

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.5131 HIV infection and acquired immunodeficiency syndrome; confidentiality of reports, records, data, and information; test results; limitations and restrictions on disclosures in response to court order and subpoena; information released to legislative body; applicability of subsection (1); immunity; identification of individual; violation as misdemeanor; penalty.

Sec. 5131. (1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification under section 5114a, that are associated with HIV infection and acquired immunodeficiency syndrome are confidential. A person shall release reports, records, data, and information described in this subsection only pursuant to this section.

(2) Except as otherwise provided by law, the test results of a test for HIV infection or acquired immunodeficiency syndrome and the fact that such a test was ordered is information that is subject to section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(3) The disclosure of information pertaining to HIV infection or acquired immunodeficiency syndrome in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

(a) A court that is petitioned for an order to disclose the information shall determine both of the following:

(i) That other ways of obtaining the information are not available or would not be effective.

(ii) That the public interest and need for the disclosure outweigh the potential for injury to the patient.

(b) If a court issues an order for the disclosure of the information, the order must do all of the following:

(i) Limit disclosure to those parts of the patient's record that are determined by the court to be essential to fulfill the objective of the order.

(ii) Limit disclosure to those persons whose need for the information is the basis for the order.

(iii) Include any other measures as considered necessary by the court to limit disclosure for the protection of the patient.

(4) A person who releases information pertaining to HIV infection or acquired immunodeficiency syndrome to a legislative body shall not identify in the information a specific individual who was tested or is being treated for HIV infection or acquired immunodeficiency syndrome.

(5) Subject to subsection (7), subsection (1) does not apply to the following:

(a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(i) To protect the health of an individual.

(ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(b) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by a physician or local health officer to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the physician or local health officer determines that the disclosure of the information is necessary to prevent a reasonably foreseeable risk of further transmission of HIV. This subdivision imposes an affirmative duty upon a physician or local health officer to disclose information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome. A physician or local health officer may discharge the affirmative duty imposed under this subdivision by referring the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to the appropriate local health department for assistance with partner notification under section 5114a. The physician or local health officer shall include as part of the referral the name and, if available, address and telephone number of each individual known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome.

(c) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by an authorized representative of the department or by a local health officer to an employee of a school district, and if the department representative or local health officer determines that the disclosure is necessary to prevent a reasonably foreseeable risk of transmission of HIV to pupils in the school district. An employee of a school district to

whom information is disclosed under this subdivision is subject to subsection (1).

(d) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the disclosure is expressly authorized in writing by the individual. This subdivision applies only if the written authorization is specific to HIV infection or acquired immunodeficiency syndrome. If the individual is a minor or incapacitated, the written authorization may be executed by the parent or legal guardian of the individual.

(e) Information disclosed under section 5114, 5114a, 5119(3), 5129, 5204, or 20191 or information disclosed as required by rule promulgated under section 5111.

(f) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is part of a report required under the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

(g) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by the department, the probate court, or a child placing agency in order to care for a minor and to place the minor with a child care organization licensed under 1973 PA 116, MCL 722.111 to 722.128. The person disclosing the information shall disclose it only to the director of the child care organization or, if the child care organization is a private home, to the individual who holds the license for the child care organization. An individual to whom information is disclosed under this subdivision is subject to subsection (1). As used in this subdivision, "child care organization" and "child placing agency" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(6) A person who releases the results of an HIV test or other information described in subsection (1) in compliance with subsection (5) is immune from civil or criminal liability and administrative penalties including, but not limited to, licensing sanctions, for the release of that information.

(7) A person who discloses information under subsection (5) shall not include in the disclosure information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV, to protect the health of the individual to whom the information pertains, to prevent the further transmission of HIV, or to diagnose and care for a patient. A person disclosing identifying information under this subsection shall disclose only the minimum information necessary to accomplish the intended purpose of the disclosure. This subsection does not apply to information disclosed under subsection (5)(d), (f), or (g).

(8) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both, and is liable in a civil action for actual damages or \$1,000.00, whichever is greater, and costs and reasonable attorney fees. This subsection also applies to the employer of a person who violates this section, unless the employer had in effect at the time of the violation reasonable precautions designed to prevent the violation.

History: Add. 1988, Act 488, Eff. Mar. 30, 1989;—Am. 1989, Act 174, Imd. Eff. Aug. 22, 1989;—Am. 1989, Act 271, Imd. Eff. Dec. 26, 1989;—Am. 1992, Act 86, Eff. Mar. 31, 1993;—Am. 1994, Act 200, Imd. Eff. June 21, 1994;—Am. 1997, Act 57, Eff. Jan. 1, 1998;—Am. 2010, Act 119, Imd. Eff. July 13, 2010;—Am. 2018, Act 536, Eff. Mar. 28, 2019.

Popular name: Act 368

Administrative rules: R 325.9001 et seq. of the Michigan Administrative Code.