

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 826

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

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**HIV Testing - Informed Consent and Treatment**

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This bill changes the informed consent process as it relates to testing an individual for the Human Immunodeficiency Virus. In addition, the bill requires a provider of prenatal care to notify each patient that she will be tested for HIV and that she has the right to refuse without penalty. If she declines, her declination must be documented in her medical record. If she consents, the HIV test must be performed. The bill specifies additional testing requirements as well as referral requirements for women who test positive, and repeals a requirement that counseling for a pregnant woman as part of her prenatal care program include information that she is not required to consent to an HIV test.

The bill takes effect July 1, 2008.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in Medicaid expenditures (50% general, 50% federal) in FY 2009 and future years due to increase costs associated with the test.

**Local Effect:** Any impact would be operational in nature.

**Small Business Effect:** Minimal

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**Analysis**

**Bill Summary:** The bill allows pretest counseling about HIV information for any individuals to be provided verbally, by video, or a combination of these strategies as appropriate. In addition, the bill repeals the requirement that an individual's informed

consent for being tested for HIV be in writing *unless* the HIV test is ordered outside a health care facility, in which case the informed consent still has to be in writing. A health care provider has to inform the individual that an HIV test will be administered and advise the individual that he or she has the right to refuse without penalty. If he or she consents, the health care provider has to document the provision of informed consent in the patient's medical record. If an individual tests positive for HIV, the physician has to provide a referral for treatment and support services, as well as a referral to the local health officer to assist in notifying sexual and needle-sharing partners. Local health officers have to provide health care providers in their jurisdiction information on referral resources for HIV positive individuals.

The bill also requires that health care providers who provide prenatal care • offer an HIV test in the third trimester to a pregnant woman who was not tested earlier in her pregnancy; • consider routinely offering a repeat HIV test in the third trimester to all pregnant women at health care facilities in areas with high HIV prevalence rates and who are at a high risk of acquiring HIV; and • provide a referral for treatment and support services, including case management services. A health care provider who provides labor and delivery services to pregnant women has to offer • a rapid HIV test to pregnant women with unknown or undocumented HIV status during labor and delivery; and • antiretroviral prophylaxis if a rapid HIV test during labor and delivery is positive, *before* the positive HIV test is confirmed.

**Current Law:** Before obtaining a fluid or tissue sample from the body of an individual to test for the presence of HIV, a health care provider has to • obtain written informed consent from the individual on a uniform HIV informed consent form developed by the Department of Health and Mental Hygiene; and • provide the individual with pretest counseling including education about HIV infection and methods for preventing transmission, information about a physician's duty to warn, and assistance in accessing health care available to an individual who tests positive for the HIV infection.

Refusal to consent to the HIV test or a positive test result cannot be used as the sole basis by an institution or laboratory to deny services or treatment. Substitute consent can be given if the individual is unable to give informed consent.

A physician or physician's designee who obtains a positive result from an HIV test has to • notify the individual from whom the fluid or tissue sample was obtained; • provide the individual with a copy of DHMH's publication describing available counseling services; • counsel the individual to inform all sexual and needle-sharing partners of his or her HIV status; and • offer to help notify the individual's sexual and needle-sharing partners. If the individual refuses to notify his or her sexual and needle-sharing partners, the

physician can inform the local health officer and/or the individual's sexual and needle-sharing partners.

The informed consent document has to be distinct and separate from all other consent forms. A patient identifying number obtained from an anonymous and confidential test site approved by DHMH may be evidence of a patient's informed consent in lieu of a patient's signature.

As part of a health care provider's patient acceptance procedures or protocol, a health care provider has to provide a pregnant woman with counseling concerning being tested for the presence of HIV as part of the woman's prenatal care program. Counseling has to

- include information that the pregnant woman is not required to consent to a test for the presence of HIV or that the pregnant woman will not be denied prenatal care because she refuses to be tested; and
- education on the effect of a positive HIV test result on the pregnant woman and fetus and methods of reducing the risk of transmission to the fetus.

The record of an HIV test is confidential and not discoverable or admissible in evidence in any criminal, civil, or administrative action unless the identity or any other information that could be associated with the identity of the pregnant woman is not disclosed. A health care provider, including a health care facility, acting in good faith to provide counseling cannot be held liable in any cause of action related to a woman's decision to consent or not to consent to have an HIV test.

**Background:** Prenatal care during the first trimester helps to identify and prevent medical, genetic, or environmental risk factors that might increase the possibility of a premature or low-birth-weight baby. In 2006, the percentage of women receiving prenatal care decreased slightly to 80.4%.

An estimated 6,000 to 7,000 HIV-infected women give birth each year in the United States, resulting in 280 to 370 new prenatal infections. However, antiretroviral therapy lowers the risk of mother-to-child transmission of HIV to less than 2%. According to the Vital Statistics Administration, HIV disease was responsible for 480 deaths among Marylanders in 2006, down from 526 in 2005. However, Maryland still has the third highest AIDs case rate in the country, and Baltimore ranks second for its AIDs case rate among cities. The age-adjusted death rate for HIV has been declining in Maryland since 2003. The Centers for Disease Control and Prevention recommends HIV screening for all patients in health-care settings, including pregnant women after a patient is notified that testing will be performed *unless* the patient declines (opt-out screening).

Chapter 183 of 2007 required the AIDS Administration to convene a workgroup to review and make recommendations regarding the Centers for Disease Control and

Prevention guidelines regarding HIV/AIDS, including pre- and post-test counseling and written informed consent. The workgroup also had to review and consider best practices and research and data regarding treatment for HIV/AIDS and report on any recommendations by January 1, 2008. The bill reflects the outcome of the workgroup's recommendations.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 991 (Delegate Pena-Melnyk, *et al.*) – Health and Government Operations.

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

**Fiscal Note History:** First Reader - March 9, 2008  
mam/ljm Revised - Senate Third Reader - April 1, 2008

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