

STORAGE NAME: h0003a.grr

DATE: February 2, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 3

RELATING TO: Child Identification Program

SPONSOR(S): Representative Starks and Others

COMPANION BILL(S): SB 200

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING AND REGULATION YEAS 11 NAYS 0
- (2) FAMILY LAW AND CHILDREN YEAS 6 NAYS 0
- (3) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
- (4)
- (5)

I. SUMMARY:

HB 3 creates the Child Identification Program or "ChIP" act of 1999. It provides legislative intent for all health care providers, including hospitals, birthing centers, and physicians to assist parents in obtaining a DNA sample of their child for safekeeping by the parent.

It requires all licensed hospitals and licensed birthing centers to notify expectant parents during the admissions process in such facilities, that the facility is a participant in the ChIP Program and as such will provide a DNA sample from their child to the parents upon request and payment of a reasonable fee to be determined by the hospital or birthing center.

No copy or record of any DNA sample provided to a parent shall be created or maintained by any entity participating in the ChIP program.

All physicians who provide primary care to children born prior to implementation of the ChIP program are encouraged to voluntarily participate and provide DNA samples to parents of such children. The Boards of Medicine and Osteopathic Medicine are encouraged to increase awareness among physicians about the program.

The bill may have some fiscal impact on the private sector.

An amendment adopted by the the Committee on Health Care Licensing and Regulation is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there is no statewide mandated program using any method for child identification. There are limited programs that use fingerprints or footprints for identification purposes. For instance, many hospitals use a footprint to identify new born babies. In some localities, there are established programs that use a fingerprint and a photograph on ID cards for children. This is usually not done until the child is 3 or 4 years old. While fingerprints can be used to identify a particular individual, fingerprints cannot be used in determining parentage or family relationships.

DNA identification is the most precise and definitive method available at this time for determining parentage and other family relationships. Everyone is born with a unique genetic "blueprint" known as DNA (deoxyribonucleic acid). Because the DNA of an individual is inherited from both the mother and father, DNA identification provides a conclusive way to determine biological relationships. Initially, it was used in the identification of bodies. More recently it has come to be used in determining the parenthood or relationship of a child to an adult or to determine whether or not an individual is related to a common ancestor.

A pilot program was recently implemented at Tallahassee Memorial HealthCare (TMH). This is a collaborative effort between the hospital, the Florida Department of Law Enforcement (FDLE), and Life Technologies, Inc. The voluntary program provides a DNA sample of a newborn to the parents for future child identification needs. This is done by collecting a small blood sample from a heel prick, depositing that sample on a special filter paper, and sealing it in a foil pouch for preservation. The Tallahassee program reported very positive feedback from the families that participated. As a result of the positive experience, TMH has decided to continue the program without cost to the parents. The cost to TMH was covered by a grant.

B. EFFECT OF PROPOSED CHANGES:

The bill creates the Child Identification Program or "ChIP" act of 1999, to provide for a statewide child identification program. All health care providers, including licensed hospitals and licensed birthing centers are required to offer the service to parents of newborn children.

All physicians who provide primary care to children born prior to implementation of the ChIP program are encouraged to voluntarily participate and provide DNA samples to parents of such children.

No copy or record of any DNA sample provided to a parent shall be maintained by any entity participating in the ChIP program.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No. However, the Agency for Health Care Administration may develop procedures to provide uniformity in the collection of blood samples and dissemination of information.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Hospitals and birthing centers are required to participate in the program.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. Any parent who participates in the CHIP program will be required to pay a reasonable fee for the DNA sample.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The parents may pay the cost to obtain a DNA sample.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, families have the option to participate in the CHIP program.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

The family. Having a child's DNA sample available may enable parents to better assist law enforcement in finding and identifying a child in the unfortunate event of a child's disappearance or abduction. Also, it will assist in identifying children who may be victims in an accident or natural disaster.

(2) Who makes the decisions?

The family.

(3) Are private alternatives permitted?

The family can decide not to participate in the program.

(4) Are families required to participate in a program?

No.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

Yes. It is possible that one parent would want to participate, while the other parent may not. This decision could affect the relationship between the parents. If parents subsequently divorce, there may be a question of which parent gets the sample.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

The family decides whether or not to participate in the program.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill does not affect any present statutes. It creates new statutory language, but does not number the language. The language might be appropriately placed in Chapter 383, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the Child Identification Program or CHIP act of 1999. The section provides legislative intent for all health care providers, including hospitals, birthing centers, and physicians to assist parents in obtaining a DNA sample of their child for safekeeping by the parent.

The section requires all hospitals and birthing centers to notify the parents of new born babies in such facilities, that the facility is a participant in the CHIP Program and will provide a DNA sample to the parents upon request and payment of a reasonable fee.

The section also provides that no copy or record of any DNA sample provided to a parent shall be maintained by any entity participating in the CHIP program and that all physicians who provide primary care to children born prior to implementation of the CHIP program are encouraged to voluntarily participate and provide DNA samples to parents of such children.

Section 2. Provides an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

It will only impact those parents who choose to participate in the CHIP program.

2. Direct Private Sector Benefits:

Having a child's DNA sample available may enable parents to better assist law enforcement in finding and identifying a child in the unfortunate event of a child's disappearance or abduction. Also, it may assist in identifying children who may be victims in an accident or natural disaster.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

It was reported that the cost to the hospital (TMH) for providing the blood sample is approximately \$1.50. The bill requires the hospitals and birthing centers to charge the parents a reasonable fee for the sample and necessary materials. This does not include cost of nursing staff time or completing the necessary paperwork.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Committee on Health Care Licensing and Regulation

The bill only refers to the Board of Medicine for purposes of encouraging licensed physicians to participate in CHIP. Osteopathic physicians also serve as primary care physicians to children and are regulated by the Board of Osteopathic Medicine. Further, the bill does not address children born in route to the hospital or those children born out of state that subsequently move to Florida. As drafted, the bill covers children born prior to the effective date of the bill and children born in Florida after the establishment of the CHIP program.

Additionally, the Department of Health pointed out that the CHIP program established in this bill should not be confused with another program with the acronym "CHIP" which stands for Florida's Child Health Insurance Program.

The Committee on Family Law and Children

It is the stated preference of FDLE that the same materials be used by all hospitals and birthing centers. Life Technologies, Inc. has a patent on the materials suggested for use. If that patent was issued from an application filed on or after June 8, 1995, then it is valid for 20 years from the first U.S. filing date for the patent.

Requiring hospitals and birthing centers to offer the service adds the possibility of liability for those institutions along with the accompanying potential for litigation and its associated costs.

Requiring the service to be offered for newborns and **encouraging** the service to be offered for older children might imply a different standard for the two age groups of children.

The service should not be marketed to give parents a false sense of safety or security. Having these samples will not save children's lives nor will it prevent children from being abducted.

DNA technology is already used successfully to identify bodies and remains as well as to determine relationships or potential relationships between children and adults in cases where no DNA sample has been obtained and kept in the household. Having the samples available for future use may, however, make an identification easier, faster, and more credible to the parent.

The proposal by FDLE was for hospitals and birthing centers to voluntarily offer the DNA samples to parents of newborns and absorb the cost. As a result of the pilot, TMH has decided to continue the practice at no cost to the parent. This legislation appears to preclude hospitals and birthing centers from doing that.

Since the parent is required to pay for the service and it is not covered by Medicaid, lower income families might not be able to afford the program.

There may be some concerns from a biomedical ethics perspective. The Human Genome Project is a 15 year, federally funded \$3 billion effort to identify all of the estimated 80,000 genes in human DNA. This project will provide individuals more information about their own genetic makeup. Medical ethicists are already debating whether or not this information should remain the exclusive property of the individual or properly be the concern of insurers, employers, and society. Two concerns specific to this bill might be that there will be a record of the collection of the samples and a precedent will be set for state mandated collection of DNA. What starts out as a seemingly innocuous service may pave the way for other more harmful uses in the future.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted by the Committee on Health Care Licensing and Regulation. This amendment included The Board of Osteopathic Medicine as one of two medical boards encouraged to educate licensed physicians about the program and to encourage physicians to participate in the program.

VII. SIGNATURES:

COMMITTEE ON Health Care Licensing & Regulation:

Prepared by:

Staff Director:

Robert W. Coggins

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON Family Law and Children:

Prepared by:

Staff Director:

Carol Preston

Stephanie Olin Birtman

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum