

SUBSTITUTE FOR
HOUSE BILL NO. 6018

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 5133 (MCL 333.5133), as amended by 2010 PA 320.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5133. (1) Except as otherwise provided ~~in this section,~~
2 **BY LAW,** a physician who orders an HIV test or a health facility
3 that performs an HIV test shall provide information appropriate to
4 the test subject both before and after the test is administered.
5 ~~—— (2) Except as otherwise provided in this part, a physician, or~~
6 ~~an individual to whom the physician has delegated authority to~~
7 ~~perform a selected act, task, or function under section 16215,~~
8 ~~shall not order an HIV test for the purpose of diagnosing HIV~~
9 ~~infection without first providing the test subject with pretest~~
10 ~~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.~~

(2) A TEST SUBJECT OR HIS OR HER AUTHORIZED REPRESENTATIVE WHO PROVIDES GENERAL INFORMED CONSENT FOR MEDICAL CARE IS CONSIDERED TO HAVE CONSENTED TO AN HIV TEST. A SEPARATE CONSENT FORM FOR AN HIV TEST IS NOT REQUIRED. HOWEVER, EXCEPT AS OTHERWISE PROVIDED BY LAW, A HEALTH CARE PROVIDER SHALL NOT ORDER AN HIV TEST FOR A TEST SUBJECT WITHOUT FIRST DOING BOTH OF THE FOLLOWING:

(A) INFORMING THE TEST SUBJECT OR HIS OR HER LEGALLY

1 AUTHORIZED REPRESENTATIVE VERBALLY OR IN WRITING THAT AN HIV TEST
2 WILL BE PERFORMED UNLESS THE TEST SUBJECT OR HIS OR HER LEGALLY
3 AUTHORIZED REPRESENTATIVE DECLINES THE HIV TEST.

4 (B) OFFERING THE TEST SUBJECT OR HIS OR HER LEGALLY AUTHORIZED
5 REPRESENTATIVE AN OPPORTUNITY TO ASK QUESTIONS AND DECLINE THE HIV
6 TEST.

7 (3) IF A TEST SUBJECT OR THE TEST SUBJECT'S LEGALLY AUTHORIZED
8 REPRESENTATIVE DECLINES AN HIV TEST UNDER SUBSECTION (2), THE
9 DECISION MUST BE DOCUMENTED IN THE TEST SUBJECT'S MEDICAL RECORD.

10 (4) If A TEST SUBJECT UNDERGOES AN HIV TEST AT A DEPARTMENT
11 APPROVED TESTING SITE AND the test results of ~~an~~THE HIV test
12 performed under this subsection indicate that the test subject is
13 HIV infected, the staff of the department approved testing site
14 shall proceed with partner notification in the same manner in which
15 a local health department would proceed as described in section
16 5114a(3) to (5).

17 (5) ~~(9)~~—This section does not apply to an HIV test performed
18 for the purpose of research, if the test is performed in such a
19 manner that the identity of the test subject is not revealed to the
20 researcher and the test results are not made known to the test
21 subject.

22 (6) ~~(10)~~—Except as otherwise provided in subsection ~~(12)~~, (8),
23 this section does not apply to an HIV test performed ~~upon~~ON a
24 patient in a health facility if the conditions in subdivisions (a)
25 and (b) or the conditions in subdivisions (a) and (c) are met:

26 (a) The patient is informed in writing upon admission to the
27 health facility that an HIV test may be performed ~~upon~~ON the

1 patient without his or her right to decline under circumstances
2 described in subdivision (b) or (c). As used in this subdivision,
3 "admission" means the provision of an inpatient or outpatient
4 health care service in a health facility.

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

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

16 (7) ~~(11)~~ Except as otherwise provided in subsection ~~(12)~~, **(8)**,
17 this section does not apply if the test subject is unable to
18 receive or understand the information described in subsections (1)
19 ~~to (3)~~ **AND (2)** or to decline the test as described in subsection
20 ~~(2)~~, **(3)**, and ~~the~~ **A** legally authorized representative of the test
21 subject is not readily available to receive the information or
22 decline for the test subject.

23 (8) ~~(12)~~ If the results of an HIV test performed under this
24 section indicate that the patient is HIV infected, the health
25 facility shall inform the patient of the positive test results and
26 **SHALL** provide the patient with appropriate counseling regarding HIV
27 infection and acquired immunodeficiency syndrome **AND REFERRALS TO**

1 **EXPEDITE HIV TREATMENT AND SERVICES.** If the results of an HIV test
2 performed under this section indicate that the patient is not HIV
3 infected, that information ~~shall~~**MUST** be provided to the patient
4 through normal health care provider procedures. ~~, including, but~~
5 ~~not limited to, a patient visit, mail, or telephone communication.~~

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.