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Leg[islative] Review - 6/99 - Coburn Prevention Bill

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DISCUSSION DRAFT

JUNE 10, 1999

4:00 p.m.

106TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. COBURN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Public Health Service Act with respect to preventing the transmission of the human immunodeficiency virus (commonly known as HIV), and for other purposes.

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 Prevention Act of 1999".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The States should recognize that the terms "acquired immune deficiency syndrome" and "AIDS" are obsolete. In the case of individuals who are infected with the human immunodeficiency virus (commonly known as HIV), the more important medical fact for the individuals and for the protection of the public health is the fact of infection, and not just the later development of AIDS (the stage at which the infection causes severe immune deficiency or symptoms). The term "HIV disease", meaning infection with HIV regardless of whether the infection has progressed to AIDS, more correctly defines the medical condition.

(2) The medical, public health, political, and community leadership must focus on the full course of HIV disease rather than concentrating on later stages of the disease. Continual focus on AIDS rather than the entire spectrum of HIV disease has left our Nation unable to deal adequately with the epidemic. Federal and State data collection efforts should focus on obtaining data as early as possible

after infection occurs, while continuing to collect data on the symptomatic stage of the disease.

(3) Recent medical breakthroughs may enable doctors to treat HIV disease as a chronic disease rather than as a terminal disease. Early intervention in the progression of the infection is imperative to prolonging and improving the lives of individuals with the disease.

(4) The Centers for Disease Control and Prevention has recommended partner notification as a primary prevention service. The health needs of the general public, and the care and protection of those who do not have the disease, should be balanced with the needs of individuals with the disease in a manner that allows for the infected individuals to receive optimal medical care and for public health services to protect the uninfected.

(5) Individuals with HIV disease have an obligation to protect others from being exposed to HIV by avoiding behaviors that place others at risk of becoming infected. The States should have in effect laws providing that willfully exposing others to HIV is a felony.

SEC. 3. ESTABLISHMENT OF HIV-RELATED REQUIREMENTS FOR STATE GRANTS UNDER PROGRAM FOR HIV HEALTH CARE SERVICES.

(a) IN GENERAL.—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. PREVENTION OF TRANSMISSION OF HIV.

"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)(A) In the case of a health entity that provides for the performance on an individual of a test for HIV disease, or that [provides care for individual with the disease], the State requires, subject to subparagraph (B), that the entity confidentially report the positive test results to the State public health officer, including the name of the individual, together with such additional information as may be necessary for carrying out such program.

"(B) The State may provide that the requirement of subparagraph (A) does not apply to the testing of an individual for HIV disease if the individual underwent the testing through a program designed to perform the test and provide the results to the individual without the individual disclosing his or her identity to the program. This subparagraph may not be construed as affecting the requirement of subparagraph (A) with respect to a health entity that provides care for an individual with HIV disease.

"(3) The program under paragraph (1) 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 for 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 of infected individuals and their partners includes the provision of information regarding therapeutic measures for preventing and treating the deterioration of the immune system and conditions arising from the disease, and providing other prevention-related information.

"(E) Referrals for appropriate services are provided to partners and infected individuals, including referrals for social services and legal aid.

"(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 or making disclosures under such program.

"(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.

"(4) The State annually reports to the Director of the Centers for Disease Control and Prevention the number of individuals from whom the names of partners have been sought under the program under paragraph (1), the number of such individuals who provided the names of partners, and the number of partners so named who were notified under the program.

"(5) The State cooperates with such Director in carrying out a national program of partner notification, including the sharing of information between the public health officers of the States.

"(6) With respect to a defendant against whom an information or indictment is presented for a crime in which by force or threat of force the per-

petrator compels the victim to engage in sexual activity, the State requires as follows:

"(A) That the defendant be tested for HIV disease if—

"(i) the nature of the alleged crime is such that the sexual activity would have placed the victim at risk of becoming infected with HIV; or

"(ii) the victim requests that the defendant be so tested.

"(B) That if the conditions specified in subparagraph (A) are met, the defendant undergo the test not later than 48 hours after the date on which the information or indictment is presented, and that as soon thereafter as is practicable the results of the test be made available to the victim; the defendant (or if the defendant is a minor, to the legal guardian of the defendant); the attorneys of the victim; the attorneys of the defendant; the prosecuting attorneys; the judge presiding at the trial, if any; and the principal public health official for the local governmental jurisdiction in which the crime is alleged to have occurred.

"(C) That if the defendant has been tested pursuant to subparagraph (B), the defendant, upon request of the victim, undergo such follow-up tests for HIV as may be medically appropriate, and that as soon as is practicable after each such test the results of the test be made available in accordance with subparagraph (B) (except that this subparagraph applies only to the extent that the individual involved continues to be a defendant in the judicial proceedings involved, or is convicted in the proceedings).

"(D) That, if the results of a test conducted pursuant to subparagraph (B) or (C) indicate that the defendant has HIV disease, such fact may, as relevant, be considered in the judicial proceedings conducted with respect to the alleged crime.".

(b) APPLICABILITY OF REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) applies upon the expiration of the 120-day period beginning on the date of the enactment of this Act.

(2) DELAYED APPLICABILITY FOR CERTAIN STATES.—In the case of the State involved, if the Secretary determines that a requirement established

by the amendment made by subsection (a) cannot be implemented in the State without the enactment of State legislation, then such requirement applies to the State on and after the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session is deemed to be a separate regular session of the State legislature.

SEC. 4. AMENDMENT TO PROGRAM FOR NOTIFICATION OF EMERGENCY RESPONSE EMPLOYEES REGARDING EXPOSURE TO LIFE-THREATENING INFECTIOUS DISEASES.

Subpart II of part E of title XXVI of the Public Health Service Act (42 U.S.C. 300ff–81 et seq.) is amended by inserting after section 2687 the following section:

"SEC. 2687A. AUTHORITY FOR COURT ORDERS REGARDING EVALUATIONS.

"(a) INABILITY TO LEARN EXPOSURE STATUS; PROVISION OF FACTS TO PUBLIC HEALTH OFFICER.—If an emergency care provider (as defined in subsection (c)) believes that in responding to an emergency the provider may have been exposed by an individual to an infectious

disease included on the list under section 2681(a), and if the provider is unable to learn pursuant to section 2682 or 2683 whether the provider has been so exposed, then the designated officer involved shall, upon the request of the provider, provide to the public health involved the facts that relate to the circumstances under which the provider may be have been so exposed.

"(b) COMMENCEMENT OF JUDICIAL PROCEEDING.—If a public health officer determines that the facts provided to the officer pursuant to subsection (a) indicate that there are reasonable grounds for believing that the emergency care provider involved would have been exposed if the individual referred to in such subsection had an infectious disease included in the list under section 2681(a), the public health officer may in any court of competent jurisdiction commence a proceeding, conducted in camera, to obtain from the court an order that the individual referred to in subsection (a) be evaluated (which may include testing) to determine whether the individual has such a disease. If the court orders such an evaluation, the court may require that the emergency care provider pay the costs of the evaluation of such individual and reasonable attorneys fees and costs for the individual, and the court shall order the provider to maintain confidentiality

with respect to the identify of the individual ordered to be evaluated and the results of the evaluation.

"(c) DEFINITIONS.—For purposes of this section:

"(1) The term 'emergency care provider' means an emergency response employee and any other individual who is a first responder at the scene of the emergency involved, including such an individual whose professional duties do not include responding to emergencies.

"(2) The term 'designated officer involved', with respect to an emergency, means—

"(A) in the case of an emergency response employee, the designated officer of the employee; and

"(B) in the case of any other first responder, any designated officer of emergency response employees whose geographical jurisdiction includes the scene of the emergency to which the first responder responded.

"(3) The term 'public health officer involved', with respect to an emergency, means—

"(A) in the case of an emergency response employee, the public health officer for the community in which the employee is stationed; and

"(B) in the case of any other first responder, any public health officer whose geographical jurisdiction includes the scene of the emergency to which the first responder responded.".

SEC. 5. SENSE OF CONGRESS REGARDING WILLFUL EXPOSURE TO HIV.

It is the sense of the Congress that the States should have in effect laws providing that it is a felony for an individual who has HIV disease to willfully expose another to HIV, whether through sexual activities or otherwise, without first obtaining the consent of the other individual to the exposure.

SEC. 6. SENSE OF CONGRESS REGARDING CONFIDENTIALITY.

It is the sense of the Congress that strict confidentiality should be maintained in carrying out the provisions of section 2616A of the Public Health Service Act (as added by section 3(a) of this Act).