep. Jan Dolan

House Bill 4658 as enrolled
Public Act 420 of 1994
Sponsor: Rep. Dennis Olshove

House Committee: Public Health
Senate Committee: Health Policy and
Senior Citizens

Third Analysis (1-9-95)

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 (outside of a health facility) to the patient's blood or other 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 to allow emergency "medical first responders" -- which include 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. The Public Health Code places certain notification requirements (and certain notification restrictions with regard to HIV) on health facilities that test emergency patients for "infectious agents" as part of the patients' treatment in the facility. ("Infectious agent," which is defined

by rule, currently includes AIDS or HIV infection, any kind of viral hepatitis, and syphilis).

If an emergency patient tests positive for any infectious agent, the health facility is required to notify the emergency medical workers who helped or transported the patient (and anyone else who demonstrated in writing that they had treated or transported the emergency patient or had been exposed to his or her body fluids or "airborne agents") (1) that they may have been exposed to an infectious agent, (2) appropriate infection control precautions, and (3) the approximate dates of the potential exposure.

When an emergency patient tests positive for HIV, the health code specifically prohibits the health facility from revealing that the infectious agent was HIV except upon written request from the emergency medical worker (or other qualified person).

The notice must be given within two days after the health facility obtains the test results (or receives the written request regarding HIV) and cannot contain information identifying the emergency patient who tested positive for an infectious agent. The information in the notice is confidential, and people who receive such confidential information can disclose it to others "only to the extent consistent with the authorized purpose for which the information was obtained."

House Bills 4348 and 4658 (1-9-95)

HIV testing. The bill would allow emergency medical workers (and other qualified people) who had been exposed to the body fluids (including blood) of an emergency patient to request that the patient they had helped or transported to a health facility be tested for HIV or HBV. (The bill would specify that an emergency medical worker's exposure to an emergency patient's body fluids would have to be in one of three ways: through the worker's skin ["percutaneous"], mucous membranes, or an open wound.)

Written request. The request for HIV or HBV testing would have to be submitted before the emergency patient was discharged from the health facility, and would have to be in writing, on a form provided by the Department of Public Health. The request form would have to be dated and would have to include at least the following: the name and address of the person making the request, a description of his or her exposure to the emergency patient's body fluids, and a statement that the requester was subject to the health code's confidentiality requirements. The request form would be specifically prohibited from containing information that would identify the emergency patient by name.

Health facility testing requirements. The bill would require that the health facility notify the person requesting the HIV or HBV test if the test results were negative. If someone requested that an emergency patient be tested for HIV or HBV (or both), then regardless of whether the test results were positive or negative, the health facility would be required to notify the person making the request that he or she should be tested for, and counseled about, HIV and/or HBV. (However, health facilities wouldn't be required to provide HIV counseling to someone who requested that an emergency patient be tested for HIV unless the facility tested the requester for HIV.)

Health facilities that received a request to test an emergency patient for HIV and/or HBV would be required to accept as fact the requester's description of his or her exposure to the emergency patient's body fluids, unless the health facility had "reasonable cause" to believe otherwise. The facility also would be required to determine whether or not the exposure described in the request was percutaneous, mucous membrane, or open wound exposure according to administrative rules (R 325.700001 to R 325.70018). If the health facility

decided that the exposure described in the request was a percutaneous, mucous membrane, or open wound exposure, it would have to test the emergency patient for HIV or HBV (or both), as indicated in the request.

Exemptions. A health facility wouldn't have to do a requested HIV or HBV test under the following circumstances: (1) the health facility determined that there was "reasonable cause to disbelieve the requester's description of his or her exposure"; (2) the health facility determined that the requester hadn't been exposed to the emergency patient's body fluids in one of the required ways (percutaneous, mucous membrane, or open wound); or (3) the health facility determined that there was the required exposure, but was unable to test the emergency patient.

If a health facility didn't have to comply with a test request for one of the above reasons, it would have to state in writing on the request form its reasons for disbelieving the requester's description of his or her exposure, the facility's exposure determination, or its inability to test the emergency patient. The health facility would have to return the completed request form to the requester after determining that it didn't have to do the requested testing.

Payment for tests. The person requesting the test would be responsible for paying the charges, if the charges weren't covered by his or her employer or health care plan.

Civil and criminal immunity. The bill would rewrite the existing provisions protecting "good faith" compliance with the health code's notification requirements from civil liability and criminal penalty to say that anyone making a good faith effort to comply with the bill's requirements would be immune from any civil liability or criminal penalty "based on compliance or the failure to comply."

Rule promulgation. The bill would amend the health code to require, rather than allow, the Department of Public Health to promulgate rules to administer this section of the health code.

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.

The bill also would define "admission" to mean the provision of an inpatient or outpatient health care service in a health facility.

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

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, House Bill 4348 would cost the Department of Public Health \$5,000 per year to provide health facilities with the request form described in the bill, while House Bill

4658 would have no fiscal implications for state or local government. (12-12-94)

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.