

Act No. 320
Public Acts of 2010
Approved by the Governor
December 21, 2010
Filed with the Secretary of State
December 21, 2010
EFFECTIVE DATE: January 1, 2011

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Reps. Roy Schmidt, Dean, Hildenbrand, Genetski, Bennett, Huckleberry, Slezak and Haugh

ENROLLED HOUSE BILL No. 4583

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 5133 (MCL 333.5133), as amended by 1994 PA 420.

The People of the State of Michigan enact:

Sec. 5133. (1) Except as otherwise provided in this section, a physician who orders an HIV test or a health facility that performs an HIV test shall provide information appropriate to the test subject both before and after the test is administered.

(2) Except as otherwise provided in this part, a physician, or an individual to whom the physician has delegated authority to perform a selected act, task, or function under section 16215, 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 informed consent of the test subject. For purposes of this section, informed consent means a written or verbal consent to the test by the test subject or the legally authorized representative of the test subject. 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 January 1, 2011, pretest information shall include 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 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.

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

(iv) The person or class of persons to whom the test results may be disclosed under this part and under the health insurance portability and accountability act of 1996, Public Law 104-191.

(4) The department, the Michigan board of medicine, and the Michigan board of osteopathic medicine and surgery shall make the information required under subsection (3) available to physicians. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing all physicians subject to this section of the requirements of this section and the availability of the information by January 1, 2011. Upon request, the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall provide copies of the information, free of charge, to a physician who is subject to this section.

(5) A test subject who executes a signed writing pursuant to subsection (2) as that subsection read before September 1, 2010 is barred from subsequently bringing a civil action based on failure to obtain informed consent for the HIV test against the physician who ordered the HIV test.

(6) The department shall develop the information required under subsection (3) in clear, nontechnical English and Spanish, and provide the information upon request and free of charge, to a physician or other person or a governmental entity that is subject to this section. Nothing in this section prohibits a physician or health facility from combining a form used to obtain informed consent for HIV testing with forms used to obtain consent for general medical care or any other medical tests or procedures if the forms make clear that the subject may consent to general medical care, tests, or medical procedures without being required to consent to HIV testing and, if applicable, that the subject may decline HIV testing at any time before the administration of the test.

(7) In addition to complying with the duties imposed under subsection (6), the department shall provide copies of the information required under subsection (3) to the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery. The department shall provide copies of the information to other persons upon written request, at cost, and shall also provide copies of the information free of charge, upon request, to public or private schools, colleges, and universities.

(8) An individual who undergoes an HIV test at a department approved testing site may request that the HIV test be 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) 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.

(10) 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 his or her right to decline under circumstances described in subdivision (b) or (c). As used in this subdivision, "admission" means the provision of an inpatient or outpatient health care service in a health facility.

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

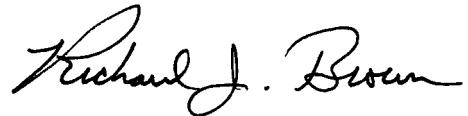
(c) The HIV test is performed pursuant to a request made under section 20191(2).

(11) Except as otherwise provided in subsection (12), this section does not apply if the test subject is unable to receive or understand the information described in subsections (1) to (3) or to decline the test as described in subsection (2), and the legally authorized representative of the test subject is not readily available to receive the information or decline for the test subject.

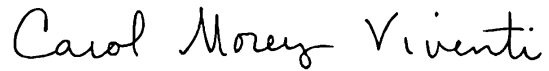
(12) If the results of an HIV test performed under this section indicate that the patient is HIV infected, the health facility shall inform the patient of the positive test results and provide the patient with appropriate counseling regarding HIV infection and acquired immunodeficiency syndrome. If the 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.

Enacting section 1. This amendatory act takes effect January 1, 2011.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor