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Senate Bill 681 (as introduced 7-15-09)

Sponsor: Senator Tom George Committee: Health Policy

Date Completed: 10-21-09

CONTENT

The bill would amend the Public Health Code to do the following:

- -- Allow a physician to order a human immunodeficiency virus (HIV) test without a person's informed consent.
- -- Provide that a person's consent to general medical care would constitute consent to an HIV test unless the person declined it.
- -- Require the Department of Community Health (DCH) to include a model form to decline the test in the pamphlet that must be distributed to test subjects.

The Code prohibits a physician or an individual to whom a physician has delegated authority from ordering an HIV test for the purpose of diagnosing HIV infection without first receiving the test subject's written, informed consent, subject to certain exceptions. The bill would allow a physician or delegate to order an HIV test without the person's written, informed consent. Unless the HIV test were declined in writing, the test subject's consent to general medical care would be considered consent to an HIV test.

Currently, written, informed consent consists of a signed writing executed by the test subject or his or her legally authorized representative that includes at least all of the following:

- -- An explanation of the test, including its purposes, potential uses and limitations, and the meaning of test results.
- -- An explanation of the test subject's rights, including the right to withdraw consent at any time before administration of the test, the right to confidentiality of the test results, and the right to consent to and participate in the test on an anonymous basis.
- -- The person or class of people to whom the test results may be disclosed.

The bill would delete this provision.

Under the Code, a physician or an individual to whom the physician has delegated authority who orders an HIV test must distribute to each test subject a pamphlet regarding the test on a form provided by the DCH. The pamphlet must include the purpose and nature of the test, the consequences of both taking and not taking the test, the meaning of the results, and other information the Department considers necessary or relevant.

The pamphlet also must include a model consent form for the required signed writing. The model consent form must contain information regarding the test subject's rights.

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Under the bill, instead of the model consent form, the pamphlet would have to include a model form for the test subject to use if he or she wished to decline the HIV test in writing. The DCH would have to include in the model form all of the following information:

- -- An explanation of the test, including its purpose, its potential uses and limitations, and the meaning of test results.
- -- An explanation of the test subject's rights, including the right to decline the test at any time before administration and the circumstances under which the subject did not have the right to decline the test; the right to confidentiality of the results; and the right to consent to and participate in the test on an anonymous basis.
- -- The person or class of people to whom the results could be disclosed.
- -- A place for the test subject to decline the test in writing.

The Code required the DCH to develop the pamphlet. The DCH must write and print the pamphlet in clear, nontechnical English and Spanish, and distribute it, upon request and free of charge, to an applicable physician or other person or a governmental entity. The Michigan Board of Medicine and the Michigan Board of Osteopathic Medicine and Surgery were required to notify all physicians in writing of the pamphlet requirements and the availability of the pamphlet. Under the bill, these requirements would apply to the pamphlet containing the model form to decline the test.

The Code provides that a person who executes a signed writing giving informed consent for an HIV test is barred from bringing a subsequent civil action based on failure to obtain informed consent against the physician who ordered the test. Under the bill, this provision would apply to a person who executed the signed writing before the bill's effective date.

The bill would replace various references to a test subject's written, informed consent with references to a test subject's right to decline the test.

MCL 333.5133 Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The development and distribution of the required pamphlet would impose minor indeterminate costs on the Department of Community Health.

Fiscal Analyst: Steve Angelotti

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