

House BILL NO. *281*

INTRODUCED BY *James Hickney, Suzanne Messmore, Menahan, Jacobson, Hoyer, Odwell, Wm E. Bell*

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE PERFORMANCE OF TESTING RELATED TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) BY HEALTH CARE PROVIDERS IN A MEDICAL EMERGENCY WHEN THE PATIENT IS MENTALLY IMPAIRED OR PHYSICALLY DISABLED; AND AMENDING SECTION 50-16-1007, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-1007, MCA, is amended to read:

***50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) A person may not request an HIV-related test without first receiving the written informed consent of the subject of the test or the subject's spouse, parent, adult child, or legal guardian. A health care provider shall certify in writing that informed consent has been received prior to requesting testing. Testing may only be requested by a health care provider.

(2) Prior to executing an informed consent agreement, the subject of the test or the subject's spouse, parent, adult child, or legal guardian must be given pretest counseling.

(3) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform a

person who wishes to be tested anonymously that anonymous testing is available at one of the counseling testing sites established by the department.

(4) The results of an HIV-related test must be given to the health care provider designated by the subject, who shall inform the subject of the results in person.

(5) At the time the subject of a test is given the test results, the subject must be provided with posttest counseling.

(6) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(7) Subsections (1) through (5) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(8) (a) A health care provider may request an HIV-related test without consent if the subject of the test is unable to consent and the subject's health may be



1 adversely affected by a delay in obtaining consent.
 2 (b) If a health care facility's infection control
 3 committee or an equivalent body determines that an agent or
 4 employee of a health care facility or a health care provider
 5 with privileges at the health care facility has been exposed
 6 to the blood or body fluids of a patient who may be infected
 7 with HIV or any other infectious agent in a manner creating
 8 a risk of infection, the infection control committee may
 9 without the consent of the patient conduct tests, in
 10 accordance with the infectious disease exposure guidelines
 11 of the center for disease control or the infectious disease
 12 exposure standards of the health care facility, on
 13 previously drawn blood or previously collected bodily fluids
 14 to determine if the patient is in fact infected. If
 15 previously drawn blood or previously collected bodily fluids
 16 are not available or are not suitable for testing, the
 17 health care facility may order, without the consent of the
 18 patient, that blood or bodily fluids be drawn or collected
 19 from the patient to conduct the necessary tests. A health
 20 care facility is not required to perform a test authorized
 21 in this subsection.
 22 (c) If the results of a test are positive, the health
 23 care facility shall inform the patient of the results and
 24 provide the patient with counseling. The patient may not be
 25 charged for a test performed under this subsection (B). The

1 results of a test may not be made part of the patient's
 2 medical record and are subject to 50-16-1009(1), except that
 3 the health care facility may inform the exposed person of
 4 the results of the test.
 5 (B)(9) A knowing or purposeful violation of this
 6 section is a misdemeanor punishable by a fine of \$1,000 or
 7 imprisonment for up to 6 months, or both."

-End-