

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 343

(Delegate Morhaim, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

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Hospitals - HIV Testing - Health Care Providers and First Responders

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This bill requires a hospital to order an HIV test, under specified circumstances, if there has been an “exposure” between a patient and a health care provider or between a patient and a first responder before the patient is admitted to a hospital.

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Fiscal Summary

**State Effect:** General fund expenditures would increase to the extent that the bill results in an increase in the number of HIV tests conducted by State hospitals. Any such costs are assumed to be minimal.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** A hospital is required to order an HIV test if: (1) informed or substitute consent of the patient was sought and the patient was unavailable or unable to consent; (2) the “exposed” health care provider promptly notified the hospital of the incident or the first responder has promptly notified the jurisdiction’s medical director and the medical director has promptly notified the hospital where the patient is admitted; (3) the health care provider or first responder gave informed consent and submitted a blood sample; and (4) the hospital determined that testing the patient for HIV would be helpful in managing the provider’s or responder’s risk of disease and health outcome. A hospital must notify the patient of the test results and, if the results are positive, provide or arrange for counseling and treatment recommendations for the health care provider or first responder and patient. The hospital may not document the test in either the patient’s, the

provider's, or the responder's medical records. Instead, the hospital must keep a confidential record or incident report of these tests. Hospitals must pay for the HIV testing costs.

If there is an exposure between a first responder and a person before the person is admitted to the hospital: (1) the first responder must give notice to the medical director; (2) the medical director must be an intermediary between the first responder and the hospital; and (3) the medical director and the hospital must ensure that exposure information is confidential.

If the patient's identity is not disclosed, the test results can be introduced as evidence for a criminal, civil, or administrative action, including the adjudication of a worker's compensation claim. A provider, responder, hospital, or hospital designee acting in good faith to notify or maintain confidentiality of the test results may not be held liable in any cause of action related to a breach of patient, health care provider, or first responder confidentiality.

The Department of Health and Mental Hygiene's AIDS Administration, consulting with the Maryland Hospital Association and AIDS advocacy organizations, must study the issue of HIV testing of individuals who refuse to consent to HIV testing when there is an exposure involving a health care provider or first responder. The administration must report its findings and recommendations to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Governmental Operations Committee by December 1, 2003. This portion of the bill takes effect July 1, 2003.

**Current Law:** Except as provided by statute for victims' and witnesses' right to HIV testing, before an HIV test can occur a health care provider must obtain written informed consent from the person in question and provide that person with pretest counseling. A physician, nurse, or health care facility designee must, at the exposed health care provider's request, seek the patient's informed consent to conduct an HIV test when: (1) there has been an exposure between the patient and health care provider; (2) the health care provider has given prompt written notice of the exposure; (3) the exposure occurred, based on a physician's judgment who is not the health care provider; and (4) the provider involved in the exposure has given informed consent and submitted a blood sample for testing.

If the patient's physical or mental condition prevents a physician, nurse, or health facility designee from getting a patient's informed consent to take a sample for an HIV blood test, the health care employee must seek the consent of a person who has the authority to consent to the patient's medical care.

**Background:** HIV, the virus that causes AIDS, progressively destroys the body's ability to fight infections and certain cancers. According to the National Institute of Allergy and

Infectious Diseases, there could be as many as 900,000 Americans infected with HIV. One of the ways HIV is spread is through contact with infected blood. The institute reports that it is rare for a health care provider to give a patient, or a patient to give a provider, HIV by accidentally sticking him or her with a contaminated needle or other medical instrument.

In 2001, there were approximately 470 exposures at Johns Hopkins Hospital. In 28% of the cases, patients were unable to give consent for HIV testing. Often a patient cannot consent because they are deceased or critically ill.

When an exposure occurs, time is critical as it is recommended that the first treatment of post-exposure drugs should be administered within one to two hours of the exposure.

When a patient is unable or unavailable to consent and there is an exposure, health care workers have to take relatively toxic medications while waiting for test results. Centers for Disease Control and Prevention data shows that 50%-90% of health care workers have reported side effects from post-exposure drugs, including hepatitis.

The Department of Health and Mental Hygiene advises that State laboratory costs for an HIV blood test are \$10 for an ELISA or Western Blot test and \$25 for a rapid test.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 254 of 1997, passed in the House but received an unfavorable report in the Senate Economic and Environmental Affairs Committee.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene; *HIV Infection and AIDS: An Overview*, National Institute of Allergy and Infectious Diseases, August 2002; Centers for Disease Control and Prevention; Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2003  
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