



HOUSE BILL No. 4348

February 24, 1993, Introduced by Reps. Dolan, Bullard, Oxender, Jaye, Middleton, Whyman, McBryde, Bobier and McNutt and referred to the Committee on Public Health.

A bill to amend sections 5133 and 20191 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

section 5133 as added by Act No. 488 of the Public Acts of 1988 and section 20191 as amended by Act No. 179 of the Public Acts of 1990, being sections 333.5133 and 333.20191 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5133 and 20191 of Act No. 368 of the
2 Public Acts of 1978, section 5133 as added by Act No. 488 of the
3 Public Acts of 1988 and section 20191 as amended by Act No. 179
4 of the Public Acts of 1990, being sections 333.5133 and 333.20191
5 of the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 5133. (1) Except as otherwise provided in this
7 section, a physician who orders an HIV test or a health facility

1 that performs an HIV test shall provide counseling appropriate to
2 the test subject both before and after the test is administered.

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

14 (a) An explanation of the test including, but not limited
15 to, the purpose of the test, the potential uses and limitations
16 of the test, and the meaning of test results.

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

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

21 (ii) The right under this part to confidentiality of the
22 test results.

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

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

1 (3) ~~Within 120 days after the effective date of this part~~
2 BEGINNING JULY 28, 1989, a physician or an individual to whom the
3 physician has delegated authority to perform a selected act,
4 task, or function under section 16215 who orders an HIV test
5 shall distribute to ~~the~~ EACH test subject ~~information~~ A
6 PAMPHLET regarding the HIV test on a form provided by the
7 department. The ~~form shall be developed by the department and~~
8 DEPARTMENT SHALL DEVELOP THE PAMPHLET, WHICH shall include all of
9 the following:

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

11 (b) The consequences of both taking and not taking the
12 test.

13 (c) The meaning of the test results.

14 (d) Other information considered necessary or relevant by
15 the department.

16 (e) A ~~standard~~ MODEL consent form for the signed writing
17 required under subsection ~~(1)~~ (2). The ~~standard~~ DEPARTMENT
18 SHALL INCLUDE IN THE MODEL consent form ~~shall include~~ all of
19 the information required under subsection (2)(a), (b), and (c).

20 (4) The ~~form required under subsection (2) shall be made~~
21 ~~available to physicians through the~~ department, the Michigan
22 board of medicine, and the Michigan board of osteopathic medicine
23 and surgery SHALL MAKE THE PAMPHLET REQUIRED UNDER SUBSECTION (3)
24 AVAILABLE TO PHYSICIANS. The Michigan board of medicine and the
25 Michigan board of osteopathic medicine and surgery shall notify
26 in writing all physicians subject to this section of the
27 requirements of this section and the availability of the ~~form~~

~~1 within 100 days after the effective date of this part~~ PAMPHLET
2 BY JULY 10, 1989. Upon request, the Michigan board of medicine
3 and the Michigan board of osteopathic medicine and surgery shall
4 provide copies of the form, free of charge, to a physician who is
5 subject to this section.

6 (5) If a test subject is given a copy of the ~~form~~ PAMPHLET
7 required under subsection (3), THE PHYSICIAN OR INDIVIDUAL
8 DESCRIBED IN SUBSECTION (3) SHALL INCLUDE IN THE TEST SUBJECT'S
9 MEDICAL RECORD a form, signed by the test subject, indicating
10 that he or she has been given a copy of the ~~form required under~~
11 ~~subsection (3), shall be included in the test subject's medical~~
12 ~~record~~ PAMPHLET.

13 (6) A test subject who executes a signed writing pursuant to
14 subsection (2) ~~shall be~~ IS barred from subsequently bringing a
15 civil action based on failure to obtain informed consent against
16 the physician who ordered the HIV test AND, IF THE HIV TEST IS
17 PERFORMED AT A HEALTH FACILITY, THE HEALTH FACILITY.

18 (7) The ~~information form~~ DEPARTMENT SHALL PROVIDE THE
19 PAMPHLET required ~~by~~ UNDER subsection (3). ~~(2) shall be pro-~~
20 ~~vided by the department.~~ The department shall develop the ~~form~~
21 PAMPHLET and have ~~the form~~ IT ready for distribution ~~within 90~~
22 ~~days after the effective date of this part~~ BY JUNE 28, 1989.
23 The ~~form shall be written~~ DEPARTMENT SHALL WRITE THE PAMPHLET
24 in English and in clear, nontechnical terms ~~copies~~ AND SHALL
25 PRINT COPIES of the ~~form shall also be printed~~ PAMPHLET in
26 Spanish. The ~~form shall be distributed~~ DEPARTMENT SHALL
27 DISTRIBUTE THE PAMPHLET, upon request and free of charge, to a

1 physician or other person or a governmental entity that is
2 subject to this section.

3 (8) In addition to the ~~forms~~ PAMPHLETS provided under
4 subsection (7), the department shall provide copies of the ~~form~~
5 PAMPHLET to the Michigan board of medicine and the Michigan board
6 of osteopathic medicine and surgery. The department shall pro-
7 vide copies of the ~~form~~ PAMPHLET to other persons upon written
8 request, at cost, and shall also provide copies of the ~~form~~
9 PAMPHLET free of charge, upon request, to public or private
10 schools, colleges, and universities.

11 (9) An individual who undergoes an HIV test at a department
12 approved testing site may request that the HIV test be performed
13 on an anonymous basis. If an individual requests that the HIV
14 test be performed on an anonymous basis, THE STAFF OF THE DEPART-
15 MENT APPROVED TESTING SITE SHALL ADMINISTER the HIV test ~~shall~~
16 ~~be administered~~ anonymously or under the condition that the test
17 subject not be identified, and SHALL OBTAIN consent to the test
18 ~~shall be given~~ using a coded system that does not link the
19 individual's identity with the request for the HIV test or the
20 HIV test results. If the test results of an HIV test performed
21 under this subsection indicate that the test subject is HIV
22 infected, the staff of the department approved testing site shall
23 proceed with partner notification in the same manner in which a
24 local health department would proceed as described in ~~section~~
25 ~~5114a(4)(a) and (b)~~ SECTION 5114A(3) TO (5).

26 (10) Subsection (2) does not apply to an HIV test performed
27 for the purpose of research, if the test is performed in such a

1 manner that the identity of the test subject is not revealed to
2 the researcher and the test results are not made known to the
3 test subject.

4 (11) A health facility may develop a standard protocol for
5 an HIV test performed upon a patient in the health facility in
6 preparation for an incisive or invasive surgical procedure.

7 (12) This section does not apply to an HIV test performed
8 upon a patient in a health facility if ~~both of the following~~
9 conditions IN SUBDIVISIONS (A) AND (B) OR SUBDIVISIONS (A) AND
10 (C) are met:

11 (a) The patient is informed in writing upon admission to the
12 health facility that an HIV test may be performed upon the
13 patient without the written consent required under this section
14 under circumstances described in subdivision (b) OR (C). AS USED
15 IN THIS SUBDIVISION, "ADMISSION" MEANS THE PROVISION OF AN INPA-
16 TIENT OR OUTPATIENT HEALTH CARE SERVICE IN A HEALTH FACILITY.

17 (b) The HIV test is performed after a health professional or
18 ~~other~~ health facility employee sustains a percutaneous, mucous
19 membrane, or open wound exposure to the blood or other body
20 fluids of the patient.

21 (C) THE HIV TEST IS PERFORMED PURSUANT TO A REQUEST MADE
22 UNDER SECTION 20191(2).

23 (13) Subsections (2) and (3) do not apply if the test
24 subject is unable to receive or understand, or both, the
25 ~~information~~ PAMPHLET required under subsection (3) or to ex-
26 cute the written consent ~~form~~ required under subsection (2),
27 and the legally authorized representative of the test subject is

1 not readily available to receive the ~~information~~ PAMPHLET or
2 execute the written consent ~~form~~ for the test subject.

3 (14) If the results of an HIV test performed ~~as described~~
4 ~~in~~ PURSUANT TO subsection (11) or (12) indicate that the patient
5 is HIV infected, the health facility shall inform the patient of
6 the positive test results and provide the patient with appropri-
7 ate counseling regarding HIV infection, acquired immunodeficiency
8 syndrome, and acquired immunodeficiency syndrome related
9 complex.

10 Sec. 20191. (1) If ~~an emergency patient is assisted or~~
11 ~~transported, or both, to a health facility by a police officer;~~
12 ~~fire fighter; medical first responder, emergency medical techni-~~
13 ~~cian, emergency medical technician specialist, or paramedic~~
14 INDIVIDUAL licensed under section ~~30950~~ 20950; or another indi-
15 vidual ASSISTS AN EMERGENCY PATIENT WHO IS SUBSEQUENTLY TRANS-
16 PORTED TO A HEALTH FACILITY OR TRANSPORTS AN EMERGENCY PATIENT TO
17 A HEALTH FACILITY, and if the emergency patient, as part of the
18 treatment rendered by the health facility OR PURSUANT TO A
19 REQUEST MADE UNDER SUBSECTION (2), is tested for the presence in
20 the emergency patient of an infectious agent, and the test
21 results are positive, the health facility shall do all of the
22 following:

23 (a) Subject to subsection ~~(2)~~ (3) and subdivision (b), if
24 the test results are positive for an infectious agent and the
25 individual meets 1 of the following requirements, notify the
26 individual on a form provided by the department that he or she
27 may have been exposed to an infectious agent:

1 (i) The individual is a police officer, fire fighter, or
2 individual licensed under section 20950.

3 (ii) The individual demonstrates in writing to the health
4 facility that he or she was exposed to the blood, body fluids, or
5 airborne agents of the emergency patient or participated in pro-
6 viding ~~treatment~~ ASSISTANCE to the emergency patient or trans-
7 portation of the emergency patient to the health facility.

8 (b) Subject to subsection ~~(2)~~ (3), if the test results
9 ~~are positive for HIV~~ INDICATE THAT THE EMERGENCY PATIENT IS HIV
10 INFECTED, the health facility shall not reveal that the infec-
11 tious agent is HIV unless the health facility has received a
12 written request for notification from an individual described in
13 subdivision (a)(i) or (ii).

14 (c) Subject to subsection ~~(2)~~ (3), on a form provided by
15 the department, notify the individual described in subdivision
16 (a), at a minimum, of the appropriate infection control precau-
17 tions to be taken and the approximate date of the potential
18 exposure.

19 (2) A POLICE OFFICER, FIRE FIGHTER, INDIVIDUAL LICENSED
20 UNDER SECTION 20950, OR OTHER INDIVIDUAL WHO ASSISTS AN EMERGENCY
21 PATIENT WHO IS SUBSEQUENTLY TRANSPORTED TO A HEALTH FACILITY OR
22 WHO TRANSPORTS AN EMERGENCY PATIENT TO A HEALTH FACILITY AND WHO
23 SUSTAINS A PERCUTANEOUS, MUCOUS MEMBRANE, OR OPEN WOUND EXPOSURE
24 TO THE BLOOD OR BODY FLUIDS OF THE EMERGENCY PATIENT MAY REQUEST
25 THAT THE EMERGENCY PATIENT BE TESTED FOR HIV INFECTION OR HBV
26 INFECTION, PURSUANT TO THIS SUBSECTION. THE POLICE OFFICER, FIRE
27 FIGHTER, INDIVIDUAL LICENSED UNDER SECTION 20950, OR OTHER

1 INDIVIDUAL SHALL MAKE A REQUEST TO A HEALTH FACILITY UNDER THIS
2 SUBSECTION IN WRITING ON A FORM PROVIDED BY THE DEPARTMENT BEFORE
3 THE EMERGENCY PATIENT IS DISCHARGED FROM THE HEALTH FACILITY.
4 THE REQUEST SHALL CONTAIN AT A MINIMUM THE NAME AND ADDRESS OF
5 THE INDIVIDUAL MAKING THE REQUEST AND A DESCRIPTION OF THE
6 INDIVIDUAL'S EXPOSURE TO THE EMERGENCY PATIENT'S BLOOD OR OTHER
7 BODY FLUIDS. A HEALTH FACILITY THAT RECEIVES A REQUEST UNDER
8 THIS SUBSECTION AND DETERMINES THAT THE EXPOSURE DESCRIBED IN THE
9 REQUEST WAS A PERCUTANEOUS, MUCOUS MEMBRANE, OR OPEN WOUND EXPO-
10 SURE SHALL TEST THE EMERGENCY PATIENT FOR HIV INFECTION OR HBV
11 INFECTION. A HEALTH FACILITY THAT PERFORMS A TEST UNDER THIS
12 SUBSECTION MAY CHARGE THE INDIVIDUAL REQUESTING THE TEST FOR THE
13 COST OF THE TEST.

14 (3) ~~(2)~~ The notification required under subsection (1)
15 shall occur within 2 days after the test results are obtained by
16 the health facility or after receipt of a written request under
17 subsection (1)(b). The notification shall be transmitted to the
18 potentially exposed individual as follows:

19 (a) If the potentially exposed individual provides his or
20 her name and address to the health facility or if the health
21 facility has a procedure that allows the health facility in the
22 ordinary course of its business to determine the individual's
23 name and address, the health facility shall notify the individual
24 directly at that address.

25 (b) If the potentially exposed individual is a police offi-
26 cer, fire fighter, or individual licensed under section 20950,
27 and if the health facility does not have the name of the

1 potentially exposed individual, the health facility shall notify
2 the appropriate police department, fire department, or life sup-
3 port agency that employs or dispatches the individual. If the
4 health facility is unable to determine the employer of an indi-
5 vidual described in this subdivision, the health facility shall
6 notify the medical control authority or chief elected official of
7 the governmental unit that has jurisdiction over the transporting
8 vehicle.

9 (c) A medical control authority or chief elected official
10 described in subdivision (b) shall notify the potentially exposed
11 individual or, if unable to notify the potentially exposed indi-
12 vidual, shall document in writing the notification efforts and
13 reasons for being unable to make the notification.

14 (4) ~~(3)~~ The notice required under subsection (1) shall not
15 contain information ~~which~~ THAT would identify the emergency
16 patient who tested positive for an infectious agent. The infor-
17 mation contained in the notice is confidential and is subject to
18 this section, the rules promulgated under section 5111(2), and
19 section 5131. A person who receives confidential information
20 under this section shall disclose the information to others only
21 to the extent consistent with the authorized purpose for which
22 the information was obtained.

23 (5) ~~(4)~~ The department may promulgate rules to administer
24 this section.

25 (6) ~~(5) A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
26 A person who discloses information regarding an infectious agent
27 ~~that is not a serious communicable disease or infection or HIV~~

1 in violation of subsection ~~(3)~~ (4) is guilty of a misdemeanor.
2 THIS SUBSECTION DOES NOT APPLY TO THE DISCLOSURE OF INFORMATION
3 REGARDING A SERIOUS COMMUNICABLE DISEASE OR INFECTION, EXCEPT FOR
4 INFORMATION REGARDING THE SERIOUS COMMUNICABLE DISEASE OR INFEC-
5 TION OF HIV.

6 (7) ~~(6)~~ A person or governmental entity authorized or
7 required to make a notification under subsection (1) that com-
8 plies in good faith with this section is immune from any civil
9 liability or criminal penalty for making a notification required
10 under subsection (1).

11 (8) ~~(7)~~ As used in this section:

12 (a) "Emergency patient" means an individual who is trans-
13 ported to an organized emergency department located in and oper-
14 ated by a hospital licensed under this article or a facility
15 other than a hospital that is routinely available for the general
16 care of medical patients.

17 (B) "HBV" MEANS HEPATITIS B VIRUS.

18 (C) "HBV INFECTED" OR "HBV INFECTION" MEANS EITHER OF THE
19 FOLLOWING:

20 (i) THE STATUS OF AN INDIVIDUAL WHO IS TESTED AS
21 HBeAg-POSITIVE.

22 (ii) THE STATUS OF AN INDIVIDUAL WHO HAS TESTED
23 HBsAg-POSITIVE ON NOT LESS THAN 2 OCCASIONS THAT WERE NOT LESS
24 THAN 6 MONTHS APART OR WHO HAS TESTED HBsAg-POSITIVE AND
25 IgM-NEGATIVE ON A SINGLE SERUM SPECIMEN.

26 (D) ~~(b)~~ "Health facility" means a health facility or
27 agency as defined in section 20106.

1 (E) ~~(c)~~ "HIV" means human immunodeficiency virus.

2 (F) ~~(d)~~ "HIV infected" means that term as defined in
3 section 5101.

4 (G) ~~(e)~~ "Infectious agent" means that term as defined in
5 R 325.9031 of the Michigan administrative code.

6 (H) ~~(f)~~ "Life support agency" means that term as defined
7 in section 20906.

8 (I) ~~(g)~~ "Serious communicable disease or infection" means
9 that term as defined in section 5101.