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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Health, Health Insurance, Privacy, Property Tax Relief, and Revenue (SC-HHIPTRR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue

Assembly Bill 659

Relating to: HIV testing, disclosure of HIV test results, and providing penalties.

By Representatives Shilling, Richards, Benedict, Berceau, Hebl, Pasch, Sinicki, Turner, Zepnick and A. Williams; cosponsored by Senators Robson and Taylor.

February 18, 2010 Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

March 3, 2010 **PUBLIC HEARING HELD**

Present: (7) Senators Erpenbach, Carpenter, Robson, Lassa, Lazich, Kanavas and Darling.

Absent: (0) None.

Appearances For

- Judy Robson — Sen.
- Jennifer Shilling — Rep.
- Jim Vergeront — DHS-Division of Public Health
- Kathleen Krchnavek — DHS-Division of Public Health
- Karen Dotson, Madison — AIDS Network
- Bill Keeton, Milwaukee — AIDS Resource Center of Wisconsin
- Marilyn Michels — Gundersen Lutheran

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Lena Taylor — Sen.
- Bob Bowers — HIVictorius, Inc.
- Chris Rasch — WI Medical Society

Registrations Against

- None.

Registrations for Information Only

- None.

March 16, 2010

EXECUTIVE SESSION HELD

Present: (7) Senators Erpenbach, Carpenter, Robson, Lassa,
Lazich, Kanavas and Darling.

Absent: (0) None.

Moved by Senator Carpenter, seconded by Senator Erpenbach that
Assembly Bill 659 be recommended for concurrence.

Ayes: (7) Senators Erpenbach, Carpenter, Robson,
Lassa, Lazich, Kanavas and Darling.

Noes: (0) None.

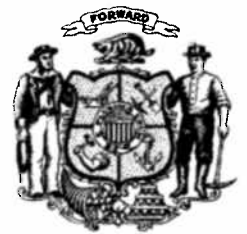
CONCURRENCE RECOMMENDED, Ayes 7, Noes 0



Kelly Becker
Committee Clerk



WISCONSIN STATE LEGISLATURE





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AB659

December 20, 2009

Dear State Legislator:

As a coalition of organizations working to promote routine HIV testing, we are writing to provide you with an update on current CDC recommendations on routine HIV testing. We encourage you to review where your state stands on testing provisions.

Last year the Centers for Disease Control and Prevention (CDC) revised upwards the number of new HIV infections occurring annually in the U.S. from 40,000 to roughly 56,000. This dramatic adjustment sends a clear signal that the HIV/AIDS epidemic is worse than originally thought, and far from over in this country.

In 2006 the CDC revised recommendations on HIV testing to advise that all adolescents and adults 13 to 64 in health care settings should receive routine testing for HIV. As noted below, a number of compelling facts support the wider adoption of HIV testing as an important tool for controlling the HIV epidemic in the US and for improving the health outcomes for people living with HIV disease.

- HIV testing among the general population is cost effective and the cost is comparable to other screenings and medical interventions.^{1 2}
- African-Americans make up approximately 13% of the US population. However, in 2005, blacks accounted for 49% of the new HIV/AIDS diagnoses in the United States³
- Between 250,000 and 320,000 people living with HIV in the US are unaware of their HIV status.⁴ They may be unknowingly transmitting the disease.
- People that know their HIV status are more likely to take precautions to reduce the spread of HIV disease.^{5 6}
- Many people with HIV/AIDS are diagnosed very late in the disease process and are unable to fully benefit from the lifesaving HIV treatment available today.⁷ People who receive a diagnosis late in their course of HIV infection often are more severely immunosuppressed and more likely to experience increased morbidity and short-term mortality than persons with earlier diagnoses.
- Identifying people with HIV disease earlier and connecting them with HIV care and treatment earlier results in better health outcomes and the delivery of more cost effective care.⁸

¹ Sanders GD, et al. Cost-effectiveness of screening for HIV in the era of highly active antiretroviral therapy. N Engl J Med. 2005;352(6):570-585.

² Palliel AD, et al. Expanded HIV screening in the United States: Effect on clinical outcomes, HIV transmission and cost. Ann Intern Med. 2006;145(11):797-806.

³ CDC HIV/AIDS among African-Americans Fact Sheet, Revised 2008

⁴ CDC. Number of persons tested for HIV United States, 2002. MMWR 2004;53:1110-3.

⁵ CDC. Advancing HIV prevention: new strategies for a changing epidemic – United States, 2003. MMWR 2003; 52(15):329-332.

⁶ Marks G, et al. Meta-analysis of high-risk sexual behavior in persons aware and unaware they are infected with HIV in the United States: implications for HIV prevention programs. JAIDS 2005; 39(4):446-53.

⁷ CDC. Missed opportunities for earlier diagnosis of HIV infection, 2006. MMWR 2006;55(47):1269-1272

⁸ Chen RY, et al. Distribution of health care expenditures for HIV-infected patients. CID 2006;42:1003-10.

In light of these facts, many states have passed laws on implementation of routine HIV testing and ensuring linkages to care for people that test positive. The laws have centered on three key aspects: consent, counseling, and reimbursement. We would like to offer you technical information on those 3 areas. Listed below is information on the current status of various states with regards to current CDC recommendations.

- 42 states and the District of Columbia have state laws that are aligned with the CDC's revised recommendations: AL, AK, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MN, MO, MS, MT, NC, ND, NH, NJ, NM, NV, OH, OK, OR, SC, SD, TN, TX, UT, VA, VT, WV, WY.

There are 20 states that have amended or passed new legislation to ensure their compatibility with the revised recommendations.

We are aware that Wisconsin has undertaken efforts to remove barriers to routine HIV testing in previous legislative sessions.

Enclosed is a list of further resources on HIV testing, as well as a ~~compendium on HIV testing laws~~ compendium on HIV testing laws in the states developed by the National HIV/AIDS Clinicians' Consultation Center (NCCC). According to *The Compendium*, Wisconsin state laws are compatible with the CDC recommendations on counseling, but incompatible with the specific provisions on consent recommended by the CDC.

Please also consider our coalition a resource on this important issue. The American Academy of HIV Medicine and its partners would be pleased to support your efforts by providing information on HIV testing, identifying HIV medical providers in your state to provide further assistance on the subject, or putting you in contact with experts in other states. Please contact AAHIVM Assistant Director of Policy and Programs Holly Kilness, at (202) 659-0699 x 20. For specific questions about your HIV/AIDS in your state, please contact: James M. Vergeront, Director, AIDS/HIV Program
Division of Public Health, Wisconsin Department of Health and Family Services; 1 West Wilson Street, Room 318, P.O. Box 2659, Madison, Wisconsin, 53702; telephone: 608-266-9853; james.vergeront@wisconsin.gov.

Again, we thank you for your efforts and we look forward to working with you to reduce the barriers towards routine HIV testing in clinical settings throughout the United States.

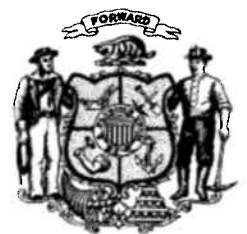
Sincerely,

The American Academy of HIV Medicine

National HIV/AIDS Clinicians' Consultation Center
AIDS Service, Johns Hopkins University School of Medicine
The HIV Medicine Association



WISCONSIN STATE LEGISLATURE





AIDS RESOURCE CENTER
OF WISCONSIN

LEADING WISCONSIN'S RESPONSE TO AIDS

Testimony of Bill Keeton, Director of Government Relations
AIDS Resource Center of Wisconsin in support of Assembly Bill 659

My name is Bill Keeton and I am the Director of Government Relations for the AIDS Resource Center of Wisconsin. I am here today on behalf of ARCW to testify in support of Assembly Bill 659 and to thank Representative Shilling and the Department of Health Services for inviting ARCW to offer feedback and insight into the drafting of a bill that will help expand HIV testing while protecting patient rights.

ARCW is Wisconsin's largest provider of HIV medical, dental and mental health care. We have offices in nine cities across Wisconsin and we also provide a vast array of both social services to help make sure people living with HIV have the greatest chance for living a long and healthy life as well as aggressive HIV prevention programs to help reduce the number of new infections in our state.

Today, HIV patients have the opportunity to live a long and healthy life provided they have access to appropriate medications and medical providers. However, significant barriers to successful HIV treatment continue to exist, including two addressed by this bill:

- 1.) Late diagnosis: Many patients are not diagnosed until they have been living with HIV for a long time and they are either at or close to an AIDS diagnosis. As with many other diseases, early detection and treatment substantially increase the chances for successful treatment.
- 2.) Access to care: After being diagnosed, many patients are unsure of where to go to receive health care and support. Making sure anyone who tests positive for HIV is immediately linked into health care increases the likelihood for successful treatment.

The changes included in AB 659 will help reduce these barriers by streamlining the HIV testing process in Wisconsin while ensuring that the ability consent for testing remains with the patient. Given the stigma that is still experienced by many HIV patients, it is important that testing remains voluntary and that the law regarding consent is clear.

Additionally, AB 659 clarifies post-test counseling to ensure when someone tests positive that they are immediately given information as to where they can go to receive the health care, social services and the support they need to cope with what is a life-changing diagnosis. Wisconsin has invested in the creation and maintenance of a strong network of AIDS Service Organizations that make sure no matter where someone in Wisconsin lives, they have access to medical care, medications and the social services they need to be successful in their treatment regimens.

ARCW encourages the passage of AB 659 and applauds Representative Shilling for her hard work in building consensus on this important issue.

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608-258-9103 800-518-9910 FAX 608-258-9136 arcw.org

APPLETON EAU CLAIRE GREEN BAY KENOSHA LA CROSSE MADISON MILWAUKEE SUPERIOR WAUSAU



March 3, 2010

Re: AB-659 HIV testing and consent revisions

Testimony of Craig Roberts, PA-C

Chairman Erpenbach and members of the committee, I want to thank you for the opportunity to comment on Assembly Bill 659 relating to the revision of HIV testing statutes. I regret that I am unable to appear in person for the hearing today but would like to offer these remarks in support of the bill.

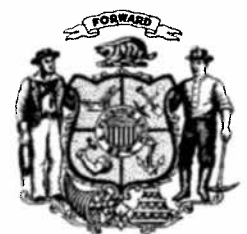
I am a physician assistant and epidemiologist with University Health Services at the University of Wisconsin-Madison. In my role there, I am the manager of the sexually transmitted disease clinic that serves both UW-Madison students and Dane County residents, known as the Blue Bus Clinic. I am also a clinical assistant professor in the Department of Population Health Sciences in the School of Medicine and Public Health at UW-Madison. I have 30 years of experience in the diagnosis, management and treatment of sexually transmitted diseases and see patients for STD and HIV testing on a daily basis.

When the HIV antibody test first became available 25 years ago, there were justified concerns that people could be tested against their will, and that patients would be discriminated against just because they were tested. The Wisconsin Legislature wisely created appropriate legal protections to keep this from happening. Since that time however, HIV testing has become common, mainstream and is widely accepted. An HIV test is frequently requested by patients, and in my clinic we perform approximately 2200 HIV tests per year. Every one of those requires us to go through the process of collecting a signed consent on a paper form, then processing that form. Patients frequently ask why this is being done, since they are not required to provide written consent for any other laboratory test. It is time consuming and unnecessary since the patient has already agreed, and often requested, that an HIV test be done.

The time has come to drop the written consent requirement. It is a relic of the 1980's, an era when our understanding and approach to HIV infection was very different than today. I'm certain that the hassle of obtaining written consent has caused many clinicians to avoid even offering HIV testing to their patients, and that is unfortunate. We should be using opt-out testing or verbal consent instead. The proposed revisions to current statutes will continue to provide strong protection for disclosure of results and for patient information about testing. This bill will substantially increase the penalties for discrimination or inappropriate disclosures. It modernizes our approach to HIV testing, education and reporting and brings us into compliance with CDC recommendations and the testing practices adopted by nearly every other state.

I encourage you to support this important legislation and revise current statutes relating to HIV testing.

Please free to contact me with any questions you may have. Thank you for your interest in the bill.





Judith B. Robson

Wisconsin State Senator

Testimony regarding AB 659, HIV Testing Modernization Bill

Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief & Revenue
Wednesday, March 3, 2010, 10 am, Room 201 SE

I'm pleased to have the opportunity to work with Rep. Shilling and the Department of Health Services on this bill to update Wisconsin's HIV laws and increase our rates of testing, diagnosis, and treatment of persons infected with HIV. Our former colleague, Dr. Sheldon Wasserman, introduced the first version of this bill last session. I want to thank him for laying the groundwork and looking forward to completing the project he started.

In 2006, the Center for Disease Control released revised recommendations for HIV testing of adults, children, and pregnant women. These recommendations reflect advances in health care services and address many barriers that prevent individuals from being tested for HIV. Forty-two states have already established guidelines similar to the CDC's revised recommendations. It's time for Wisconsin to approve similar guidelines.

HIV infection is a serious public health problem in Wisconsin. We know that approximately 7,000 HIV positive individuals currently live in the state. It is estimated that another 1,850 Wisconsin residents are HIV positive, but don't know it. Transmission from persons who are unaware of their infection accounts for 54-70% of the new infections. Early testing and treatment are critical to breaking the chain of HIV transmission as well as reducing both the mortality and the morbidity rates of HIV infections.

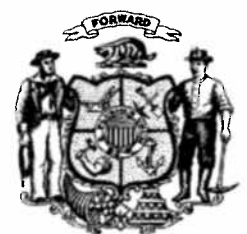
Prevention strategies that maximize voluntary HIV screening are highly effective in controlling the spread of HIV. For example, screening blood donors for HIV has nearly eliminated transfusion associated HIV infections in the U.S. Another example is screening pregnant women, which has reduced perinatal transmission rates among infected mothers by 98% WHEN THEY are treated prior to the baby's birth.

To expand the use of voluntary screening, we need to streamline the consent process so that more physicians will routinely offer and incorporate HIV testing in their practice and care. This bill will increase and encourage voluntary testing by making a number of changes to Wisconsin's outdated statutes. First, it brings the consent requirements more in line with standard patient protections for other sexually transmitted disease tests. Second, it creates Good Samaritan protections for individuals who may have been exposed to HIV while providing aid to an accident victim. Third, it updates privacy protections and penalties for individuals found guilty of improperly divulging patient medical records.

I would like to conclude by acknowledging the work of the DHS in collaboration with several hospitals and health organizations, the AIDS Network and AIDS Resource Center in developing this legislation. Together we can take the next steps in preventing the spread of HIV.



WISCONSIN STATE LEGISLATURE





State of Wisconsin
Department of Health Services

Jim Doyle, Governor
Karen E. Timberlake, Secretary

Senate Public Hearing
Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue
Wednesday, March 3, 2010

Assembly Bill 659: Related to HIV Consent and Testing Statutes
Jim Vergeront, M.D., Director, AIDS/HIV Program, DHS
Kathleen Krchnavek, MSW, AIDS/HIV Program, DHS

Chairman Erpenbach and Committee members, thank you for the opportunity to speak today on AB 659. We are happy to be here today in support of AB 659. The Department has worked closely with Representative Jennifer Shilling to create legislation that will modernize Wisconsin statutes related to HIV consent and testing. It is our strong belief that enacting this legislation will lead to earlier identification of HIV-infected persons and initiation of appropriate medical care that will result in reduced morbidity, mortality and transmission of HIV to other persons.

Wisconsin has a long tradition of establishing HIV-related legislation that is science-based and that fairly balances the public health needs while protecting the rights of an HIV-infected individual. In the early years of the epidemic, significant but appropriate concern regarding HIV-related stigma and discrimination led Wisconsin and many other states to establish informed consent requirements for HIV testing that are much more restrictive than for other diseases.

Wisconsin statutes that have safeguarded the confidentiality of persons infected with HIV and protected them from discrimination in health care, housing, and employment, have been critical to the State's successful response to the HIV epidemic. However, to ensure that we continue to effectively address the HIV epidemic, it is important that we make some changes to our current HIV testing and consent laws. These changes would make Wisconsin law consistent with the HIV opt-out testing that the Centers for Disease Control and Prevention (CDC) recommends. Specifically, to reduce barriers to HIV testing, the CDC recommends that states should not require written informed consent for HIV testing. CDC recommends "opt-out consent" where the provider notifies a patient that an HIV test will be done unless the patient declines.

AB 659 does more than change Wisconsin's HIV consent law. It updates our statutes related to disclosure of test results; HIV reporting; significant exposure provisions; penalties for discrimination and inappropriate disclosure of HIV test results; and it clarifies and simplifies a very complex area of our public health statutes. AB 659 addresses the following areas:

- Written authorization for disclosure would be retained but now would be separated from the process of obtaining consent for HIV testing.
- The local health officer would be added to the list of entities that have legal access to HIV test results for public health purposes.
- "Mode of transmission" would be added to the HIV Case Report, making it consistent with the AIDS Case report, and providing information that is essential for identifying trends in the epidemic.
- Specific conditions related to significant exposure would be revised, including allowing Good Samaritans access to a source patient's test results in specific situations, and enabling HIV test results of an exposed person to be released to the exposed person's health care provider.
- Penalties for discrimination and inappropriate disclosure of HIV test results would be doubled.
- The definition for "HIV test" would be simplified throughout the statutes.

HIV infection remains a severe public health problem in the United States and in Wisconsin

- Approximately 1.1 million Americans are living with HIV infection.
- It is estimated that approximately 56,000 individuals in the U.S. are infected annually, and that of this estimate, 21% are infected and do not know it.
- Transmission from persons who are not aware of their infection accounts for 54-70% of the new infections.
- Nationally and in Wisconsin, approximately 35-40% of individuals infected with HIV do not get diagnosed until they are within 1 year of an AIDS diagnosis (i.e. "late testers"). These individuals may have been living with HIV for 8 -10 years prior to diagnosis. Late diagnosis often occurs despite frequent visits to medical settings.
- Historically, HIV infection has had a disproportionately high impact on minority populations in Wisconsin. Racial/ethnic minorities comprise 12% of the Wisconsin population, but 55% of all HIV cases reported in 2008. The reported HIV infection rate in 2008 was eleven-fold greater for African Americans and five-fold greater for Hispanics compared to the rate for whites.

Early testing and treatment are critical to breaking the chain of HIV transmission

- Individuals that are infected with HIV, but unaware of it, unknowingly transmit the virus to others.
- Research indicates that people who are aware of their infection, take steps to prevent transmission to others.
- Treatment early in the course of the disease improves quality of life and extends life for those infected. Treatment is also believed to reduce infectiousness and thereby decrease likelihood of further transmission.
- HIV screening is cost effective even if the prevalence of infection is as low as 0.01% (1:1000)
- Universal screening of all blood donors in the U.S. has essentially eliminated transfusion-related HIV transmission
- Perinatal transmission has been reduced significantly due to the routine screening of pregnant women.

Numerous barriers to HIV testing have been identified

- One of the barriers cited by CDC and the Institute of Medicine is the requirement for explicit written consent for HIV testing, which requires an investment of additional time in a busy health care environment.
- Patients are more likely to be tested if their physician strongly recommends it, however, many physicians do not do so because discussing sexual and drug risk behaviors is uncomfortable and pre-test counseling takes significant time.
- Public opinion polls have shown that the majority (65%) of persons believe that "HIV testing should be treated just like routine screening for other diseases and should be included as part of regular check-ups and exams."

In 2006, CDC released new guidelines to increase HIV testing in the United States

- Health care providers should routinely test patients, ages 13-64 years by notifying them that testing will be performed unless the patient declines (opt-out consent).
- Separate written informed consent should not be required; general informed consent for medical care should be considered sufficient to encompass consent for HIV testing. 42 states are in compliance with this recommendation. Only 8 states still require written informed consent.
- Prevention counseling should not be required with diagnostic testing or as part of HIV screening programs in health-care settings.
- A review of 74 health professional organizations found the majority support the new CDC recommendations. Organizations fully endorsing the recommendations include the American Medical Association, the American Academy of Pediatrics, the American College of Physicians, American Academy of HIV Medicine and the Association of State and Territorial Health Officials (ASTHO)

- Rates of HIV screening are consistently higher in settings that use opt-out consent
 - The New York City Health and Hospital Corporation serving 1.3 million New Yorkers found the number of persons tested increased 57% and the number of new HIV diagnoses doubled.
 - A report from the San Francisco Department of Public Health showed a marked increase in HIV testing and a 50% increase in positives identified after adopting opt-out testing.

Current Wisconsin law requires written informed consent

- Wisconsin law [s. 252.15(2) (b)] requires that prior to administering an HIV test, the health care provider must first obtain written informed consent from the test subject.
- The consent must be given on a designated form for HIV testing, which must be signed and contain all of the following:
 - The name and signature of the test subject who is giving consent
 - The date consent is provided
 - A list of persons to whom and the circumstances under which statutes specify that test results may be disclosed without consent – or a notice that such a list is available
- The same statute also indicates that the test subject may identify on the same form to whom the result may be disclosed. However, due to recent HIPAA requirements, the Department of Health Services has encouraged the use of two separate forms for consent and for disclosure.

2009 Assembly Bill 659 modernizes Wisconsin HIV testing and consent laws

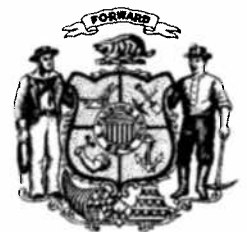
- AB 659 eliminates the requirement for written informed consent and instead requires patient notification for opt-out testing with the option to decline
- Opt-out consent is defined by the following process:
 1. The health care provider notifies the patient that an HIV test will be done, unless the patient declines.
 2. The health care providers offers a brief oral or written explanation of HIV testing, including a brief explanation of HIV infection; meaning of test results; reporting requirements; and treatment options and HIV-related services available for those who test positive.
 3. The patient must be notified that they may decline testing, and that this refusal may not be used as a reason to deny treatment or services.
 4. The subject must be given the opportunity to ask questions and decline testing.
 5. The provider must verify that the patient understands that testing will occur and that the decision by the patient is not coerced or involuntary.
 6. The consent or declination of consent must be recorded in the subject's medical record.
- AB 659 maintains patient rights by requiring that the health care provider verify that the patient understands that the test will be done and has given the patient an opportunity to decline the test.
- The patient must still provide written informed consent to disclose test results
- Penalties for illegal disclosure of test results and HIV-related discrimination have been doubled from current statutory limits.

In conclusion

- AB 659 will increase HIV testing in Wisconsin while maintaining patient rights.
- Through opt-out testing, more people will be diagnosed earlier and have access to life-saving medications, leading to an increase in quality of life for those who are infected and a gain in life expectancy.
- Routine HIV testing is cost-effective and cost-comparable to screenings for other diseases – similar to the cost-effectiveness of colonoscopies and Pap tests.
- A recent study estimated that a national policy of routine, opt-out HIV testing would extend the lives of thousands of people, saving 610,000 life years.
- Testing is also a critical prevention strategy that decreases HIV transmission through patient behavior change after diagnosis and reducing infectiousness through treatment interventions.
- By modernizing Wisconsin's HIV statutes, HIV prevention and treatment in our state can respond to meet the challenges of a disease that still stubbornly persists in our communities.



WISCONSIN STATE LEGISLATURE





WISCONSIN STATE REPRESENTATIVE
Jennifer Shilling
95TH ASSEMBLY DISTRICT

Testimony in support of Assembly Bill 659: HIV Testing Modernization Bill

Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue

March 3, 2010

Good afternoon Chairman Erpenbach and members of the committee. Thank you for holding a public hearing on this bill.

HIV infection remains a significant public health problem in Wisconsin with approximately 7,000 HIV positive individuals who are reported to be currently living in the state. It is also estimated that there are almost 2,000 residents living in Wisconsin who do not know that they are infected. While efforts to curb this disease have had some significant success over the years, new research and data from around the nation have made it clear that our state laws are outdated and restrictive for both patients and health care providers.

In 2006, the National Center for Disease Control released revised recommendations for HIV testing of adults, children, and pregnant women. These revised recommendations reflect advances in health care services that have been made in the past decade and address many barriers that studies found were preventing individuals from being tested for HIV. While 42 states have laws in place that are in line with the CDC's revised recommendations, Wisconsin is one of the few states that have yet to adopt these new standards.

In the CDC report, many health care providers cited several issues such as Wisconsin's current written informed consent requirements and extensive pre-test counseling as being time-consuming and burdensome. In a survey of health care providers, the CDC found that only 10% of providers encouraged at risk patients to be tested for HIV on-site.

By adopting the CDC recommended "opt-out" consent process, more physicians will be encouraged to routinely incorporate HIV testing and counseling in their care of patients. I strongly believe that this change will not only increase testing rates, but will ensure that patients continue to be well-informed of their health care decisions.

In addition to this change, AB 659 also includes a number of new patient confidentiality and privacy provisions. This bill protects a patient's right to decline HIV testing, clarifies that a health care provider cannot use this decision to deny other services or treatment, and increases penalties for improperly disclosing HIV test results without consent.

In summary, AB 659 will help to adopt the CDC-identified best practices, encourage prevention strategies that maximize voluntary HIV screening rates, and update our state statutes to reflect modern advances in the screening and treatment of HIV infections. This bill will help to bring Wisconsin up to date in our efforts to identify and prevent the spread of HIV and AIDS, and I want to thank you again for this opportunity to testify before you today.





WISCONSIN STATE REPRESENTATIVE
Jennifer Shilling
95TH ASSEMBLY DISTRICT

AB 659: HIV Testing Modernization Bill

Goals of legislation

- Clarify and update testing language
- Increase testing of patients for HIV/AIDS
- Protect patient privacy rights
- Minimize burden on health care providers

Major Issues Addressed by the Bill

- **Informed consent**
 - Currently, patients are required to sign an agreement consenting to be tested for HIV
 - This paperwork is both burdensome for health professionals and also deters some patients from being tested
 - This bill will eliminate current written informed consent requirements and replace with a model more closely resembling the CDC recommended “Opt-Out” provision
 - Will encourage more individuals to be tested
 - Testing will still be voluntary and a patient’s right to decline is clearly stated
 - Will reduce paperwork for doctors and simplify testing requirements
 - The Opt-Out process for obtaining consent is similar to the testing requirements for other STD screening tests
- **Disclosure of results and discrimination against people with HIV**
 - HIV test results should not be disclosed in an inappropriate manner
 - AB 659 provides stronger protections of medical records and increases penalties for discrimination and inappropriate disclosure
- **Good Samaritan testing**
 - AB 659 would establish a process for testing individuals for HIV who are involved in significant exposure situations under Wisconsin’s “Good Samaritan” Law
 - A “Good Samaritan” can request that an accident victim be tested for HIV if there is a significant exposure and potential risk of infection to the “Good Samaritan”
 - If the accident victim objects to testing, the “Good Samaritan” would have to go through the legal process to obtain a court order
- **Simplify definition of HIV**
 - Statutory language is clarified in the bill
 - Medical advances in the last 20 years have made the old definition obsolete and unclear
- **HIV case reporting**
 - AB 659 allows HIV information and data to be provided to certain public health officials to promote public safety and further HIV prevention efforts





WISCONSIN STATE REPRESENTATIVE
Jennifer Shilling
95TH ASSEMBLY DISTRICT

TO: Members of the Health Committee

FROM: Rep. Jennifer Shilling

DATE: February 2, 2010

RE: Assembly Bill 659 – HIV Testing Modernization Bill

Dear Colleagues,

At the Public Hearing for AB 659 – the HIV Testing Modernization Bill – several questions were raised regarding a health care provider's ethical responsibility to inform patients of their HIV status in significant exposure situations where they may or may not have consented to testing. While these situations are extremely rare, currently, even if a provider felt an ethical obligation to share this information, it would be prohibited.

After speaking with Dr. Bud Hammes who is the Director of Medical Humanities at Gundersen Lutheran, he sent the following email and asked that I forward this to members of the committee. In line with Dr. Hammes recommendations, AB 659 would allow a provider to share a patient's test results with him in a medically appropriate manner based on the provider's judgment. If you have any other questions regarding this bill, please feel free to contact me.

Thank you,

Rep. Jennifer Shilling

From: <bjhammes@gundluth.org>
Sent: Monday, February 01, 2010 3:06 PM
To: <rep.shilling@legis.wi.gov>
Subject: HIV testing

Jennifer,

As I understand your question, you and your committee are wondering what would be the ethical thing to do when HIV testing is done because of significant exposure to another person and the results are now available. Should the person being tested be told or not? What if they refuse to be told?

- continued -



In my judgment, whenever a test is undertaken the person should be told about the test. Obviously, if this was done with consent, then they know. But if the test was done on a sample taken for other reasons and the person doesn't know, I believe that the person still should be told what tests were done and why.

I also think that the person should be offered the results in a "professionally appropriate" manner.

Most people would want to know. Others may refuse for a variety of different reasons. Here "professionally appropriate" means that reasons for refusal would need to be considered and reviewed. For example, a person might not want to know, because they are afraid of losing their insurance or not knowing how to handle the information. These concerns would need to be discussed and most often can be resolved so that the patient's best interest is actually served.

My reasoning here is drawn from the ethics of research. In research there are some studies where we can determine that collecting certain data might lead to a finding of a serious illness that might be treated. In these research projects it is the standard of care to make sure that if the researcher finds some unexpected disease, that the research subject be told. This obligation is especially important when the disease can be cured or managed. I think this example works well for purpose of testing when someone else is exposed. In research we are collecting data for something other than treating a patient (just like this case where we are running an HIV test for a police officer or health provider who has been exposed), but if we find some result that is relevant to the subjects health (or the person) then we still have duties to them so they know and can receive the best care at the earliest opportunity.

In my view, it is impossible to write an absolute rule for health professionals and patients about this disclosure. That is I think it is dangerous to say "you must tell the patient" or "the patient's refusal to know the results must be respected." In this situation, no matter what rule you select, you will be wrong some of the time. I think the best policy is to say:

- 1) The person has a right to know that a test was done either by consent before the test or by being informed after the test was done;
- 2) The person must be offered the test results by a health provider qualified to explain the test and the results in the most professional manner possible.

Let me know if you have additional questions or if I did not fully answer your concern.

Bud Hammes

Bud Hammes, PhD
Director of Medical Humanities
Gundersen Lutheran Medical Foundation
C03-006A
1836 South Avenue
La Crosse, WI 54601

Gundersen Lutheran

January 27, 2010

The Honorable Jennifer Shilling
Wisconsin State Capitol
Room 320 East, PO Box 8953
Madison, WI 53708

Re: Human Immunodeficiency Virus (HIV) Testing Modernization Bill

Dear Representative Shilling:

I am writing on behalf of Gundersen Lutheran Health System to encourage you to support the proposed HIV Testing Modernization legislation which would move the state's health care system towards more routine testing for this virus, while maintaining an appropriate level of confidentiality and respect for patient privacy.

As you know, HIV is a very serious, life-threatening infection that over 5,900 Wisconsin residents are currently facing. Unfortunately, 25% of this population is unaware of their infection, which plays a significant role in HIV transmissions. Recently, there has been an increase in the percentage of HIV infected women of childbearing age, placing the unborn at great risk. The Centers for Disease Control (CDC) now recommends all adults and teenagers be tested for HIV, especially all pregnant women as early as possible during pregnancy.

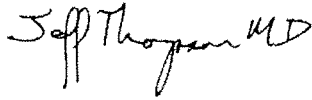
Gundersen Lutheran believes the HIV Testing Modernization Bill addresses the shortcomings of current testing practices which were written at a time when there were limited options for treatment and effective disease management. Current health code places barriers to timely testing of patients, many of whom may have inadvertently exposed health care workers. Health care workers significantly exposed to the blood from critically ill patients often need to wait until a consent form is signed before testing is done. In the meantime, antiviral prophylaxis drugs must be administered and workers face a great deal of uncertainty until the HIV status of the patient is known. This places unnecessary stress and hardship on the health care provider and their intimate contacts, not to mention the possibility of serious drug reactions.

The proposed legislation appropriately revises Wisconsin Health Code 252, consistent to current trends in disease development and recommendations by the Centers for Disease Control. At the heart of the debate is the rights and privacy of the individuals who are subjected to testing for HIV infection. They often suffer through fear, isolation, and, in some instances, discrimination. Taking into consideration the importance of patient confidentiality, sensitivity and desires, this legislation allows for patients to opt-out of testing, undertaken with the patient's knowledge and consent to general medical care. By changing the consent process, this legislation allows providers to request testing and, if patients do not disapprove, carry the testing out in a timelier fashion.

External Affairs Department 1900 South Avenue, H02-009 La Crosse, WI 54601
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Gundersen Lutheran encourages you to support HIV Testing Modernization Legislation because it expedites the testing process and will facilitate expanded testing and disease intervention while protecting patient privacy and choice.

Sincerely,

A handwritten signature in black ink that reads "Jeff Thompson MD". The signature is written in a cursive style with a large, stylized "J" and "T".

Jeff Thompson, MD
Chief Executive Officer



Good morning, Mr. Chairman and members of this distinguished committee. My name is Marilyn Michels. I am a nurse and have worked in the area of hospital infection control since the advent of Universal Precautions in 1985. During my tenure, I have participated in over 2000 follow-up investigations of health care worker exposures to blood or body fluids. I have assisted in obtaining written consent from patients as part of exposure investigations and reported HIV cases from the La Crosse area to the state epidemiologist.

A newly reported HIV case does not necessarily represent a new infection. While some patients with a new HIV diagnosis were infected recently; others were infected as long as ten years ago. Many of the cases I recently reported had AIDS, an indication that these patients were infected years before it was detected. When a patient presents with AIDS, we have failed to provide essential care to prevent rapid progression to a life threatening infection. We have also failed to provide education on how to prevent transmission to their loved ones. We have failed in protecting our community. If HIV can be discovered early, its transmission can be radically curtailed. Approximately one-fourth (24% -27%) of HIV-infected persons are believed to be unaware of their infection. However one study found that 95% of those with early onset of their HIV infection sought medical care with presenting complaints of fever, swollen glands, sore throat, and rash. We need to become more aggressive with expanding our opportunities for HIV testing and removing the established barriers so we may appropriately respond to our patients.

It is estimated that transmission is 3.5 times higher among persons who are unaware of their infection than persons who are aware of their infection. This contributes to a large number of new HIV infections each year in our country. Experts believe that new sexually acquired HIV infections could be reduced >30% per year if all infected persons could learn their HIV status and adopt changes in behavior similar to those adopted by persons already aware of their infection. More testing will result in earlier detection by which both treatment for the infected individual and prevention of the spread of HIV infection will be reasonably achieved.

Routine HIV screening has been recommended by the Centers for Disease Control and Prevention (CDC) since 2003. However in 2006, CDC¹ expanded on their recommendations to remove the written consent but inform the patient that testing will be done unless the patient declines, commonly referred to as

opt-out testing. CDC also recommended that all at risk adults, 13–64 years old be tested annually. Although this recommendation was published in 2006, this is not the current practice in the healthcare systems across our state. Routine testing will not be achievable until we remove the barriers associated with a written consent. Nationally there has been a 15% increase in reported HIV cases between 2006-2007. This noted increase may be due to recent changes in the reporting regulations by other states through out the nation. Consistency of our state statutes with the CDC recommendations is critical to Gundersen Lutheran. We provide patient care not only in Wisconsin, but also in Iowa and Minnesota. Iowa statutes are consistent with the CDC recommendations while Minnesota requests written or verbal consent. The acceptance of the proposed changes in this bill will allow Gundersen Lutheran to respect practices of our neighbors without imposing our restrictions on testing.

We are living in a different era with respect to this infection. When the current legislation passed years ago: We did not have accurate testing. We did not understand the epidemiology. We did not have rapid testing. We did not have effective treatment. We were afraid and needed to protect the infected. Now these protections are placing the infected at risk for a longer time when we can provide them with effective care.

¹ CDC, *MMWR*, Vol. 55, No. RR14; September 2006.