

Legislative Analysis



AMENDING HIV REPORTING AND TESTING REQUIREMENTS

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House Bills 6016 and 6017 as introduced
Sponsor: Rep. Edward J. Canfield, D.O.

House Bills 6020 and 6021 as introduced
Sponsor: Rep. Jon Hoadley

House Bill 6018 as introduced
Sponsor: Rep. Hank Vaupel

House Bill 6022 as introduced
Sponsor: Rep. John Bizon, M.D.

House Bill 6019 as introduced
Sponsor: Rep. Abdullah Hammoud

House Bill 6023 as introduced
Sponsor: Rep. Kevin Hertel

Committee: Health Policy
Complete to 5-22-18

SUMMARY:

House Bills 6016 to 6020, 6022, and 6023 would amend various sections of the Public Health Code to update the terminology and applicable testing and reporting for those infected with HIV. House Bill 6021 would make a complementary change to the sentencing guidelines chapter of the Code of Criminal Procedure. The bill package was requested by the Division of HIV and STD Programs within the Michigan Department of Health and Human Services (DHHS). Each bill would take effect 90 days after its enactment.

House Bill 6016 would amend the definition of *HIV infection* or *HIV infected* in the Public Health Code to mean the status of an individual who is infected with HIV, as evidenced by any of the following:

- An HIV test, or a combination of tests, that is considered a confirmatory diagnostic test according to prevailing medical technology and algorithms or guidance from the federal Centers for Disease Control and Prevention (CDC).
- An HIV test that is approved by the Department of Health and Human Services (DHHS).

MCL 333.5101

House Bill 6017 would remove the time frame for document retention as well as the requirement for biennial reports to the House and Senate Health Policy standing committees. The requirement that documents be retained for only 90 days predated later initiatives that linked regular reporting and maintenance of information to federal funding from the CDC. Likewise, DHHS currently produces statewide and local annual reports on HIV,¹ so the requirement of biennial reporting on the same data may be less necessary.

MCL 333.5114a

¹ July 2017 DHHS HIV statistics and data reports: https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2955_2982_46000_46003-35962--00.html#current

House Bill 6018 would remove specific requirements for HIV pre- and post-test counseling mandated of providers.

Additionally, it would rewrite the requirement for informed consent before an HIV test. Currently, the Code prohibits a physician (or individual to whom the physician has delegated authority) from ordering an HIV test for the purpose of diagnosing HIV infection without first providing the test subject with pretest information and receiving the informed consent of the test subject. The bill would prohibit a person from administering or ordering an HIV test for a patient without first receiving informed consent from the patient or the patient's legally authorized representative.

Finally, in addition to the current requirement that a person determined to be HIV-infected be provided appropriate counseling on HIV and AIDS, the bill would require that the health facility provide referrals to expedite HIV treatment and services.

MCL 333.5133

House Bill 6019 would remove the term “serious communicable disease” and state that a physician or local health officer disclosing information as provided in the Code may only disclose the minimum information necessary to accomplish the intended purpose of the disclosure. [According to DHHS, the term “serious communicable disease” currently prevents medical providers from sharing behavioral, substance abuse, and comorbidity data in a health information technology environment.]

MCL 333.5131

House Bill 6020 would amend the “Felony Disclosure Law,” which currently makes it a felony for a person who knows that he or she has been diagnosed with AIDS or AIDS-related complex (ARC) (a term no longer in use) or who knows he or she is HIV-infected to engage in sexual penetration with another person without first informing that person of his or her AIDS, ARC, or HIV status.

The bill would remove reference to AIDS and ARC and instead provide that a person who knows he or she is HIV-infected who exposes an uninfected person to HIV by engaging in sexual penetration without informing that person of his or her HIV status with the intent that the other person contract HIV, and whose engagement results in the uninfected person becoming infected, would be guilty of a misdemeanor. The misdemeanor would be punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

MCL 333.5210

House Bill 6021 would remove the felony described as “AIDS – sexual penetration with uninformed partner,” which is punishable by a statutory maximum of 4 years, from the sentencing guidelines in the Code of Criminal Procedure. This bill is tie-barred to HB 6020, meaning that it could not take effect unless HB 6020 were also enacted.

MCL 777.13k

House Bill 6022 would amend the requirement that pregnant women be tested for certain sexually transmitted diseases. Currently, a physician or otherwise authorized person must submit a pregnant woman's test specimens taken at the time of her initial examination for testing for sexually transmitted infection (STI), HIV or an antibody to HIV, and hepatitis B. **The bill** would retain that requirement, but instead provide that the testing be for HIV, syphilis, and hepatitis B. It would also add a requirement that HIV and syphilis testing be completed during the woman's third trimester of pregnancy.

Currently, a woman who appears at a health care facility to deliver or receive immediate postpartum care is also subject to testing if no record of previous testing is readily available. **The bill** would retain this requirement for syphilis, HIV, and hepatitis B testing.

Under current law, this testing is not required if it is medically inadvisable in the professional opinion of the physician or other person or if the woman does not consent to be tested. **The bill** would remove the first provision but retain the second.

[According to DHHS, third trimester testing would bring testing requirements into compliance with current DHHS and CDC guidelines.]

MCL 333.5123

House Bill 6023 would remove the requirement that a person or governmental agency who obtains a test result confirming or monitoring an HIV infection must report that finding to the local health department (or DHHS, if requested by the local health department) within 7 days after receiving a diagnostic test result. Instead, **under the bill**, test results would need to be reported to the local health department (or DHHS) within a time frame determined by DHHS. [According to DHHS, the 7-day requirement is no longer necessary, as electronic laboratory reporting results in much faster reporting.]

MCL 333.5114

FISCAL IMPACT:

The bills may provide minor savings for the Department of Health and Human Services and local public health departments resulting from the reduction of statutory directives regarding pretest information, data retention, and reporting requirements. DHHS estimates about \$25,000 of savings related to pretest information materials. There will be a modest increase in Medicaid costs for adding third trimester tests for HIV and syphilis, but these tests will likely result in reduced cases of mother-to-child transmission of HIV and congenital syphilis and consequently less health care costs over the long term.

House Bill 6020 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons that might be convicted under provisions of the bill. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 6021 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Jenny McInerney
Fiscal Analysts: Susan Frey
Kevin Koorstra
Robin Risko

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