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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/07  
 LAST UPDATED 2/21/07      HB \_\_\_\_\_

SPONSOR    SJC

SHORT TITLE    HIV Testing During Routine Medical Care      SB 270/SJCS

ANALYST    Hanika Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Reponses Received From  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Bill 270 amends the Health & Safety Act allowing Human Immunodeficiency Virus testing without full HIV pre-test counseling during routine medical care; and, provides for informed consent.

### FISCAL IMPLICATIONS

NFI

### SIGNIFICANT ISSUES

DOH provided the following comments:

The purpose of this bill is to encourage testing for HIV infection during routine medical care in order for infected persons to be detected earlier in the course of the illness. This will allow more effective early treatment and will also help prevent transmission of HIV. While maintaining the requirement for informed consent, the bill removes the requirement for full pre-test counseling before testing during routine medical care thus removing an impediment for providers to conduct HIV testing.

HIV is a serious chronic infectious disease that continues to have a high mortality rate. Effective treatments for HIV infection have been available since 1996 and have resulted in very significant decreases in the morbidity and mortality associated with HIV infection. The effectiveness of HIV treatment is largely dependent upon when HIV treatment is initiated in the course of HIV disease. The sooner HIV is diagnosed and treated, the better the prognosis. Unfortunately, when diagnosed with HIV, 57 percent of New Mexicans have been found to have AIDS, an advanced stage of HIV disease that is less responsive to HIV treatments, compared to the US rate of 43 percent. Attempts to improve the likelihood that a person will be diagnosed with HIV early in the course of his or her disease that have focused testing efforts on traditional “high risk populations” (men who have sex with men and injection drug users) have not succeeded in identifying cases earlier. The HIV epidemic is increasingly affecting populations not previously at risk, including heterosexuals and communities of color, especially African-Americans, Hispanics and Native Americans. Therefore, it is important to make HIV testing more routinely available to the general population in order to offer the benefits of effective HIV treatments to more people earlier in the course of their disease. Full HIV pre-test counseling is beneficial and appropriate in contexts in which HIV testing is targeted at populations who are at high risk for HIV. In these contexts, full HIV pre-test counseling offers the opportunity to discuss risk behaviors and risk reduction. However, in routine medical care settings and in the context of prenatal care, the requirement for full pre-test counseling can be a significant barrier to providers in offering HIV testing. For example, busy urban hospital emergency rooms would be ideal settings for identifying previously undiagnosed cases of HIV. HIV testing is usually not offered in these settings because of the time required to provide full HIV pre-test counseling.

The HPC reported in the original bill analysis that on September 21, 2006, the CDC published new recommendations for health care providers that are designed to make voluntary HIV screening a routine part of medical care for all patients aged 13 to 64. The recommendations aim to simplify the HIV testing process in health care settings and increase early HIV diagnosis among the estimated more than 250,000 HIV-positive Americans who are unaware of their infection. The recommendations also include new measures to improve diagnosis among pregnant women and further reduce mother-to-child HIV transmission.

The new recommendations address HIV screening in health care settings only and do not apply to non-clinical settings such as community centers or outreach programs. They replace CDC’s 1993 recommendations on testing in acute care hospitals and update the portions of CDC’s 2001 recommendations on HIV counseling, testing, and referral that apply to health care settings.

CDC’s recommendations were developed over a three-year period with extensive input from health care providers, public health experts, community-based organizations, and advocates nationwide. Major components of the new recommendations include:

- *HIV screening for all patients, regardless of risk:* To normalize HIV screening as a routine part of medical care, the revised recommendations advise that all patients aged 13-64 be screened.
- *Voluntary, “opt-out” approach:* CDC’s recommendations strongly emphasize that HIV testing must be voluntary and undertaken only with the patient’s knowledge. The recommendations advise that patients be specifically informed that HIV testing is part of routine care and have the opportunity to decline testing.

- *Simplified testing procedures:* The recommendations advise that pre-test counseling and separate written consent for HIV testing shall no longer be required. Consent for HIV testing can be incorporated into a general consent for medical care.
- *Enhanced screening for pregnant women:* Existing CDC recommendations for routine prenatal HIV screening have contributed to preventing mother-to-child HIV transmission in the U.S. The estimated number of infants born with HIV declined from a peak of approximately 1,650 in 1991 to fewer than 240 each year today. The new recommendations are intended to help reduce this number even further.

## PERFORMANCE IMPLICATIONS

Current statute 24-2B-5 allowing HIV testing without informed consent occurs when determining safety of human tissue and organs donated for transplant, including blood and semen, or to determine medical suitability of transplant recipients. In addition, testing without informed consent can also occur in providing emergency care; under certain research conditions or public health care settings where identity of the test subject is unknown; or for prenatal testing with the option to decline

Current statute 24-2B-2 requires that written or verbally obtained and documented informed consent be obtained before HIV testing can occur, except as provided in Section 24-2B-5 or in Sections 24.2B-5.1, 5.2, 5.3 which expand on situations where informed consent is not required. These sections also allow testing without informed consent on persons formally charged or convicted of certain criminal offenses involving body fluids contact, and on “source” persons” when an individual is significantly exposed by another such as might occur in a correctional facility.

## ADMINISTRATIVE IMPLICATIONS

DOH reports HIV testing in routine medical care settings may identify new cases of HIV infection that otherwise would have been identified at a later time. DOH further reports any additional workload associated with these cases including medical care and case management can be readily absorbed with existing staff and resources.

## TECHNICAL ISSUES

The bill provides HIV testing in routine medical settings using an assumed “opt-out” strategy. Even though the bill appears to not provide the opportunity to decline testing within specific language in statute; the DOH can provide educational activities with health care providers reinforcing the practice that “informed consent” always includes the right to refuse. As with any medical care information, even if the “opt-out” language was more formally in statute, protections relating to client (patient) confidentiality exist and will continue to exist under HIPPA.

## OTHER SUBSTANTIVE ISSUES

DOH reports Hispanics in New Mexico are disproportionately diagnosed with HIV at a late stage of disease; 66 percent of Hispanics diagnosed with HIV have advanced to AIDS by the time they are tested, as compared to non-Hispanic whites (50 percent) and Native Americans (49 percent)

and African-Americans (45 percent).

The New Mexico HIV/AIDS annual surveillance report states that as of 2005, 4,870 persons had been reported with HIV or AIDS. During 2005, 93 new cases of HIV and 127 cases of AIDS were documented, reflecting an incidence rate of 4.8 and 6.6 cases per 100,000 population. Overall New Mexico continues to be a low morbidity state for HIV/AIDS, with a decrease of about 12% in HIV/AIDS since 2004.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

HIV testing in routine medical settings will not be exempted from the informed consent requirements as currently defined by the New Mexico HIV Test Act.

#### **AMENDMENT**

Pg 1, lines 12 and 13, delete “THE OPTION TO DECLINE TESTING” AND REPLACE WITH “INFORMED CONSENT” in the Title of the Act. This language may more accurately reflect the intent within the body of the bill.

Pg 2, line 3, after the first period; add, “Informed consent for HIV testing may be incorporated into a health care provider’s written consent for routine medical care.” A written consent will usually legally override a later denial of informed consent.

Pg 1, line 21 after “person” insert “or their authorized representative” to reflect the providing of consent on another’s behalf.

AHO/csd