

SENATE BILL No. 579

October 10, 1989, Introduced by Senators SCHWARZ, EHLERS
and CARL and referred to the Committee on Health Policy.

A bill to amend section 5133 of Act No. 368 of the Public
Acts of 1978, entitled as amended
"Public health code,"
as added by Act No. 488 of the Public Acts of 1988, being section
333.5133 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 5133 of Act No. 368 of the Public Acts
2 of 1978, as added by Act No. 488 of the Public Acts of 1988,
3 being section 333.5133 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 5133. (1) Except as otherwise provided in this sec-
6 tion, a physician who orders an HIV test or a health facility
7 that performs an HIV test shall provide counseling appropriate to
8 the test subject both before and after the test is administered.

1 (2) Except as otherwise provided in this part, a physician,
2 or an individual to whom the physician has delegated authority to
3 perform a selected act, task, or function under section 16215,
4 shall not order an HIV test for the purpose of diagnosing HIV
5 infection without first receiving the written, informed consent
6 of the test subject. ~~Subject to subsection (2), for~~ FOR pur-
7 poses of this ~~subsection~~ SECTION, written, informed consent
8 ~~shall consist~~ CONSISTS of a signed writing executed by the
9 subject of a test or the legally authorized representative of the
10 test subject which includes, at a minimum, all of the following:

11 (a) An explanation of the test including, but not limited
12 to, the purpose of the test, the potential uses and limitations
13 of the test, and the meaning of test results.

14 (b) An explanation of the rights of the test subject includ-
15 ing, but not limited to, all of the following:

16 (i) The right to withdraw consent to the test at any time
17 before the administration of the test.

18 (ii) The right under this part to confidentiality of the
19 test results.

20 (iii) The right under this part to consent to and partici-
21 pate in the test on an anonymous basis.

22 (c) ~~A description of the~~ THE person OR CLASS OF PERSONS to
23 whom the test results may be disclosed UNDER THIS PART.

24 (3) ~~Within 120 days after the effective date of this part~~
25 BY JULY 28, 1989, a physician or an individual to whom the physi-
26 cian has delegated authority to perform a selected act, task, or
27 function under section 16215 who orders an HIV test shall

1 distribute to the test subject ~~information~~. A PAMPHLET regarding
2 the HIV test on a form provided by the department. The ~~form~~
3 PAMPHLET shall be developed by the department and shall include
4 all of the following:

5 (a) The purpose and nature of the test.

6 (b) The consequences of both taking and not taking the
7 test.

8 (c) The meaning of the test results.

9 (d) Other information considered necessary or relevant by
10 the department.

11 (e) A ~~standard~~ MODEL consent form for the signed writing
12 required under subsection ~~(1)~~ (2). The ~~standard~~ MODEL con-
13 sent form shall include all of the information required under
14 subsection (2)(a), (b), and (c).

15 (4) The ~~form~~ PAMPHLET required under subsection ~~(2)~~ (3)
16 shall be made available to physicians through the department, the
17 Michigan board of medicine, and the Michigan board of osteopathic
18 medicine and surgery. The Michigan board of medicine and the
19 Michigan board of osteopathic medicine and surgery shall notify
20 in writing all physicians subject to this section of the require-
21 ments of this section and the availability of the form ~~within~~
22 ~~100 days after the effective date of this part~~ BY JULY 10,
23 1989. Upon request, the Michigan board of medicine and the
24 Michigan board of osteopathic medicine and surgery shall provide
25 copies of the form, free of charge, to a physician who is subject
26 to this section.

1 (5) If a test subject is given a copy of the ~~form~~ PAMPHLET
2 required under subsection (3), a form, signed by the test
3 subject, indicating that he or she has been given a copy of the
4 ~~form required under subsection (3)~~ PAMPHLET, shall be included
5 in the test subject's medical record.

6 (6) A test subject who executes a signed writing pursuant to
7 subsection (2) ~~shall be~~ IS barred from subsequently bringing a
8 civil action based on failure to obtain informed consent against
9 the physician who ordered the HIV test.

10 (7) The ~~information form~~ PAMPHLET required by subsection
11 ~~(2)~~ (3) shall be provided by the department. The department
12 shall develop the ~~form~~ PAMPHLET and have ~~the form~~ IT ready
13 for distribution ~~within 90 days after the effective date of this~~
14 ~~part~~ BY JUNE 28, 1989. The ~~form~~ PAMPHLET shall be written in
15 English and in clear, nontechnical terms. Copies of the ~~form~~
16 PAMPHLET shall also be printed in Spanish. The ~~form~~ PAMPHLET
17 shall be distributed, upon request and free of charge, to a phy-
18 sician or other person or a governmental entity that is subject
19 to this section.

20 (8) In addition to the ~~forms~~ PAMPHLETS provided under
21 subsection (7), the department shall provide copies of the ~~form~~
22 PAMPHLET to the Michigan board of medicine and the Michigan board
23 of osteopathic medicine and surgery. The department shall pro-
24 vide copies of the ~~form~~ PAMPHLET to other persons upon written
25 request, at cost, and shall also provide copies of the ~~form~~
26 PAMPHLET free of charge, upon request, to public or private
27 schools, colleges, and universities.

1 (9) An individual who undergoes an HIV test at a department
2 approved testing site may request that the HIV test be performed
3 on an anonymous basis. If an individual requests that the HIV
4 test be performed on an anonymous basis, the HIV test shall be
5 administered anonymously or under the condition that the test
6 subject not be identified, and consent to the test shall be given
7 using a coded system that does not link the individual's identity
8 with the request for the HIV test or the HIV test results. If
9 the test results of an HIV test performed under this subsection
10 indicate that the test subject is HIV infected, the staff of the
11 department approved testing site shall proceed with partner noti-
12 fication in the same manner in which a local health department
13 would proceed as described in ~~section 5114a(4)(a) and (b)~~
14 SECTION 5114A(3) TO (5).

15 (10) Subsection (2) does not apply to an HIV test performed
16 for the purpose of research, if the test is performed in such a
17 manner that the identity of the test subject is not revealed to
18 the researcher and the test results are not made known to the
19 test subject.

20 ~~(11) A health facility may develop a standard protocol for~~
21 ~~an HIV test performed upon a patient in the health facility in~~
22 ~~preparation for an incisive or invasive surgical procedure.~~

23 (11) ~~(12)~~ This section does not apply to an HIV test per-
24 formed upon a patient in a health facility if ~~both of~~ the
25 ~~following~~ conditions IN SUBDIVISIONS (A) AND (B) OR SUBDIVI-
26 SIONS (A) AND (C) are met:

1 (a) The patient is informed in writing upon admission to the
 2 health facility that an HIV test may be performed upon the
 3 patient without the written consent required under this section
 4 under circumstances described in subdivision (b) OR (C).

5 (b) The HIV test is performed after a health professional or
 6 other health facility employee sustains a percutaneous, mucous
 7 membrane, or open wound exposure to the blood or other body
 8 fluids of the patient.

9 (C) THE HIV TEST IS PERFORMED IN PREPARATION FOR AN INCISIVE
 10 OR INVASIVE PROCEDURE AND IF THE PHYSICIAN IN CHARGE OF THE PRO-
 11 CEDURE DETERMINES THAT THE PHYSICIAN OR ANOTHER HEALTH PROFES-
 12 SIONAL TAKING PART IN THE PROCEDURE IS AT SIGNIFICANT RISK OF
 13 EXPOSURE TO HIV DURING THE PROCEDURE.

14 (12) ~~(+3)~~ Subsections (2) and (3) do not apply if the test
 15 subject is unable to receive or understand, or both, the
 16 ~~information~~ PAMPHLET required under subsection (3) or to exe-
 17 cute the written consent ~~form~~ required under subsection (2),
 18 and the legally authorized representative of the test subject is
 19 not readily available to receive the ~~information~~ PAMPHLET or
 20 execute the written consent ~~form~~ for the test subject.

21 (13) ~~(+4)~~ If the results of an HIV test performed ~~as~~
 22 ~~described in~~ PURSUANT TO subsection (11) ~~or (+2)~~ indicate that
 23 the patient is HIV infected, the health facility shall inform the
 24 patient of the positive test results and provide the patient with
 25 appropriate counseling regarding HIV infection, acquired immuno-
 26 deficiency syndrome, and acquired immunodeficiency syndrome
 27 related complex.