

HOUSE BILL No. 6019

May 16, 2018, Introduced by Rep. Hammoud and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 5131 (MCL 333.5131), as amended by 2010 PA 119.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5131. (1) All reports, records, and data pertaining to
2 testing, care, treatment, reporting, and research, and information
3 pertaining to partner notification under section 5114a, that are
4 associated with ~~the serious communicable diseases or infections of~~
5 HIV infection and acquired immunodeficiency syndrome are
6 confidential. A person shall release reports, records, data, and
7 information described in this subsection only pursuant to this
8 section.

9 (2) Except as otherwise provided by law, the test results of a
10 test for HIV infection or acquired immunodeficiency syndrome and

1 the fact that such a test was ordered is information that is
2 subject to section 2157 of the revised judicature act of 1961, 1961
3 PA 236, MCL 600.2157.

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

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

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

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

14 (b) If a court issues an order for the disclosure of the
15 information, the order ~~shall~~**MUST** do all of the following:

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

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

21 (iii) Include ~~such~~**ANY** other measures as considered necessary
22 by the court to limit disclosure for the protection of the patient.

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

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

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

8 (i) To protect the health of an individual.

9 (ii) To prevent further transmission of HIV.

10 (iii) To diagnose and care for a patient.

11 (b) Information pertaining to an individual who is HIV
12 infected or has been diagnosed as having acquired immunodeficiency
13 syndrome, if the information is disclosed by a physician or local
14 health officer to an individual who is known by the physician or
15 local health officer to be a contact of the individual who is HIV
16 infected or has been diagnosed as having acquired immunodeficiency
17 syndrome, if the physician or local health officer determines that
18 the disclosure of the information is necessary to prevent a
19 reasonably foreseeable risk of further transmission of HIV. This
20 subdivision imposes an affirmative duty upon a physician or local
21 health officer to disclose information pertaining to an individual
22 who is HIV infected or has been diagnosed as having acquired
23 immunodeficiency syndrome to an individual who is known by the
24 physician or local health officer to be a contact of the individual
25 who is HIV infected or has been diagnosed as having acquired
26 immunodeficiency syndrome. A physician or local health officer may
27 discharge the affirmative duty imposed under this subdivision by

1 referring the individual who is HIV infected or has been diagnosed
2 as having acquired immunodeficiency syndrome to the appropriate
3 local health department for assistance with partner notification
4 under section 5114a. The physician or local health officer shall
5 include as part of the referral the name and, if available, address
6 and telephone number of each individual known by the physician or
7 local health officer to be a contact of the individual who is HIV
8 infected or has been diagnosed as having acquired immunodeficiency
9 syndrome.

10 (c) Information pertaining to an individual who is HIV
11 infected or has been diagnosed as having acquired immunodeficiency
12 syndrome, if the information is disclosed by an authorized
13 representative of the department or by a local health officer to an
14 employee of a school district, and if the department representative
15 or local health officer determines that the disclosure is necessary
16 to prevent a reasonably foreseeable risk of transmission of HIV to
17 pupils in the school district. An employee of a school district to
18 whom information is disclosed under this subdivision is subject to
19 subsection (1).

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

1 (e) Information disclosed under section 5114, 5114a, 5119(3),
2 5129, 5204, or 20191 or information disclosed as required by rule
3 promulgated under section 5111.

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

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

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

27 (7) A person who discloses information under subsection (5)

1 shall not include in the disclosure information that identifies the
2 individual to whom the information pertains, unless the identifying
3 information is determined by the person making the disclosure to be
4 reasonably necessary to prevent a foreseeable risk of transmission
5 of HIV, **TO PROTECT THE HEALTH OF THE INDIVIDUAL TO WHOM THE**
6 **INFORMATION PERTAINS, TO PREVENT THE FURTHER TRANSMISSION OF HIV,**
7 **OR TO DIAGNOSE AND CARE FOR A PATIENT. A PERSON DISCLOSING**
8 **IDENTIFYING INFORMATION UNDER THIS SUBSECTION SHALL DISCLOSE ONLY**
9 **THE MINIMUM INFORMATION NECESSARY TO ACCOMPLISH THE INTENDED**
10 **PURPOSE OF THE DISCLOSURE.** This subsection does not apply to
11 information disclosed under subsection (5)(d), (f), or (g).

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

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