SENATE . . . . . No. 01997

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

In the Year Two Thousand Eleven

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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