Overview

This bill establishes protocols regarding obtaining consent for procedures, obtaining and testing blood samples for bloodborne pathogens, and informing individuals of blood test results when an emergency medical services person has a significant exposure to a bloodborne pathogen from a source individual, and when a corrections employee has a significant exposure to a bloodborne pathogen from an inmate.

The bill also modifies notification requirements that apply when an EMS person is exposed to a person with active tuberculosis, expands the HIV and HBV prevention program for health professionals to also cover hepatitis C, and makes conforming changes.

1 Health test results. Amends § 13.99, subd. 38. Amends a cross-reference in the Data Practices Act, from a section that is being repealed to a new section being created in the bill.

2 Blood test results. Adds subd. 65f to § 13.99. Adds, to a section of the Data Practices Act, a cross-reference to a section classifying as private data blood test results obtained after corrections employees may have been exposed to a bloodborne pathogen by an inmate.

3 HIV tests; crime victims. Amends § 72A.20, subd. 29. Changes a cross-reference in a chapter on insurance trade practices, from a section that is being repealed to new sections being created in the bill. Replaces a reference to HIV with a reference to bloodborne pathogens. Makes other conforming changes.

4 Tuberculosis notification. Adds subd. 8 to § 144.4804. In a section establishing notification requirements related to people with tuberculosis, requires that if an emergency medical services person is exposed to a person with active TB, the treatment facility must notify the EMS agency and must provide the EMS person with screening and follow-up information.

5 Definitions. Adds § 144.7601. Defines the following terms, for a series of sections establishing protocols to follow when an EMS person experiences a significant exposure to
Condition for applicability of procedures. Adds § 144.7602. Specifies conditions under which protocols for responding to an EMS person's exposure to a bloodborne pathogen may apply. Establishes procedures for locating source individuals of bloodborne pathogens.

Subd. 1. Request for procedures. Allows an EMS person or EMS agency to request that a facility follow the significant exposure protocols established when an EMS person may have experienced a significant exposure to a bloodborne pathogen.

Subd. 2. Conditions. Requires facilities to follow the protocols established when the facility determines that a significant exposure has occurred, the source individual's blood test results are needed to determine a course of treatment, and the exposed EMS person consents to provide a blood sample for testing for bloodborne pathogens.

Subd. 3. Locating source individual. Requires the EMS agency and the facility to make reasonable efforts to locate or contact the source individual to follow the protocols for significant exposure, and allows the agency and facility to exchange private data about the source individual as necessary.

Information required to be given to individuals. Adds § 144.7603. Before seeking any consent from a source individual to obtain a blood sample, test a blood sample, or obtain existing blood test results, requires a facility to inform the source individual that (1) the individual's test results will be reported to the exposed EMS person if the EMS person so requests; (2) the individual may refuse to provide a blood sample and a refusal may result in a court order for the sample; and (3) the facility will tell the EMS person about the confidentiality requirements and penalties for unauthorized releases before disclosing any test information. Before disclosing any information about a source individual to an EMS person, requires the facility to inform the EMS person about the confidentiality requirements and penalties for unauthorized release.

Disclosure of positive bloodborne pathogen test results. Adds § 144.7604. Requires a facility to (1) ask the source individual and the EMS person if either of them has ever had a positive test for a bloodborne pathogen, (2) try to get existing test results before trying to obtain blood samples or perform new tests, and (3) disclose the source individual's test results to the exposed EMS person without any identifying information about the source individual.

Consent procedures generally. Adds § 144.7605. Specifies that the facility must follow its usual procedures for obtaining consent when it needs to obtain consent for a procedure from a source individual or EMS person. Provides that consent from a source individual or representative is not required if (1) the facility has made reasonable efforts to obtain the representative's consent, but that consent cannot be obtained within 24 hours of the exposure, or (2) the source individual dies before able to give consent to blood collection or testing. If testing occurs without consent, requires the facility to give the source individual certain required information whenever it is possible to do so.

Testing of available blood. Adds § 144.7606. Establishes procedures by which a facility can test an available sample of a source individual's blood, with the source individual's consent or without the source individual's consent.

Subd. 1. Procedures with consent. Provides that if the source individual is or was under the care of the facility and a sample of the source individual's blood is available with the individual's consent, the facility must test the blood sample with
the individual's consent.

**Subd. 2. Procedures without consent.** Establishes criteria under which an available blood sample may be tested for bloodborne pathogens without the source individual's consent, if the EMS person or the EMS agency requests the test.

**Subd. 3. Follow-up.** Requires the facility to tell the exposed EMS person of the source individual's test results without any identifying information about the source individual.

**Blood sample collection for testing.** Adds § 144.7607. Establishes procedures by which a facility can obtain and test a blood sample from a source individual with or without the individual's consent.

**Subd. 1. With consent.** Establishes procedures for collecting and testing blood samples and making the test results available when the source individual consents to give a blood sample and when one is not otherwise available. If the source individual refuses to consent, requires the facility to so inform the EMS person.

**Subd. 2. Procedures without consent.** Allows an EMS agency or an EMS person to petition for a court order to require a source individual to provide a blood sample for testing for bloodborne pathogens. Requires facilities to provide any information needed by petitioners. Specifies the circumstances under which a court may order a source individual to provide a blood sample. Allows court proceedings to be held in camera, and gives the source individual the right to counsel.

**No discrimination.** Adds § 144.7608. Prohibits facilities from conditioning decisions about admitting a source individual to a facility or providing care or treatment on any requirement that the source individual consent to a blood test for bloodborne pathogens.

**Use of test results.** Adds § 144.7609. Specifies that test results of a source individual can be used only for diagnostic and treatment purposes, and prohibits them from being used as evidence in criminal or civil proceedings.

**Test information confidentiality.** Adds § 144.7611. Classifies information on test results for bloodborne pathogens as private data for public facilities, and prohibits private facilities from disclosing data without consent as required by a section governing access to health records. Prohibits facilities, individuals, and employers from disclosing any identifying information about a source individual to an EMS person without a written release from the source individual.

**Penalty for unauthorized release of information.** Adds § 144.7612. Makes any unauthorized release of information a misdemeanor. Specifies that source individuals are allowed to pursue other remedies and penalties against any person responsible for releasing private data or information protected from disclosure.

**Responsibility for testing and treatment; costs.** Adds § 144.7613. Requires the facility to ensure that tests for bloodborne pathogens are performed if requested by an EMS person or an EMS agency, provided the conditions established in this bill are met. Specifies that the EMS agency that employs the EMS person who requests the test must pay for, or arrange for the payment of, the costs of testing and treating the EMS person and the costs of testing the source individual. Requires the facility to have a protocol on whether the facility will pay the costs of testing and treatment of a person acting as a good Samaritan or making a citizen's arrest.

**Protocols for exposure to bloodborne pathogens.** Adds § 144.7614. Requires EMS agencies and facilities to have post-exposure protocols to follow when an EMS person experiences a significant exposure.

**Subd. 1. EMS agency requirements.** Requires the EMS agency to have procedures for an EMS person to notify a facility that the person may have experienced a significant exposure, and
procedures to locate the source individual if necessary.

Subd. 2. Facility protocol requirements. Requires facilities to adopt a post-exposure protocol for EMS persons who have experienced a significant exposure. Requires the protocol to follow the current recommendations by the U.S. Public Health Service, and lists the minimum criteria that must be met.

18 Penalties and immunity. Adds § 144.7615. Establishes penalties and immunity for certain individuals.

Subd. 1. Penalties. Makes it a misdemeanor to violate any of these sections.

Subd. 2. Immunity. Extends immunity to facilities, physicians, and designated health care personnel who have made a good faith effort to comply with these sections.

19 HCV. Adds subd. 3a to § 214.18. Adds a definition to HCV (hepatitis C virus) to the definitions section of the HIV/HBV prevention program for health professionals, in the chapter on licensing boards.

20 Regulated person. Amends § 214.18, subd. 5. Amends the definition of regulated person for purposes of the HIV/HBV prevention program, to clarify that the nurses included in the term are nurses who are currently registered as registered nurses or licensed practical nurses.

21-26 Amend language governing the operation of the HIV/HBV prevention program, by adding references to HCV (hepatitis C virus) throughout the statutes where there are references to HIV and HBV.

27 Definitions. Adds § 243.94. Defines terms, for a series of sections establishing protocols to follow when a corrections employee experiences a significant exposure to a bloodborne pathogen from an inmate.

Subd. 2. Bloodborne pathogens. Defines this to mean microorganisms in human blood that can cause human disease. Includes but is not limited to HIV and hepatitis B and C.

Subd. 3. Inmate. Means an individual who is convicted of a felony and is committed to the custody of the commissioner of corrections and is confined in a state correctional facility or released from a state correctional facility pursuant to certain laws; or (2) an individual who is convicted of a crime and is in the custody of a local correctional facility.

Subd. 4. Correctional facility. Means a state or local facility.

Subd. 5. Corrections employee. Means an employee of a state or local correctional agency who experiences a significant exposure to an inmate in the course of employment duties.

Subd. 6. Significant exposure. Means contact in a manner supported by U.S. public health service recommendations that includes (1) percutaneous injury, contact of mucous membrane or nonintact skin, or prolonged contact of intact skin or (2) contact, of a kind that may transmit a bloodborne pathogen, with blood, tissue, or other body fluids.

28 Conditions for applicability of procedures. Adds § 243.941. Lets a corrections employee (employee) who may have experienced a significant exposure to an inmate request a blood test of the inmate. Requires the correctional facility (facility) to follow the procedures in the bill if the following conditions are met:

(1) a licensed physician determines that a significant exposure has occurred;
(2) the physician needs the inmate's bloodborne pathogens test results to begin, continue, modify, or stop treatment in accordance with the most recent U.S. public health guidelines, because of possible exposure to a bloodborne pathogen; and
(3) the employee consents to provide a blood sample for testing.

29 Information required to be given to individuals. Adds § 243.942. Requires the facility to
inform the inmate that (1) inmate test results without identifying information will be reported to
the employee if requested, (2) that test results are for medical purposes and cannot be used in
criminal proceedings, and (3) that the employee will be informed of confidentiality requirements
and penalties before any test results are disclosed.

Before giving an employee inmate test results, the facility must tell the employee the
confidentiality requirements in law and that the employee may be subject to penalties for
unauthorized release.

30 Disclosure of positive bloodborne pathogen test results. Adds § 243.943. If the conditions of
sections 28 and 29 are met, the facility must ask the inmate if the inmate ever had a positive test
for a bloodborne pathogen. The facility must attempt to get existing test results before getting a
blood sample or testing for bloodborne pathogens. Requires the facility to give the employee
inmate test results without identifying information.

31 Consent procedures generally. Adds § 243.944. Requires a facility seeking inmate consent to
act consistent with other law generally applicable to consent. Provides that consent is not
required if the facility makes reasonable efforts to get it but cannot get it within 24 hours of a
significant exposure. If testing occurs without consent because an inmate is unconscious or
unable to consent and a representative cannot be located, the facility will provide the information
in section 28 to the inmate or representative whenever

it is possible. If an inmate dies before giving consent, the facility does not need the inmate's
representative's consent.

32 Testing of available blood. Adds § 243.945. Establishes procedures by which the correctional
facility can test an available blood sample from an inmate, with or without the inmate's consent.
Subd. 1. Procedures with consent. Provides for testing an inmate's blood sample with inmate
consent if sections 28 and 29 are met.
Subd. 2. Procedures without consent. Establishes criteria that will allow testing of an inmate's
blood if an inmate provides a blood sample but does not consent to testing and if the corrections
employee requests the test.
Subd. 3. Follow up. Requires the facility to tell the inmate test results. Requires it to give
results, without inmate identifying information, to the employee's health care provider.

33 Blood sample collection for testing. Adds § 243.946. Establishes procedures by which a
correctional facility can obtain and test a blood sample from an inmate with or without the
inmate's consent.
Subd. 1. Procedures with consent. If a blood sample is not otherwise available, the facility
must obtain inmate consent to collect one. If the inmate consents to give a sample, the facility
must have it tested and give results to the employee's health care provider without identifying
the inmate. The inmate must be told he or she can refuse, and that refusal may result in a court
order to require a blood sample. If the inmate refuses consent, the facility must so inform the
employee.
Subd. 2. Procedures without consent. Authorizes a facility or employee to seek a court order
to require an inmate to give a blood sample. Requires the facility to serve the petition on the
inmate. Specifies what the petition must include.

Specifications that in order to require a blood sample the court must (1) find probable cause to
believe the employee experienced a significant exposure, (2) impose safeguards against
unauthorized disclosure or use of test results, (3) find that a physician needs the test in
connection with treatment of the employee, and (4) find a compelling need for the test.
To determine compelling need the court must (1) weigh the need for compelled blood
collection against the inmate's privacy interests and (2) consider whether involuntary blood collection and testing serve the public interest.

Provides for a closed hearing unless either party requests an open hearing or the court determines an open hearing is necessary to the public interest and administration of justice.

Allows the inmate to arrange for counsel in a proceeding under this subdivision.

34 **No discrimination.** Adds § 243.947. Prohibits the facility from withholding care or treatment from an inmate who refuses to consent to testing.

35 **Use of test results.** Adds § 243.948. Provides for using blood tests under the bill for diagnostic purposes and to determine need for treatment. Prohibits using test results in a criminal proceeding.

36 **Blood testing for other exposed persons.** Adds § 243.949. Allows any person, other than another inmate, who has experienced significant exposure to an inmate to request the correctional facility to implement the blood testing procedures set forth in this bill. Provides that the other provisions in the bill also apply to any person, other than another inmate, who experiences this significant exposure.

37 **Test information confidentiality.** Adds § 243.950. Makes test results obtained under the bill private data (accessible only to the subject of the data and the entity that creates, collects, or maintains it), except that the results will be disclosed as provided by the bill.

38 **Penalty for unauthorized release of information.** Adds § 243.951. Makes unauthorized release of an inmate's identity under the bill a misdemeanor. Allows an inmate to pursue remedies under the data practices act or other law against an individual, government entity, or private entity for releasing private information about the inmate.

39 **Protocol for exposure to bloodborne pathogens.** Adds § 243.952. Requires facilities to follow federal guidelines for bloodborne pathogens. Requires adherence to the latest U.S. public health service protocols when an employee experiences a significant exposure.

40 **Immunity.** Adds § 243.953. Makes a facility, physician, and designated health care personnel immune from civil, criminal, or administrative action about the disclosure of inmate test results to an employee and the testing of an inmate blood sample, if a good faith effort has been made to comply with sections 27 to 39.

41 **Testing on request of victim.** Amends § 611A.19, subd. 1. In a subdivision establishing procedures by which victims of certain crimes can seek court orders for offenders to be tested for HIV, strikes language that requires the testing to be performed by a health professional trained in HIV counseling (the section describing the counseling that must be provided is repealed).

42 **Disclosure of test results.** Amends § 611A.19, subd. 2. In a subdivision establishing rules for the disclosure to victims of the results of HIV tests on offenders, strikes language that requires the results to be given to the victim by a health professional trained in HIV counseling (the section describing the counseling that must be provided is being repealed).

43 **Repealer.** Repeals sections 144.761 to 144.7691 (protocols for significant exposure to HIV and HBV by EMS personnel).