SENATE DOCKET, NO. 1660 FILED ON: 1/21/2011

SENATE . . . . . No. 1108

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to increase routine screening for HIV.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia D. Jehlen	☐ *[District]* ☐
Harriette L. Chandler	☐ *[District]* ☐
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Stephen L. DiNatale	*3rd Worcester*
James B. Eldridge	☐ *[District]* ☐
Susan C. Fargo	☐ *[District]* ☐
Linda Dorcena Forry	*12th Suffolk*
Gloria L. Fox	*7th Suffolk*
Karen E. Spilka	☐ *[District]*

	☐
James E. Timilty	☐ *[District]* ☐
Daniel A. Wolf	☐ *[District]* ☐

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SENATE . . . . . No. 1108

By Ms. Jehlen, petition (accompanied by bill, Senate, No. 1108) of Wolf, Timilty, Spilka and other members of the General Court for legislation to increase routine screening for HIV [Joint Committee on Public Health].

The Commonwealth of Massachusetts

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. 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 provide the subject of the test with written information about HIV.

23 The Department of Public Health shall by regulation establish the content of such information
24 and shall develop a document containing such information.

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

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

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

46 (h) No health care facility, as defined in section seventy E, and no health care provider
47 shall disclose HIV-related medical information to any person other than the subject thereof
48 without first obtaining the subject's written informed consent. For the purpose of this section
49 "written informed consent" shall mean a written consent for each requested release of an
50 individual's HIV-related medical information. Such written consent form shall state the purpose
51 for which the HIV-related medical information is being requested and shall be distinguished
52 from written consent for the release of any other medical information.

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

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

57 (k) It shall not be a violation of this section for any physician, health care
58 provider, health care institution or laboratory to report information, including the names of

59 patients diagnosed with HIV infection or AIDS, to the Department of Public Health pursuant to
60 its authority under Chapter 111 or Chapter 111D and regulations promulgated thereunder. No
61 physician, health care provider, health care institution or laboratory so required to report shall be
62 liable in any civil or criminal action by reason of any such report based on a diagnosis of HIV or
63 AIDS made at any time.

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

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

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

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

81 Section 8BB. Any contract between a subscriber and the corporation under an individual
82 or group hospital service plan that is delivered, issued or renewed within or without the
83 commonwealth shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
84 70F(f) or regulations promulgated thereunder for all individual subscribers and members within
85 the commonwealth and for all group members having a principal place of employment within the
86 commonwealth.

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

89 Section 4DD. Any subscription certificate under an individual or group hospital service
90 plan or medical service agreement that is delivered, issued or renewed within or without the
91 commonwealth, shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
92 70F (f) or regulations promulgated thereunder for all individual subscribers and members within
93 the commonwealth and all group members having a principal place of employment within the
94 commonwealth.

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

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