

SUBJECT: HIV testing of pregnant women and upon delivery of a child

COMMITTEE: Public Health — favorable, with amendments

VOTE: 6 ayes — Berlanga, Hirschi, Glaze, Janek, Maxey, Rodriguez

0 nays

3 absent — Coleman, Delisi, McDonald

WITNESSES: For — Cliff Price, Texas Pediatric Society; Carolyn Parker, Texas AIDS Network; Linda Traurig, Faith Home; Lenore Warden, Karen Haslund

Against — Shannon Noble, Texas Women's Political Caucus

On — Charles E. Bell, Texas Department of Health; Rhonda Myron, Texas Department of Insurance

BACKGROUND: Physicians or others who attend a woman during pregnancy and delivery are required to take a sample of the woman's blood and have it tested for syphilis (Health and Safety Code sec. 81.090). The woman is informed if the test result is positive. Women are not informed beforehand that their blood will be tested for syphilis and no right to refuse is provided.

Health and Safety Code sec. 81.109 provides that a positive HIV test result cannot be revealed to the person tested without giving that person immediate opportunity for individual, face-to-face counseling that includes discussion of the meaning of the test result, measures to prevent the transmission of HIV, the availability of appropriate services in the area where the person lives, and the benefits and availability of partner notification programs.

Post-test counseling is to be designed to explain ways to change behavior conducive to HIV transmission, encourage the person to seek appropriate medical care and notify persons with whom there has been contact capable of transmitting HIV.

DIGEST: HB 1345, as amended, would amend Health and Safety Code sec. 81.090 to require physicians to submit blood samples from a pregnant woman at her first exam, or from a woman who had just given birth, to be tested for HIV infection. The test could not be conducted if the woman objected. If a woman did object to the test, the physician or other person would be required to include a record of that objection in her medical record.

The blood sample from a woman who had just given birth could be drawn either from the mother or the umbilical cord of the infant within 24 hours of delivery.

Before blood could be taken a health care provider would have to distribute materials provided by the Texas Department of Health about AIDS, HIV and syphilis. The materials would inform patients about the incidence of, and methods to prevent transmission of, AIDS, HIV and syphilis, the effect these diseases could have on the health of their child, the cure for syphilis, and available treatment to prevent maternal-infant HIV transmission.

If the test showed that a woman was HIV positive, the physician or other person who submitted the sample for the test would be required to provide to the woman information about HIV infection and AIDS, and counseling under Health and Safety Code sec. 81.109.

A physician or other person could comply with requirements requiring provision of information and counseling by referring that woman to a group that provides treatment for HIV-infected individuals.

The bill would take effect September 1, 1995, and would apply only during gestation or delivery on or after January 1, 1996.

SUPPORTERS SAY: The Federal Drug Administration recently approved a treatment and course of medication (zidovudine, also known as AZT) that when correctly administered to a pregnant woman who is HIV positive, can reduce the chances of maternal-infant transmission by as much as two-thirds. HB 1345 would make sure that pregnant women who did not object to the test were made aware of their HIV status as well as the new treatment so they could act to try and save their babies from a painful and fatal disease.

HIV is the leading cause of death for Americans between the ages of 15 and 44. Heterosexual contact is the leading cause of HIV infection among women, and HIV infections among women of child-bearing age are growing faster than among homosexuals or intravenous drug users. An increasing number of women of child-bearing age are HIV positive, and they are delivering more and more babies who carry the AIDS virus.

This bill would not violate anyone's privacy because the test could not be conducted if a woman objected. The Health Department fully intends to provide pre-test information materials that doctors would be required to present before the test.

Since all women would by law be required to either be tested or refuse the test, there would be little stigma attached to the test. Simply having a statement in a woman's medical records that she had refused to take the test would not lead to discrimination by insurance companies. The statement would be there simply to prove that the doctor did indeed offer the test and that the patient refused.

Insurance companies can make decisions about coverage based on a positive HIV test, but they do not decide coverage simply on whether or not someone has been tested, or refused a test. An insurance company would not refuse coverage to a woman only because she had refused to take an HIV test.

HIV infection of a child is emotionally devastating for both parents and children, and the treatment for these children can be prohibitively expensive. Parents end up bankrupt, and the state ends up paying for the balance of the HIV-positive child's treatment. HB 1345 would save children's lives by requiring health care providers to supply mothers with information about the treatment to prevent maternal-infant HIV transmissions.

The Texas Department of Health says that in Texas in 1994 approximately 0.1 percent of the 328,000 women who became pregnant were HIV positive and at least one-fourth of their babies were HIV positive. If this bill had been in effect, and helped to encourage all those mothers to use AZT, as

many as two-thirds of those children (55 babies) could have been saved from HIV infection.

Saving even one child's life is worth the effort, and the bill would have the added bonus of saving the state a large amount of money. The treatment of even one HIV-positive child can run into many thousands of dollars. Even if only a few pregnant women discovered they were HIV positive and took AZT to prevent their babies from contracting AIDS, the parents of that child and the state could save.

The Legislative Budget Board fiscal note estimates a net savings to the state of \$364,639 in fiscal 1996 growing to \$432,336 in fiscal 2000, estimating that it would cost a total of \$100,000 per year to treat an HIV-infected infant, and assuming that 30 infants could be saved from HIV infection through early detection and treatment.

Children born HIV positive would have a better chance and a longer life under this bill since their disease would be caught and treated immediately upon birth, which could enable them to remain healthier longer.

**OPPONENTS
SAY:**

A diagnosis of HIV infection can lead to ramifications far more serious than the consequences of other diseases because people who are HIV-positive are sometimes shunned, physically threatened, subject to discrimination by insurance companies, landlords and employers and denied access to medical care. This is why many people want to be tested only if the test is completely anonymous, so no record of it or connection to them exists.

HIV testing of pregnant women, like all HIV testing, should be done anonymously, so only the woman gets the results. A positive test result in a woman's medical record could cause her and her child to be denied medical insurance or refused treatment. Women might be unreasonably pressured by physicians to have abortions (or be denied information about abortions) if they tested HIV positive.

Even including refusal to take an HIV test in a woman's medical record could bring possible discrimination. Insurance companies, for example, are often authorized to examine medical records, and it is possible that an

insurance company might deny coverage to a mother who had refused an HIV test.

It is all very well to give a person the right to object to a test, but there is nothing in either the bill or the statutes that would require that a woman be told that the test is going to be performed. Since blood is already drawn for a syphilis test, a woman would not necessarily have advance warning about the HIV test, even if she is given general materials about HIV infection by her doctor. The right to object would be meaningless unless a person knows about the test.

Doctors have enough to do without being required by state law to hand out specific written material on AIDS. This would create yet another cause of action against doctors by people claiming they did not receive the proper pamphlets. No state mandate is required to accomplish the goals of this bill. Physicians should merely recommend a test and women could choose to be tested by their doctor or at a site offering anonymous testing.

OTHER
OPPONENTS
SAY:

The bill should require verbal notification that the test is going to be performed but that it can be refused, to give the woman a true chance to object if she wants to. A woman's medical record should reflect only that a woman was given information about the test, not whether or not she had taken the test.

NOTES:

The committee amendment changed the words "a test" to "screening test and confirmatory test" in one section of the bill, and added a provision requiring that before a blood sample were taken, the health care provider would distribute Health Department printed materials, including specific criteria about AIDS, HIV and syphilis.

Related bills include HB 988 by Maxey et al., which would allow the sale of home HIV collection/testing kits and has passed both the House and Senate and was sent to the governor on April 20. HB 1129 by Chisum, which would require mandatory premarital testing for HIV and other sexually transmitted diseases, and HB 323 by Rabuck, which would require mandatory premarital HIV testing both were referred to subcommittee by the House Public Health Committee on February 28. HB 47 by McCall, which would require testing for HIV and sexually transmitted diseases of

persons who had committed certain criminal offenses, if testing was requested by their victims, was left pending by the House Public Health Committee on February 28.