

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to increase routine screening for HIV.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby amended by striking out Section 70F
2 and inserting in place thereof the following section:

3 (a) For purposes of this section, the following words shall have the following meanings:

4 “HIV test” means a test for the presence of Human Immunodeficiency Virus (HIV), or for
5 antibodies or antigens that result from HIV infection, or for any other substance specifically
6 indicating infection with HIV.

7 “HIV-related medical information” means: (1) the results of an HIV test; (2) any information that
8 indicates that the patient was the subject of an HIV test; or (3) any information that identifies a
9 patient as having HIV or AIDS, including but not limited to a diagnosis of HIV infection or
10 AIDS or the use of HIV antiretroviral or other medications.

11 (b) No health care facility, as defined in Section 70E, or health care provider, as defined in
12 Section 1 shall order an HIV test without first obtaining the verbal informed consent of the
13 patient or his health care proxy, when authorized under Chapter 201D, or guardian. To obtain
14 informed consent, a health care provider shall explain to the patient in person the purpose of an

15 HIV test and the meaning of negative and positive test results, offer the patient the opportunity
16 to ask questions, and determine that the patient voluntarily and knowingly consents to an HIV
17 test. The patient's decision to grant or deny consent shall be contemporaneously documented in
18 the medical record.

19 (c) No HIV test shall be conducted for any purpose related to insurance coverage of any type
20 without the written informed consent of the subject of the test. Nothing herein shall be construed
21 to limit regulations on HIV testing issued by the Commissioner of Insurance.

22 (d) Any health care provider who orders the performance of an HIV test, or such person's
23 representative, shall offer the subject of the test written information about HIV. The Department
24 of Public Health shall by regulation establish the content of such information and shall develop a
25 document containing such information.

26 (e) Informed consent for an HIV test is not required for repeated testing by a health care facility
27 or health care provider who previously obtained verbal informed consent for an HIV test when
28 such repeated testing is for the purpose of monitoring the course of established HIV infection.

29 (f) Health care providers who deliver primary medical care services or infectious disease
30 services to an adolescent or adult patient shall offer an HIV test to patients at the frequency
31 recommended by the CDC unless the health care provider determines that there is evidence of
32 prior HIV testing or that the patient is being treated for a life threatening emergency. The
33 Department of Public Health shall through regulation designate patients who are at high risk for
34 HIV and recommend the frequency with which health care providers shall offer HIV testing to
35 such patients. Nothing herein shall be construed to limit the frequency or appropriateness of HIV
36 testing based upon clinical judgment. For the purpose of this subparagraph (f) only, "health care

37 provider” means any physician, physician assistant, nurse, nurse practitioner, gynecologist,
38 obstetrician or midwife; “infectious disease services” means health care services provided for the
39 diagnosis or treatment of infectious diseases including, but not limited to, sexually transmitted
40 diseases and tuberculosis; and “primary medical care” means the medical fields of family
41 medicine, general pediatrics, primary care, urgent care within an emergency department of a
42 health care facility as defined in section 70E, internal medicine, primary care obstetrics, or
43 primary care gynecology.

44 (g) Any person who orders the performance of an HIV test, or such person’s representative,
45 shall provide any patient testing positive for HIV with a connection to HIV-related medical care
46 and counseling.

47 (h) No health care facility, as defined in section seventy E, and no health care provider shall
48 disclose HIV-related medical information to any person other than the subject thereof without
49 first obtaining the subject’s written informed consent; provided, however, that this provision
50 shall not apply to disclosures, within the same facility, to a treating provider or for IRB-approved
51 research. For the purpose of this section “written informed consent” shall mean a written consent
52 for each requested release of an individual’s HIV-related medical information and “IRB” shall
53 mean an institutional review board that has a minimum of 5 members who meet regularly to
54 review research applying the standards of 45 CFR Part 46 or 21 CFR Parts 50 and 56, as may be
55 amended from time to time. Such written consent form shall state the purpose for which the
56 HIV-related medical information is being requested and shall be distinguished from written
57 consent for the release of any other medical information.

58 (i) No employer shall require an HIV test as a condition of employment or require the disclosure
59 of any HIV-related medical information as part of any medical examination.

60 (j) Whoever violates the provisions of this section shall be deemed to have violated section 2 of
61 chapter 93A.

62 (k) It shall not be a violation of this section for any physician, health care provider, health care
63 institution or laboratory to report information to the Department of Public Health pursuant to its
64 authority under Chapter 111 or Chapter 111D and regulations promulgated thereunder. No
65 physician, health care provider, health care institution or laboratory so required to report shall be
66 liable in any civil or criminal action by reason of any such report.

67 (l) The Department of Public Health shall have authority to promulgate regulations implementing
68 the provisions of this section.

69 SECTION 2. Chapter 175 of the General Laws is hereby amended by inserting after section 47Z
70 the following section:

71 Section 47AA. Any individual policy of accident and sickness insurance issued pursuant to
72 section 108, which provides hospital expense and surgical expense insurance or that provides
73 benefits for outpatient services, and which is delivered, issued or renewed within or without the
74 commonwealth, and every group blanket or general policy of accident and sickness insurance
75 issued pursuant to section 110, which provides hospital expense and surgical expense insurance
76 or that provides benefits for outpatient services, which is delivered, issued or renewed within or
77 without the commonwealth, and any employees' health and welfare fund which provides hospital
78 expense and surgical benefits or that provides benefits for outpatient services and which is
79 promulgated or renewed to any person or group of persons in the commonwealth, shall cover the

80 costs of HIV testing performed pursuant to Chapter 111, Section 70F(f) or regulations
81 promulgated thereunder.

82 SECTION 3. Chapter 176A of the General Laws is hereby amended by inserting after section
83 8AA the following section:

84 Section 8BB. Any contract between a subscriber and the corporation under an individual or
85 group hospital service plan that is delivered, issued or renewed within or without the
86 commonwealth shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
87 70F(f) or regulations promulgated thereunder for all individual subscribers and members within
88 the commonwealth and for all group members having a principal place of employment within the
89 commonwealth.

90 SECTION 4. Chapter 176B of the General Laws is hereby amended by inserting after section
91 4CC the following section:

92 Section 4DD. Any subscription certificate under an individual or group hospital service plan or
93 medical service agreement that is delivered, issued or renewed within or without the
94 commonwealth, shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
95 70F (f) or regulations promulgated thereunder for all individual subscribers and members within
96 the commonwealth and all group members having a principal place of employment within the
97 commonwealth.

98 SECTION 5. Chapter 176G of the General Laws is hereby amended by inserting after section 4U
99 the following section:

100 Section 4V. Any individual or group health maintenance contract that is issued, renewed, or
101 delivered within or without the commonwealth shall provide to a member or enrollee benefits to
102 cover the costs of HIV testing performed pursuant to Chapter 111, Section 70F(d) or regulations
103 promulgated thereunder.