

SENATE No. 1997

Senate, August 8, 2011 -- The committee on Health Care Financing, on House, No. 3594, reported, in part, a "Bill to increase routine screening for HIV" (Senate, No. 1997)

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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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 Chapter 111 of the General Laws is hereby amended by striking out Section 70F and
2 inserting in place thereof the following section:

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

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

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

12 (b) No health care facility, as defined in Section 70E, or health care provider, as
13 defined in Section 1 shall order an HIV test without first obtaining the verbal informed consent
14 of the patient or his health care proxy, when authorized under Chapter 201D, or guardian. To
15 obtain informed consent, a health care provider shall explain to the patient in person the purpose
16 of an HIV test and the meaning of negative and positive test results, offer the patient the
17 opportunity to ask questions, and determine that the patient voluntarily and knowingly consents
18 to an HIV test. The patient's decision to grant or deny consent shall be contemporaneously
19 documented in the medical record.

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

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

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

31 (f) Health care providers who deliver primary medical care services or infectious
32 disease services to an adolescent or adult patient shall offer an HIV test to patients at the
33 frequency recommended by the CDC unless the health care provider determines that there is

34 evidence of prior HIV testing or that the patient is being treated for a life threatening emergency.
35 The Department of Public Health shall through regulation designate patients who are at high risk
36 for HIV and recommend the frequency with which health care providers shall offer HIV testing
37 to such patients. Nothing herein shall be construed to limit the frequency or appropriateness of
38 HIV testing based upon clinical judgment. For the purpose of this subparagraph (f) only, “health
39 care provider” means any physician, physician assistant, nurse, nurse practitioner, gynecologist,
40 obstetrician or midwife; “infectious disease services” means health care services provided for the
41 diagnosis or treatment of infectious diseases including, but not limited to, sexually transmitted
42 diseases and tuberculosis; and “primary medical care” means the medical fields of family
43 medicine, general pediatrics, primary care, urgent care within an emergency department of a
44 health care facility as defined in section 70E, internal medicine, primary care obstetrics, or
45 primary care gynecology.

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

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

57 56, as may be amended from time to time. Such written consent form shall state the purpose for
58 which the HIV-related medical information is being requested and shall be distinguished from
59 written consent for the release of any other medical information.

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

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

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

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