

HOUSE No. 2906

The Commonwealth of Massachusetts

PRESENTED BY:

Byron Rushing

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 adoption of the accompanying bill:

An Act to increase routine screening for HIV.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>1/21/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/4/2011</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/4/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/4/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/4/2011</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/4/2011</i>
<i>Patricia D. Jehlen</i>		<i>2/1/2011</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/27/2011</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>	<i>1/31/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>2/4/2011</i>

HOUSE No. 2906

By Mr. Rushing of Boston, a petition (accompanied by bill, House, No. 2906) of Byron Rushing and others for legislation to increase routine screening for the HIV virus. Public Health.

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:

1 SECTION 1. Chapter 111 of the General Laws is hereby amended by striking out
2 Section 70F and inserting in place thereof the following section:

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

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

7 “HIV-related medical information” means: (1) the results of an HIV test; (2) any
8 information that indicates that the patient was the subject of an HIV test; or (3) any information
9 that identifies a patient as having HIV or AIDS, including but not limited to a diagnosis of HIV
10 infection or AIDS or the use of HIV antiretroviral or other medications. (b) No health care
11 facility, as defined in Section 70E, or health care provider, as defined in Section 1 shall order an
12 HIV test without first obtaining the verbal informed consent of the patient. To obtain informed
13 consent, a health care provider shall explain to the patient in person the purpose of an HIV test

14 and the meaning of negative and positive test results, offer the patient the opportunity to ask
15 questions, and determine that the patient voluntarily and knowingly consents to an HIV test. The
16 patient's decision to grant or deny consent shall be contemporaneously documented in the
17 medical record.

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

21 (d) Any health care provider who orders the performance of an HIV test, or such
22 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

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. 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. 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, including the names of patients diagnosed with HIV infection or AIDS, 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 based on a diagnosis of HIV or AIDS made at any time.

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

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

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

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

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

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

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

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

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