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FISCAL IMPACT REPORT

ORIGINAL DATE 02/14/13
 LAST UPDATED 03/01/13

SPONSOR Griego HB _____

SHORT TITLE HIV Testing Disclosure SB 311/aSPAC

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Department of Health (DOH)
 Human Services Department (HSD)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 311 modifies when the Department of Health may disclose Human Immunodeficiency Virus test results to health care personnel provided they first provide to DOH for review relevant medical records or other written attestations that document the need for access to the person’s confidential test results.

Synopsis of Original Bill

Senate Bill 311 amends the confidentiality provision of the Human Immunodeficiency Virus Test Act, NMSA 1978, §§ 24-2B-1 through 24-2B-9 (the “Act”), to authorize the New Mexico Department of Health (DOH) to disclose human immunodeficiency test (HIV) results, including the identity of any person upon whom a test is performed, to (1) the subject of the test or the subject’s legally authorized representative, guardian or custodian; (2) to the person who ordered the test or that person’s agents or employees; (3) in the conduct of public health practice, public health agencies having at least equivalent security and confidentiality standards for HIV test results as maintained by DOH; and (4) health care personnel where necessary to protect the health of the individual who is the subject of the test or an individual who was significantly exposed to the subject of the test. SB 311 defines “public health practice” as a population-based

activity or individual effort aimed primarily at the prevention of injury, disease or premature mortality or the promotion of health in a community, including surveillance and response; and developing public policy. SB311 would also require DOH to provide counseling or referral for counseling whenever DOH reveals positive HIV test results to the person tested. SB 311 contains an emergency clause.

FISCAL IMPLICATIONS

The agencies report no fiscal impact.

SIGNIFICANT ISSUES

The Attorney General's Office (AGO) reports the confidentiality provision of the Act already allows persons who require or administer an HIV test to disclose the identity of the person upon a test is performed or the result of the test to (1) the subject of the test or the subject's legally authorized representative, guardian or custodian, (2) any person designated in a legally effective release executed before or after the test is administered, (3) several other entities conducting program monitoring, program evaluation, service reviews, and medical or epidemiological research, and (4) for purposes of insurance coverage, an insurer or reinsurer upon whom a test is performed. None of these entities is authorized to further disclose the identity of the person tested. The additional disclosure without consent of an individual's HIV test results may implicate the individual's constitutional right to privacy, which includes protection against unwarranted disclosure of one's medical records or condition, because the state's interest in disclosing the identity of the person upon whom a test is performed beyond what is already allowed by the Act is not clear.

DOH indicates that SB 311 is a DOH sponsored bill. The HIV Test Act is designed to severely restrict disclosure of the HIV status of an individual to ensure their privacy and confidentiality. As best practices for public health have evolved, some of these restrictions prevent DOH from delivering effective efforts to assist persons with HIV and help to prevent new infection. As currently written, the HIV Test Act allows only the person, or the person's agents or employees, who ordered an HIV test to disclose the identity of the person tested or the results of the test in a manner that permits identification of the subject of the test. While this is an important confidentiality safeguard, the HIV Test Act impedes DOH's ability to provide a safety-net to ensure that all persons with positive tests for HIV are informed of their results and are linked to life-saving healthcare and supportive social services. SB 311 would allow DOH to provide notification if the person ordering the test neglects to do so.

DOH operates programs statewide to prevent HIV infection and to ensure the delivery of HIV-related clinical and social services. In 2010, the HIV Test Act was amended to allow DOH to disclose across programs within DOH in order to provide HIV Partner Services. HIV Partner Services is an evidence-based intervention proven to be effective in identifying persons with HIV infection who are unaware of their infection. SB 311 will allow DOH to ensure the provision of services directly to the person newly diagnosed with HIV infection. HIV is an immune-compromising condition that can interact dangerously with other diagnoses. SB 311 will allow DOH to disclose a person's HIV status to healthcare personnel who may be evaluating or treating a person with multiple related diseases such as Tuberculosis (TB). SB 311 may also expedite the administration of prophylactic medication in the event a healthcare worker is exposed to the blood or other infectious bodily fluid of a person who has the HIV infection.

Additionally, SB 311 will allow DOH's HIV Surveillance Program to contribute effectively to the National HIV Surveillance System by allowing it to participate in de-duplication of national HIV surveillance reports. This de-duplication is an expectation of the Centers for Disease Control and Prevention (CDC), which is the major funder of HIV surveillance activities. SB 311 addresses administrative gaps in the existing legislation by allowing DOH to disclose the identity of the person tested and the results of the test in a manner consistent with the disclosure requirements stipulated in the HIV Test Act.

PERFORMANCE IMPLICATIONS

SB 311 relates to the Department of Health's FY 14 Strategic Plan "Goal 1: Improve Health Outcomes for the People of New Mexico" and "Goal 2: Improve Health Care Quality". SB 311 would entail different DOH personnel activities but should not result in additional work for DOH employees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Disclosure would remain limited by confidentiality provision, NMSA 1978, § 24-2B-6. and the HIV Test Act would not be amended.

TT/blm