ISSUES - partner Act?.

HOUSE OF REPRESENTATIVES

1998

KERMAN (for himself and Mr. COBURN) introduced the following bill; was referred to the Committee on Commerce

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>A BILL
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>To amend title XXVI of the Public Health Service Act to provide for State
>programs of partner notification with respect to individuals with HIV
>disease.
>
>Be it enacted by the Senate and House of Representatives of the United
>States of America in Congress assembled,
>
>SECTION 1. SHORT TITLE.
>
>This Act may be cited as the `HIV Partner Protection Act'.
>
>SEC. 2. PROGRAM FOR HIV HEALTH CARE SERVICES; AMENDMENT REGARDING STATE
>PROGRAMS OF PARTNER NOTIFICATION.
>
>Subpart I of part B of title XXVI of the Public Health Service Act (42
>U.S.C. 300ff-21 et seq.) is amended by inserting after section 2616 the
>following section:
>
>`SEC. 2616A. PARTNER NOTIFICATION.
>
>`(a) IN GENERAL- Subject to subsection (d), for fiscal year 2000 and
>subsequent fiscal years the Secretary shall not make a grant to a State
>under this part unless the State demonstrates to the satisfaction of the
>Secretary that the law or regulations of the State are in accordance with
>the following:
>
>`(1) The State requires that the public health officer of the State carry
>out a program of partner notification to inform partners of individuals
>with HIV disease that the partners may have been exposed to the disease.
>
>`(2) In the case of a health entity that provides for the performance on an
>individual of a test for HIV disease, the State requires that the entity
>confidentially report positive test results to the State public health
>officer, including the name of the individual, together with any additional
>information necessary for carrying out such program.
>
>`(3) The program is carried out in accordance with the following:
>
>`(A) Partners are provided with an appropriate opportunity to learn that
>the partners have been exposed to HIV disease, subject to subparagraph (B).
>
>`(B) The State does not inform partners of the identity of the infected
>individuals involved.
>
>`(C) Counseling and testing on HIV disease are made available to the
>partners and to infected individuals, and such counseling includes
>information on modes of transmission for the disease, including information
>on prenatal and perinatal transmission and preventing transmission.
>
>`(D) Counseling for infected individuals includes the provision of
>information regarding therapeutic measures for preventing and treating the

terioration of the immune system and conditions arising from the disease, nd providing other prevention information.

>`(E) Referrals for appropriate services are provided to partners and >infected individuals.

>`(F) Notifications under subparagraph (A) are provided in person, unless >doing so is an unreasonable burden on the State.

>`(G) There is no criminal or civil penalty on, or civil liability for, an >infected individual if the individual chooses not to identify the partners >of the individual, or if the individual does not otherwise cooperate with >such program.

>`(H) There is no criminal or civil penalty on, or civil liability for, a >person who in good faith makes errors in submitting reports on making >disclosures under such program.

* what does this mean - complete health protection

>`(I) The failure of the State to notify partners is not a basis for the >civil liability of any health entity who under the program reported to the >State the identity of the infected individual involved.

>`(J) The State provides that the provisions of the program may not be >construed as prohibiting the State from providing a notification under >subparagraph (A) without the consent of the infected individual involved.

>`(b) STATE INSURANCE LAWS WITH RESPECT TO UNDERGOING TESTING-

>`(1) IN GENERAL- Subject to subsection (d), for fiscal year 2000 and >subsequent fiscal years the Secretary shall not make a grant to a State >under this part unless the State demonstrates to the satisfaction of the >Secretary that, with respect to an individual who learns that the >individual has been exposed to HIV disease and then undergoes testing for >such disease, State insurance laws prohibit an insurer from taking any >action against the individual solely on the basis that the individual has >been tested for the disease.

Bogus

>`(2) RULE OF CONSTRUCTION- A statute or regulation shall be deemed to >regulate insurance for purposes of paragraph (1) only to the extent that >such statute or regulation is treated as regulating insurance for purposes >of section 514(b)(2) of the Employee Retirement Income Security Act of >1974.

>`(c) DEFINITIONS- For purposes of this section:

>`(1) The term `infected individual' means an individual with HIV disease.

>`(2) The term `partner' includes the spouses or other sexual partners of >infected individuals; the partners of such individuals in the sharing of >hypodermic needles for the intravenous injection of drugs; the partners of >such individuals in the sharing of any drug-related paraphernalia >determined by the Secretary to place such partners at risk of HIV disease; >and any other individual whom the infected individual exposed to HIV >disease.

>`(d) DELAYED APPLICABILITY FOR CERTAIN STATES- In the case of a State whose >legislature does not convene a regular session in fiscal year 1999, and in >the case of a State whose legislature does not convene a regular session in >fiscal year 2000, the requirements described in subsections (a) and (b) as >a condition of the receipt of a grant under this part applies only for >fiscal year 2001 and subsequent fiscal years.'.

3. GRANTS TO STATES TO ASSIST WITH COSTS OF REQUIRED LAW.

(a) IN GENERAL- The Secretary of Health and Human Services may make grants to States to assist the States with the costs of carrying out the program of partner notification with respect to the human immunodeficiency virus >that is required in section 2616A of the Public Health Service Act (as >added by section 2 of this Act).

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>(b) AUTHORIZATION OF APPROPRIATIONS- For the purpose of carrying out >subsection (a), there is authorized to be appropriated $10,000,000 for each >of the fiscal years 2000 through 2004.

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>END

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Sandy – confidential – please don't share

Comparison of HR4431 with CDC Guidelines and Other Legislation (DRAFT - DO NOT DISTRIBUTE)

Policy Area	HIV Partner Protection Act (HR 4431)	HIV Partner Counseling and Referral Services Operational Guidelines (Draft: 9/11/98)	Cooperative Agreement Announcement 99004: HIV Prevention Projects	Guidelines for National HIV ~~Case Surveillance~~, Including Monitoring for HIV Infection and AIDS NOT Published yet	Other Legislation/ Guidance	Legislative Interpretation/ Other Comments
Requirements for funding	Section 2. Subpart I of part B of title XXVI of the Public Health Service Act is amended by inserting after section 2616 the following section: (a) In General – subject to subsection (d), for fiscal year 2000 and subsequent fiscal years the Secretary shall not make a grant to a State under this part unless the State demonstrates to the satisfaction of the Secretary that the law or regulations of the State are in accordance with the following: (1): "The state requires that the public health officer of the State carry out a program of partner notification to inform partners of individuals with HIV disease that the partners may have been exposed to the disease."	How to Use this Document: "Standards [in the document] are intended to be applied consistently, so they must be followed by CDC grantees in virtually all cases." Standard (Section 1.5): "All publicly funded HIV prevention counseling and testing sites, both confidential and anonymous, must make PCRS available to all clients." Standard (Section 2.1): "Publicly funded programs must provide all HIV-infected persons with access or referral to PCRS." Section 3.3: "federal legislation requires that a good faith effort be made to notify all current spouses or persons who have been spouses during the past 10 years."	Required Recipient Activities: "All recipients must provide counseling, testing, referral, and partner counseling and referral services consistent with the current CDC HIV Counseling, Testing, and Referral Standards and Guidelines."	HIV Prevention and Care: "Voluntary partner notification services provide HIV counseling and testing to persons who may be unaware of HIV risk exposures, and these services are a required component of federally-sponsored HIV prevention programs. States are required to develop standards and implement procedures for HIV prevention partner notification."	PL 104-146 Section 8(a): "The Secretary of Health and Human Services shall not make a grant under Part B of title XXVI of the Public Health Service Act . . . to any State unless such State takes administrative or legislative action to require that a good faith effort be made to notify a spouse of a known HIV-infected patient that he or she may have been exposed to [HIV] . . . and should seek testing." PHS Act Section 2646(b): Requires states in order to receive funding "to carry out a program of partner notification regarding cases of HIV disease." Unfunded.	HR 4431 further expands the CDC requirement for partner notification by legislating that states must pass laws or regulations that provide partner notification programs in order to qualify for Part B funding under Ryan White. If HR4431 becomes law, states would have to *demonstrate to the Secretary's satisfaction* that their partner notification laws or regulations meet the bill's provisions to qualify for Part B funds. This represents a higher level of accountability than currently exists. Currently, in order to receive funding from CDC, state health departments must follow CDC guidelines that require states to provide partner notification programs.

9/11/98

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Names Reporting and Anonymous Testing	Section 2(a)(2): "In the case of a health entity that provides for the performance on an individual of a test for HIV disease, the State requires that the entity confidentially report positive test results to the State public health officer, including the name of the individual, together with additional information necessary for carrying out such program."	Standard (Section 2.1.1): "Anonymous counseling and testing sites must provide PCRS without requiring that the infected client disclose his or her identity." Section 2.1.1: "An HIV-infected client must not be denied PCRS because he or she has been tested anonymously and chooses to remain anonymous. CDC requires that, unless prohibited by state law or regulation, grantees must provide reasonable opportunities for anonymous testing."	Required Recipient Activities: "All recipients must provide, unless prohibited by law or regulation, anonymous opportunities for persons to receive client-centered HIV prevention counseling and HIV laboratory testing.	Relationship to HIV prevention and care program: "Unless prohibited by state law or regulation, CDC requires that States and local areas provide opportunities to receive anonymous HIV counseling and testing services as a condition of federal funding for HIV prevention. CDC strongly recommends that states prohibiting anonymous HIV testing change this practice, given the overriding public health objective of encouraging knowledge of HIV serologic status." Performance Standards: "CDC advises that State and local surveillance programs use the same name-based approach for HIV surveillance as is currently used for AIDS surveillance nationwide and for HIV surveillance in 31 states."	PHS Act Section 2664(b): The applicant in order to receive funding will offer "substantial opportunities" to undergo anonymous testing and counseling. Unfunded. PHS Act Section 2646(c)(1): Does not "require or prohibit any State from providing that identifying information concerning individuals with HIV disease is required to be submitted to the state." Unfunded.	Section 2(a)(2) requires that entities who perform HIV tests report the name of those who test positive to the state. CDC HIV reporting guidelines will allow for HIV reporting systems using unique identifiers. HR4431 seems to prohibit this practice, although it is not clear that states will have to maintain a statewide name registry. Anonymous testing sites have been strongly encouraged by CDC because they have been proven to bring people in earlier for testing. Although this legislation does not forbid anonymous testing per se, testing sites may find it impractical to collect only the names of those who test HIV-positive. It seems that labs processing at-home HIV-tests would also have to report the names of those who test HIV-positive.

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Partner Notification Methods	Section 2(a)(3)(A): " Partners are provided with an appropriate opportunity to learn that the partners have been exposed to HIV disease, subject to subparagraph (B)." Section 2(a)(3)(B): " The State does not inform partners of the identity of the infected individuals" Section 2(a)(3)(F): " Notifications under subparagraph (A) are provided in person, unless doing so is an unreasonable burden."	Standard (Section 3.2): " The PCRS provider must explain to the HIV-infected client all the options for serving partners and then assist that client in deciding on the best plan to confidentially reach each partner and refer them to counseling testing and other support services." Section 3.2: Methods of Notification include client referral where the HIV-infected person notifies his or her partners and provider referral where the provider notifies partners and refers them to counseling and testing. Section 5.2: A PCRS program should keep data on the percentage of partners actually reached and how many of those partners are HIV-infected.	Required Recipient Activities: "Partner counseling and referral programs should include the following components (ensuring they are consistent with state and federal laws): client referral; provider referral; spousal notification." Required Recipient Activities: "All recipients must: Develop, implement, and maintain a mechanism to determine that partners have been counseled and referred to appropriate services and appropriate follow up of partners has been completed."			Section 2(a)(3)(A) calls on states to demonstrate to the Secretary's satisfaction that state laws or regulations assure that partner notification programs offer partners an "appropriate opportunity" to learn that they have been exposed and to receive counseling, testing and referral services. " Appropriate opportunity" is not clearly defined. Section 2(a)(3)(F) directs that notifications should be done in person unless " doing so is an unreasonable burden." Unreasonable burden is not clearly defined. This standard greatly increases program costs for states who will now have to increase funding for data collection, quality assurance, training, and more staff.

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Confidentiality	Section 2(a)(3)(B): "The State does not inform partners of the identity of the infected individuals involved."	Standard (Section 4.3): "While conducting PCRS activities in the community, providers must continue to maintain confidentiality for all HIV-infected clients and their partners." Section 4.3: "As the PCRS provider works in the community serving partners, confidentiality for all persons involved must continue to be maintained."	Required Recipient Activities: "All recipients must routinely offer, on a voluntary basis with informed consent, confidential client-centered HIV prevention counseling and HIV laboratory testing services."	HIV Prevention and Care: "CDC advises that the decision about linkage between surveillance systems and prevention and care services such as partner notification be made at the local level."	PHS Act Section 2661 (a)(1): "The State agrees to ensure that information regarding the receipt of early intervention services is maintained confidentially." Unfunded.	Section 2(a)(3)(B) provides a narrow protection of confidentiality that only prohibits the state from informing a prospective partner of the index case's identity. CDC guidelines exceed this standard by already requiring that states maintain the confidentiality of both the HIV infected individual as well as his and her partners. HR 4431 does not explicitly protect the confidentiality of either the index case or his or her partners except in the above-mentioned case.

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Counseling, Testing, and Referral	Section 2(a)(3)(C): "Counseling and testing on HIV disease are made available to the partners and to infected individuals, and such counseling includes information on modes of transmission for the disease, including information on prenatal and perinatal trans-mission and preventing transmission." Section 2(a)(3)(D): "Counseling for infected individuals includes . . . . information regarding therapeutic measures for preventing and treating the deterioration of the immune system and conditions arising from the disease and providing other prevention information." Section 2(a)(3)(E): "Referrals for appropriate services are provided to partners and infected individuals."	Standard (Section 1.5): "All publicly funded HIV prevention counseling and testing sites, both confidential and anonymous, must make PCRS available to all clients." Standard (Section 2.1): "Publicly funded programs must provide all HIV-infected persons with access or referral to PCRS." Standard (Section 2.2): "All HIV-infected clients must be offered PCRS regardless of ability to pay." Standard (Section 4.4): "As each partner is informed of possible exposure to HIV, the PCRS provider must be prepared to assist that person with immediate counseling and referrals . . . ."	Required Recipient Activities: "All recipients must develop, implement, and maintain a system to ensure clients who are HIV positive receive appropriate counseling, and are entered and maintained in an appropriate system of care, which includes preventive services." Required Recipient Activities: "All recipients must establish standards and implement, and maintain procedures for confidential, voluntary, client-centered counseling and referral of sex and needle-sharing partners of HIV-infected persons."	Relationship to HIV prevention and care programs: "All persons who are diagnosed with HIV infection should be referred to programs that provide HIV care, treatment, and comprehensive management services." HIV Prevention and Care: "Persons who have been diagnosed with HIV infection at either confidential or anonymous sites should be promptly referred to facilities that provide confidential HIV care."	PHS Act Section 2662(d): Requires that counseling provided to HIV-infected individuals be "provided under conditions appropriate to the needs of the individual." Unfunded.	Section 2(a)(3)(C) and 2(a)(3)(D) prescribe information that must be included in counseling, testing and referral messages to infected persons and their partners. The bill is contrary to language in Section 2662(d) of the PHS Act which requires the messages be tailored as "appropriate to the needs of the individual." CDC requires that health departments provide client-centered counseling, testing, treatment and referral services that are tailored to best address the person's lifestyle.

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Voluntary Participation and Criminal or Civil Liability	Section 2(a)(3)(G): "There is no criminal or civil penalty on, or civil liability for, an infected individual if the individual chooses not to identify, or if the individual does not otherwise cooperate with such program." Section 2(a)(3)(H): "There is no criminal or civil penalty on, or civil liability for, a person who in good faith makes errors in submitting reports or making disclosures under such program." Section 2(a)(3)(I): "The failure of the State to notify partners is not a basis for the civil liability of any health entity who under the program reported to the state the identity of the infected individual involved."	Standard (Section 1.5): "The PCRS provider must explain the purpose and process before PCRS activities can begin." Preface: "PCRS is voluntary on the part of the infected person and his or her partners." Section 3.4.2: "All states should have a policy established to guide health department staff in situations where an HIV-infected client indicates he or she does not plan to notify known partners and will not provide the information necessary for the health department staff to make a notification."	Required Recipient Activities: "All recipients must routinely offer, on a voluntary basis with informed consent, confidential client-centered HIV prevention counseling and HIV laboratory testing services."	Relationship to HIV prevention and care: "All HIV testing services should continue to be voluntary and preceded by informed consent with local laws"	PHS Act Section 2661(b)(1): States may not receive funding unless they have received a statement "that the decision of the individual with respect to undergoing such testing [for HIV disease] is voluntarily made." Unfunded.	Section 2(a)(3)(G) emphasizes the voluntary nature of the program by protecting persons who do not cooperate with the partner notification program from civil or criminal penalties. This section does not mean HIV-infected persons are not subject to other laws (e.g. willful exposure). CDC already requires that partner, counseling, testing and referral for HIV infected persons and their partners be voluntary. HR 4431 Section 2(a)(3)(H) protects persons from liability who in good faith make errors in submitting reports or making disclosures. HR 4431 Section 2(a)(3)(I) protects health entities if the state fails to follow through with a partner notification.

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Privilege to Disclose	Section 2(a)(3)(J): "The state provides that the provisions of the program may not be construed as prohibiting the State from providing a notification without the consent of the infected individual involved."	Section 3.4.2: "Whether or not a legal "duty to warn" exists for PCRS providers is best determined by reviewing applicable state laws or regulations, especially regarding spousal notification."			The Association of State and Territorial Health Official's 1988 "Guide to Public Health Practice HIV Partner Notification Strategies" recommends that a health care provider invoke his or her privilege to disclose when that provider knows of an identifiable at-risk partner who has not been named by the HIV infected person.	Section 2(a)(3)(J) forbids a program to condition the notification of partners on receiving consent of the infected person. CDC HIV Partner, Counseling, and Referral Services Operational Guidelines allow for partner notification of uncooperative HIV-infected clients, and also describe how and under what circumstances states may want to engage in this practice. States which have such regulations or laws requiring the HIV-infected client's consent before notifying partners may have to change them.