

SUBJECT: Notifying good Samaritans of possible exposure to communicable diseases

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Delisi, Laubenberg, Truitt, Dawson, Jackson, McReynolds,  
Solis, Zedler

0 nays

1 absent — Coleman

WITNESSES: For —Chris Jones, Combined Law Enforcement Associations of Texas  
(CLEAT); (*Registered, but did not testify:*) Bob Corona, Texas  
Association of Local Health Officials; Bruce Glasscock, City of Plano;  
Mike Higgins, Texas State Association of Fire Fighters; Dinah Welsh,  
Texas Hospital Association

Against — None

On — Jeff Taylor, Department of State Health Services

BACKGROUND: Health and Safety Code, ch. 81.048, requires the notification, under certain  
circumstances, of emergency personnel — fire, police, and emergency  
medical service (EMS) personnel — if they have been exposed to a  
reportable disease in the course of their duty. By rule, the commissioner of  
the Health and Human Services Commission (HHSC) identifies which  
diseases are reportable. They include:

- if the patient and the worker are in an enclosed space: chickenpox, diphtheria, measles, pertussis (whooping cough), pneumonic plague, tuberculosis, and any viral hemorrhagic fever;
- if there has been an examination of the throat, suctioning, or mouth-to-mouth resuscitation: meningitis, mumps, poliomyelitis, pneumonia Q fever, rabies, rubella, invasive meningococcal infection, and invasive haemophilus influenzae type b infection; and
- if there is contamination with blood or other viral fluids, such as a needle stick: AIDS, anthrax, brucellosis, dengue, ehrlichiosis, viral

hepatitis, HIV, malaria, plague, syphilis, tularemia, typhus, any viral hemorrhagic fever, and yellow fever.

Although under federal and state medical record privacy laws information about a positive test result would not be shared with anyone other than the patient and medical personnel (e.g., doctors and nurses), this statute requires the hospital to give notice of possible exposure to emergency personnel if:

- the emergency personnel delivered the patient to the hospital;
- the hospital discovers that the patient has a reportable disease and believes that the patient had the disease on arrival; and
- the emergency personnel was exposed during the course of duty.

Notice of exposure is made by the hospital to the local health authority, which then notifies the department where the emergency personnel works, which notifies the affected staff member. A person who has been notified of exposure is required to keep that information confidential.

The law does not create a duty for the hospital to perform tests of patients that are not medically necessary and does not create a liability for good faith compliance with the notification requirement.

**DIGEST:**

CSHB 162 would direct the commissioner of HHSC to adopt rules permitting a hospital or local health authority to give notice of exposure to a reportable disease to a person other than fire, police, or EMS personnel if the exposure occurred while providing emergency care.

The bill would take effect September 1, 2005.

**SUPPORTERS SAY:**

Good Samaritans should not suffer for providing assistance. If someone stops at a car accident or other emergency and tries to help, they should not be denied access to potentially life-saving information. Early intervention can slow or halt the progression of some communicable diseases, so it is important that good Samaritans receive the information in a timely manner. Also, alerting the affected person could prevent the spread of some diseases that can lie dormant for years before being transmitted to others.

This disclosure of information would not breach medical privacy laws under the federal Health Insurance Portability and Accountability Act of

1996 (HIPAA). While HIPAA contains rules and standards designed to protect private medical information, it explicitly exempts information disclosed in the interest of public health. Because knowledge of exposure can help prevent further transmission, disclosure of this information clearly is in the interest of good public health.

A lawsuit based on the information obtained through this bill would be extremely unlikely. The patient probably would be unable to warn the good Samaritan of a disease given the type of assistance rendered in an emergency, such as mouth-to-mouth resuscitation or pulling an unconscious victim from a car wreck. If the patient was unable to warn the good Samaritan, then there would be no basis for a lawsuit. This bill merely would change how quickly a good Samaritan was notified of exposure. Under current law, a good Samaritan who contracts a disease in the course of providing aid will find out eventually and, if so inclined, can sue the patient then.

It is unreasonable to think that every good Samaritan should be expected to get tested for the wide range of diseases that could occur through different types of exposure. The cost would be prohibitive. It would be much more efficient for the good Samaritan to check with the hospital to find out if the patient was infected and, if so, get tested for the disease in question.

OPPONENTS  
SAY:

Helping others in an emergency is a choice — albeit a noble one — that carries some risk. Most people know that coming into contact with a stranger's bodily fluids could result in disease. If a good Samaritan has the good sense to help out in an emergency and comes into contact with blood or other fluids, that person also should have the good sense to get tested for possible communicable diseases.

OTHER  
OPPONENTS  
SAY:

Notification is a good idea because some good Samaritans might not know to take universal precautions in an emergency. However, instead of permitting disclosure of another person's medical records, the state should require EMS, fire, or police personnel to inform people who are on the scene and may have been exposed that they should get tested.

This bill should apply to more people, including those who could be exposed in the course of their work and who are not covered under current law. For example, workers in a correctional facility who are not officers, such as volunteers or other staff, are not covered under the existing statute

or the proposed one, but should be. Inmates have higher rates of communicable disease than the general population, and people working in correctional facilities could have significant contact with inmates.

NOTES:

The committee substitute would make notification permissive, rather than required.

SB 665 by Barrientos, which was referred to the Senate Criminal Justice Committee, would extend communicable disease testing and reporting rights to people working in correctional facilities who currently are not afforded such rights under state law.