

SUBSTITUTE FOR
HOUSE BILL NO. 4583

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 5133 (MCL 333.5133), as amended by 1994 PA 420.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5133. (1) Except as otherwise provided in ~~subsections~~
2 ~~(12) and (13)~~ **THIS SECTION**, a physician who orders an HIV test or a
3 health facility that performs an HIV test shall provide ~~counseling~~
4 **INFORMATION** appropriate to the test subject both before and after
5 the test is administered.

6 (2) Except as otherwise provided in this part, a physician, or
7 an individual to whom the physician has delegated authority to
8 perform a selected act, task, or function under section 16215,
9 shall not order an HIV test for the purpose of diagnosing HIV

infection without first **PROVIDING THE TEST SUBJECT WITH PRETEST INFORMATION AND** receiving the ~~written,~~ informed consent of the test subject. For purposes of this section, ~~written,~~ informed consent ~~consists of a signed writing executed~~ **MEANS A WRITTEN OR VERBAL CONSENT TO THE TEST** by the test subject or the legally authorized representative of the test subject. ~~that includes, at a minimum, all of the following:~~

~~—— (a) An explanation of the test including, but not limited to, the purpose of the test, the potential uses and limitations of the test, and the meaning of test results.~~

~~—— (b) An explanation of the rights of the test subject including, but not limited to, all of the following:~~

~~—— (i) The right to withdraw consent to the test at any time before the administration of the test.~~

~~—— (ii) The right under this part to confidentiality of the test results.~~

~~—— (iii) The right under this part to consent to and participate in the test on an anonymous basis.~~

~~—— (c) The person or class of persons to whom the test results may be disclosed under this part.~~ **THE PHYSICIAN OR HEALTH FACILITY SHALL DOCUMENT THE PROVISION OF INFORMED CONSENT, INCLUDING PRETEST INFORMATION, AND WHETHER THE TEST SUBJECT OR THE LEGALLY AUTHORIZED REPRESENTATIVE OF THE TEST SUBJECT DECLINED THE OFFER OF HIV TESTING. INFORMED CONSENT FOR HIV TESTING SHALL BE MAINTAINED IN THE PATIENT'S MEDICAL RECORDS.**

~~(3) Beginning July 28, 1989, a physician or an individual to whom the physician has delegated authority to perform a selected~~

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act, task, or function under section 16215 who orders an HIV test shall distribute to each test subject a pamphlet regarding the HIV test on a form provided by the department. The department shall develop the pamphlet, which ~~<<JANUARY 1, 2011>>~~, PRETEST INFORMATION shall include all of the following:

~~—— (a) The purpose and nature of the test.~~

~~—— (b) The consequences of both taking and not taking the test.~~

~~—— (c) The meaning of the test results.~~

~~—— (d) Other information considered necessary or relevant by the department.~~

~~—— (e) A model consent form for the signed writing required under subsection (2). The department shall include in the model consent form all of the information required under subsection (2) (a), (b), and (c).~~

(A) AN EXPLANATION OF THE TEST, INCLUDING, BUT NOT LIMITED TO, THE PURPOSE OF THE TEST, THE POTENTIAL USES AND LIMITATIONS OF THE TEST, AND THE MEANING OF TEST RESULTS.

(B) AN EXPLANATION OF HOW HIV IS TRANSMITTED AND HOW HIV CAN BE PREVENTED.

(C) AN EXPLANATION OF THE RIGHTS OF THE TEST SUBJECT, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

(i) THE RIGHT TO DECLINE THE TEST AT ANY TIME BEFORE THE ADMINISTRATION OF THE TEST AND THE CIRCUMSTANCES UNDER WHICH THE TEST SUBJECT DOES NOT HAVE THE RIGHT TO DECLINE THE TEST.

(ii) THE RIGHT TO CONFIDENTIALITY OF THE TEST RESULTS UNDER THIS PART AND UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191.

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1 (iii) THE RIGHT UNDER THIS PART TO CONSENT TO AND PARTICIPATE IN
2 THE TEST ON AN ANONYMOUS BASIS.

3 (iv) THE PERSON OR CLASS OF PERSONS TO WHOM THE TEST RESULTS
4 MAY BE DISCLOSED UNDER THIS PART AND UNDER THE HEALTH INSURANCE
5 PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191.

6 (4) The department, the Michigan board of medicine, and the
7 Michigan board of osteopathic medicine and surgery shall make the
8 ~~pamphlet~~-**INFORMATION** required under subsection (3) available to
9 physicians. The Michigan board of medicine and the Michigan board
10 of osteopathic medicine and surgery shall notify in writing all
11 physicians subject to this section of the requirements of this
12 section and the availability of the ~~pamphlet~~-**INFORMATION** by July
13 ~~10, 1989~~ **<<JANUARY 1, 2011>>**. Upon request, the Michigan board of
14 medicine and the Michigan board of osteopathic medicine and surgery
15 shall provide copies of the ~~pamphlet~~-**INFORMATION**, free of charge,
16 to a physician who is subject to this section.

17 ~~—— (5) If a test subject is given a copy of the pamphlet required~~
18 ~~under subsection (3), the physician or individual described in~~
19 ~~subsection (3) shall include in the test subject's medical record a~~
20 ~~form, signed by the test subject, indicating that he or she has~~
21 ~~been given a copy of the pamphlet.~~

22 (5) ~~(6)~~-A test subject who executes a signed writing pursuant
23 to subsection (2) **AS THAT SUBSECTION READ BEFORE SEPTEMBER 1, 2010**
24 is barred from subsequently bringing a civil action based on
25 failure to obtain informed consent for the HIV test against the
26 physician who ordered the HIV test.

27 (6) ~~(7)~~-The department shall ~~provide~~-**DEVELOP** the ~~pamphlet~~

1 **INFORMATION** required under subsection (3) ~~. The department shall~~
 2 ~~develop the pamphlet and have it ready for distribution by June 28,~~
 3 ~~1989. The department shall write and print the pamphlet in clear,~~
 4 ~~nontechnical English and Spanish, . The department shall distribute~~
 5 ~~the pamphlet, AND PROVIDE THE INFORMATION~~ upon request and free of
 6 charge, to a physician or other person or a governmental entity
 7 that is subject to this section. **NOTHING IN THIS SECTION PROHIBITS**
 8 **A PHYSICIAN OR HEALTH FACILITY FROM COMBINING A FORM USED TO OBTAIN**
 9 **INFORMED CONSENT FOR HIV TESTING WITH FORMS USED TO OBTAIN CONSENT**
 10 **FOR GENERAL MEDICAL CARE OR ANY OTHER MEDICAL TESTS OR PROCEDURES**
 11 **IF THE FORMS MAKE CLEAR THAT THE SUBJECT MAY CONSENT TO GENERAL**
 12 **MEDICAL CARE, TESTS, OR MEDICAL PROCEDURES WITHOUT BEING REQUIRED**
 13 **TO CONSENT TO HIV TESTING AND, IF APPLICABLE, THAT THE SUBJECT MAY**
 14 **DECLINE HIV TESTING AT ANY TIME BEFORE THE ADMINISTRATION OF THE**
 15 **TEST.**

16 (7) ~~(8)~~ In addition to complying with the duties imposed under
 17 subsection ~~(7)~~, ~~(6)~~, the department shall provide copies of the
 18 ~~pamphlet~~ **INFORMATION REQUIRED UNDER SUBSECTION (3)** to the Michigan
 19 board of medicine and the Michigan board of osteopathic medicine
 20 and surgery. The department shall provide copies of the ~~pamphlet~~
 21 **INFORMATION** to other persons upon written request, at cost, and
 22 shall also provide copies of the ~~pamphlet~~ **INFORMATION** free of
 23 charge, upon request, to public or private schools, colleges, and
 24 universities.

25 (8) ~~(9)~~ An individual who undergoes an HIV test at a
 26 department approved testing site may request that the HIV test be
 27 performed on an anonymous basis. If an individual requests that the

HIV test be performed on an anonymous basis, the staff of the department approved testing site shall administer the HIV test anonymously or under the condition that the test subject not be identified, and shall obtain consent to the test using a coded system that does not link the individual's identity with the request for the HIV test or the HIV test results. If the test results of an HIV test performed under this subsection indicate that the test subject is HIV infected, the staff of the department approved testing site shall proceed with partner notification in the same manner in which a local health department would proceed as described in section 5114a(3) to (5).

(9) ~~(10) Subsection (2)~~ **THIS SECTION** does not apply to an HIV test performed for the purpose of research, if the test is performed in such a manner that the identity of the test subject is not revealed to the researcher and the test results are not made known to the test subject.

~~(11) A health facility may develop a standard protocol for an HIV test performed upon a patient in the health facility in preparation for an incisive or invasive surgical procedure.~~

(10) ~~(12) This~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (12), THIS** section does not apply to an HIV test performed upon a patient in a health facility if the conditions in subdivisions (a) and (b) or the conditions in subdivisions (a) and (c) are met:

(a) The patient is informed in writing upon admission to the health facility that an HIV test may be performed upon the patient without ~~the written consent required under this section~~ **HIS OR HER RIGHT TO DECLINE** under circumstances described in subdivision (b)

1 or (c). As used in this subdivision, "admission" means the
2 provision of an inpatient or outpatient health care service in a
3 health facility.

4 (b) The HIV test is performed after a health professional,
5 health facility employee, police officer, or fire fighter, or a
6 medical first responder, emergency medical technician, emergency
7 medical technician specialist, or paramedic licensed under section
8 20950 or 20952 sustains in the health facility, while treating the
9 patient before transport to the health facility, or while
10 transporting the patient to the health facility, a percutaneous,
11 mucous membrane, or open wound exposure to the blood or other body
12 fluids of the patient.

13 (c) The HIV test is performed pursuant to a request made under
14 section 20191(2).

15 (11) ~~(13) Subsections (1) to (3) do~~ **EXCEPT AS OTHERWISE**
16 **PROVIDED IN SUBSECTION (12), THIS SECTION DOES** not apply if the
17 test subject is unable to receive or understand ~~, or both, the~~
18 ~~pretest counseling and the pamphlet~~ **INFORMATION** described in
19 subsections (1) to (3) or to ~~execute the signed writing~~ **DECLINE THE**
20 **TEST AS** described in subsection (2), and the legally authorized
21 representative of the test subject is not readily available to
22 receive the ~~pamphlet~~ **INFORMATION** or ~~execute written consent~~ **DECLINE**
23 for the test subject.

24 (12) ~~(14) If the results of an HIV test performed pursuant to~~
25 ~~subsection (11) or (12) or under circumstances described in~~
26 ~~subsection (13)~~ **THIS SECTION** indicate that the patient is HIV
27 infected, the health facility shall inform the patient of the

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as amended November 30, 2010

1 positive test results and provide the patient with appropriate
2 counseling regarding HIV infection and acquired immunodeficiency
3 syndrome. [IF THE RESULTS OF AN HIV TEST PERFORMED UNDER THIS SECTION
INDICATE THAT THE PATIENT IS NOT HIV INFECTED, THAT INFORMATION SHALL BE
PROVIDED TO THE PATIENT THROUGH NORMAL HEALTH CARE PROVIDER PROCEDURES,
INCLUDING, BUT NOT LIMITED TO, A PATIENT VISIT, MAIL, OR TELEPHONE
COMMUNICATION.]
4 Enacting section 1. This amendatory act takes effect <<January 1,
5 2011>>.