HOUSE . . . . . No. 3594

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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:

SECTION 1. 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.

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

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

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

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

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

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

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

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

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

70 SECTION 2. Chapter 175 of the General Laws is hereby amended by inserting after
71 section 47Z the following section:

72 Section 47AA. Any individual policy of accident and sickness insurance issued pursuant
73 to section 108, which provides hospital expense and surgical expense insurance or that provides
74 benefits for outpatient services, and which is delivered, issued or renewed within or without the
75 commonwealth, and every group blanket or general policy of accident and sickness insurance
76 issued pursuant to section 110, which provides hospital expense and surgical expense insurance
77 or that provides benefits for outpatient services, which is delivered, issued or renewed within or
78 without the commonwealth, and any employees' health and welfare fund which provides hospital
79 expense and surgical benefits or that provides benefits for outpatient services and which is
80 promulgated or renewed to any person or group of persons in the commonwealth, shall cover the
81 costs of HIV testing performed pursuant to Chapter 111, Section 70F(f) or regulations
82 promulgated thereunder.

83 SECTION 3. Chapter 176A of the General Laws is hereby amended by inserting after
84 section 8AA the following section:

85 Section 8BB. Any contract between a subscriber and the corporation under an individual
86 or group hospital service plan that is delivered, issued or renewed within or without the
87 commonwealth shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
88 70F(f) or regulations promulgated thereunder for all individual subscribers and members within
89 the commonwealth and for all group members having a principal place of employment within the
90 commonwealth.

91 SECTION 4. Chapter 176B of the General Laws is hereby amended by inserting after
92 section 4CC the following section:

93 Section 4DD. Any subscription certificate under an individual or group hospital service
94 plan or medical service agreement that is delivered, issued or renewed within or without the
95 commonwealth, shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
96 70F (f) or regulations promulgated thereunder for all individual subscribers and members within
97 the commonwealth and all group members having a principal place of employment within the
98 commonwealth.

99 SECTION 5. Chapter 176G of the General Laws is hereby amended by inserting after
100 section 4U the following section:

101 Section 4V. Any individual or group health maintenance contract that is issued, renewed,
102 or delivered within or without the commonwealth shall provide to a member or enrollee benefits
103 to cover the costs of HIV testing performed pursuant to Chapter 111, Section 70F(d) or
104 regulations promulgated thereunder.