

Legislative Analysis



HIV TESTING

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4583

Sponsor: Rep. Roy Schmidt

Committee: Health Policy

Complete to 3-8-10

A SUMMARY OF HOUSE BILL 4583 AS INTRODUCED 3-17-10

The bill would eliminate the requirement that a physician or health facility first obtain the written, informed consent of a person before ordering an HIV test for the purpose of diagnosing HIV infection. Instead, the bill would require that the person be informed of the right to decline the HIV testing in writing.

Consent to general medical care as consent to HIV testing. Under provisions of the Public Health Code, a physician or his or her designee is prohibited from ordering an HIV test for the purpose of diagnosing HIV infection without first receiving the written, informed consent of the test subject. House Bill 4583 would amend this provision to permit the ordering of the HIV test, and to specify that unless the HIV test was declined in writing, the test subject's consent to general medical care would be considered consent to an HIV test. The bill would also revise several provisions pertaining to executing a signed writing to conform to this change.

DCH pamphlet on HIV testing. Currently, the Department of Community Health is required to develop a pamphlet regarding HIV testing that must be given to a test subject by the physician ordering the HIV test. The pamphlet must contain a model consent form that contains certain information as prescribed in statute. The bill would instead require the pamphlet to include a model form for the test subject to use if he or she wished to decline the HIV test in writing.

Most of the information currently required to be in the model consent form would also be required to be included in the model form; however, the bill would revise one of the current statements and add another. Currently, the model consent form must inform the test subject of the right to withdraw consent to the test at any time before the administration of the test. The bill would instead require the model form to inform the test subject of the right to decline the test at any time before the administration of the test and the circumstances under which the test subject would not have the right to decline the test. The bill would also require the model form to include a place for the test subject to decline the HIV test in writing.

Bar to civil action. Currently, the code specifies that a test subject who executes a signed writing under subsection (2) of Section 5133 (i.e., the current model consent form), is barred from bringing a civil action based on failure to obtain informed consent for the HIV test against the physician who ordered the HIV test. The bill would apply this

provision only to signed writings under subsection (2) as that subsection read before the bill's effective date.

Miscellaneous provisions. The bill, as introduced, requires the DCH to have the revised pamphlets available for distribution by October 1, 2009. The two medical boards would also to notify in writing all physicians subject to Section 5133 of the availability of the pamphlets by the same date. Lastly, several provisions that have limited applicability to particular subsections would instead be amended to apply to the entire section. For instance, instead of specifying that subsection (2) did not apply to an HIV test performed for research, the bill would specify that the entire section would not apply to such a test. [Under the bill, subsection (2) allows consent to general medical care to be considered consent for HIV testing unless the subject declines in writing.]

MCL 333.5133

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.