

Department of Legislative Services

Maryland General Assembly

2007 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 987

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

Maryland HIV/AIDS Reporting Act

This emergency bill repeals Maryland's code-based HIV reporting system and establishes a name-based HIV reporting system.

Fiscal Summary

State Effect: Department of Health and Mental Hygiene (DHMH) general fund expenditures could increase by a total of \$1.3 million in FY 2008 and 2009 combined to implement a name-based HIV reporting system. The bill would preserve \$37.5 million in federal funding for DHMH beginning in FY 2009. The criminal penalty provisions are not expected to significantly affect State finances or operations.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	802,400	517,500	0	0	0
Net Effect	(\$802,400)	(\$517,500)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill will preserve up to \$28.6 million in federal funding to local governments beginning in FY 2009. The criminal penalty provisions are not expected to significantly affect local finances or operations.

Small Business Effect: Minimal to none.

Analysis

Bill Summary:

Physician Reporting: A physician who has diagnosed a patient with HIV must immediately submit a report to the local health officer that includes the name, age, race, sex, and residence address of the patient. A physician must also submit such a report within 48 hours of the birth of an infant whose mother has tested positive for HIV. If the infant does not become HIV positive within 18 months of submission of the report, the Secretary must remove the infant's name from the HIV registry. HIV reports from physicians are not medical records and are confidential, not discoverable, and not admissible in evidence in any civil action.

Institutional Reporting: A hospital, nursing home, hospice, correctional medical clinic, inpatient psychiatric facility, and inpatient drug rehabilitation program that has an individual in its care with a diagnosis of HIV or AIDS must submit a report within 48 hours to the local health officer that includes the • disease; • name, age, race, sex, and residence address of the individual; • name of the administrative head of the institution; and • address of the institution. All institutional HIV and AIDS reports are not medical records and are confidential, not discoverable, and not admissible in evidence in any civil action. The Secretary may disclose information contained in the reports to another governmental agency performing its lawful duties if the agency will maintain confidentiality.

Laboratory Reporting: The bill repeals the requirement that HIV be reported by laboratories with unique patient identifying numbers. The director of a medical laboratory must submit a report to the Secretary within 48 hours when a specimen shows evidence of any CD 4+ count or HIV. Instead of a unique patient identifying number, the report must state the name, age, sex, and residence address of the patient. Laboratory reports submitted relating to HIV and AIDS are not medical records and are confidential, not discoverable, and not admissible in evidence in any civil action.

The bill repeals language authorizing the director of a medical laboratory, the Secretary, a health officer, or their agents to compile or distribute a reproducible list of the names of patients that are in reports required to be submitted by laboratories. The bill also repeals an exception to this authorization for the names of patients in reports relating to HIV and CD 4+ count under 200/MM3. The bill further repeals language prohibiting the director of a medical laboratory from disclosing the identity of any individual tested for HIV to DHMH or a local health officer.

Penalties: Any person who knowingly and willfully discloses personal identifying health information acquired for the purposes of HIV and AIDS reporting to any person who is not authorized to receive such information or otherwise is in violation of the bill is guilty of a misdemeanor and on conviction is subject to a \$1,000 fine for a first offense and a \$5,000 fine for each subsequent conviction.

Any person who knowingly and willfully requests or obtains information on HIV and AIDS under false pretenses or through deception on conviction is subject to maximum penalties of five years in prison and/or a \$100,000 fine. If the offense is committed with intent to sell, transfer, or use individually identifiable information for commercial advantage, personal gain, or malicious harm, a violator is subject on conviction to maximum penalties of 10 years in prison and/or a \$250,000 fine. Officers or employees of a governmental unit conducting a criminal investigation are exempt from these provisions. A health care provider who violates these provisions is liable for actual damages. A physician, laboratory, or institution that in good faith submits a report or discloses information in accordance with the bill is not liable in any action arising from the disclosure of the information.

Disclosure of Public Records: A custodian shall deny inspection of the part of a public record that contains any report on HIV or AIDS submitted in accordance with the bill.

Current Law: Physicians are required to submit a name-based report for individuals with AIDS. Such reports are confidential and not medical records. Medical laboratories are required to report within 48 hours to the local health officer when a specimen shows evidence of any one of 66 diseases or conditions, including CD 4+ count under 200/MM3 and HIV. Reports of HIV and CD 4+ count under 200/MM3 use a unique patient identifying number, while reports for all other diseases and conditions include the name, age, sex, and residence address of the patient. A director of a medical laboratory, the Secretary, a health officer, or their agents may compile or distribute a reproducible list of the names of patients that are in reports required to be submitted by laboratories, with the exception of the names of patients in reports relating to HIV or CD 4+ count under 200/MM3. A violator of medical laboratory reporting provisions is guilty of a misdemeanor and on conviction subject to a \$500 fine.

Background: The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act funds medical and support services for people with HIV/AIDS. Ryan White funds represent nearly 60% of the total budget for DHMH's AIDS Administration. In December 2006, Congress reauthorized the Ryan White CARE Act, changing the requirements for federal funding from a formula based on AIDS surveillance to a formula based on HIV surveillance and requiring submission of name-based rather than code-based HIV data. Currently, 36 states have fully implemented name-based HIV reporting

while five states, including Maryland, continue to use a code-based system. According to the AIDS Administration, Maryland must enact legislation establishing a name-based reporting system by April 1, 2008 to maintain full Ryan White funding beginning in fiscal 2009.

Language in the fiscal 2007 budget bill expressed the intent of the General Assembly that DHMH develop a transition plan in the event the State was required to use a name-based reporting system for HIV reports in order to receive Ryan White funds. DHMH's AIDS Administration has submitted a transition plan to the Centers for Disease Control and Prevention (CDC) and the federal Department of Health and Human Services (HHS).

Name-based AIDS case surveillance has existed in Maryland since 1985 because in the early years of the AIDS epidemic, the affected community generally accepted AIDS surveillance by name. In 1994, Maryland was the first State to successfully implement a code-based HIV reporting system. However, since that time the treatment of HIV has matured, and the length of time that people live with HIV before being diagnosed with AIDS has increased. Confidential name-based reporting is favored by CDC and the Institutes of Medicine because the method has been shown to routinely achieve high levels of accuracy and reliability. HIV is the only infectious disease that does not report case data by name.

The Governor's proposed fiscal 2008 budget includes \$42.7 million in Ryan White funds for the AIDS Administration. Funds are used primarily for the Maryland AIDS Drug Assistance Program (MADAP), which assists persons with incomes between 116% and 500% of federal poverty guidelines (FPG) with HIV/AIDS-related drug costs. Spending on MADAP will generate an additional \$10.8 million in drug rebates for the AIDS Administration in fiscal 2008.

State Fiscal Effect: To implement a name-based HIV reporting system, DHMH general fund expenditures would increase by \$802,350 in fiscal 2008, including \$775,850 to hire temporary staff to convert historical code-based HIV reports. The information and assumptions used in calculating the estimate are stated below.

- 17,000 living cases of HIV that have been reported by code must be converted to name-based HIV reports by December 31, 2008;
- reports must be matched against the AIDS Administration's databases of 30,000 AIDS cases and 34,000 HIV cases;
- potentially duplicative cases must be resolved with other states and accepted by CDC;

- the AIDS Administration will hire 33 temporary workers in fiscal 2008 to convert code-based HIV reports at a cost of \$726,000;
- temporary staff will incur administrative and operating expenses of \$49,850, including workspace, travel and communications;
- the AIDS Administration would spend \$14,500 to publish and distribute educational materials to providers and institutions; and
- the AIDS Administration will spend \$12,000 on community meetings and forums to educate providers and the public about name-based reporting.

In fiscal 2009, DHMH expenditures would increase by \$517,500 to complete conversion to a name-based system. This estimate includes retaining 23 temporary staff to complete conversion of code-based cases (\$506,000), educational materials and supplies (\$7,100), and administrative and operating expenses for temporary staff (\$4,400).

As implementation of a name-based reporting system is required as a condition of federal funding, the AIDS Administration advises that the bill would preserve \$37,469,904 in DHMH federal fund expenditures in fiscal 2009.

Local Fiscal Effect: Baltimore City receives \$20.6 million in Ryan White funds for Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, Howard, and Queen Anne's counties. The District of Columbia receives approximately \$8 million for Calvert, Charles, Frederick, Montgomery, and Prince George's counties. The bill would preserve this funding beginning in fiscal 2009.

Additional Comments: Significant Ryan White funds are also provided to the Johns Hopkins University School of Medicine, the Institute of Human Virology at University of Maryland Baltimore, the University of Maryland Dental School, and individual medical centers. The bill would preserve this funding beginning in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: HB 1270 (Delegate Hubbard, *et al.*) – Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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