

**SUBSTITUTE FOR  
SENATE BILL NO. 467**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 16221, 17020, and 17520 (MCL 333.16221,  
333.17020, and 333.17520), section 16221 as amended by 2004 PA  
214 and sections 17020 and 17520 as added by 2000 PA 29, and by  
adding sections 17020a, 17520a, and 20170a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 16221. The department may investigate activities  
2 related to the practice of a health profession by a licensee, a  
3 registrant, or an applicant for licensure or registration. The  
4 department may hold hearings, administer oaths, and order  
5 relevant testimony to be taken and shall report its findings to  
6 the appropriate disciplinary subcommittee. The disciplinary

1 subcommittee shall proceed under section 16226 if it finds that 1  
2 or more of the following grounds exist:

3 (a) A violation of general duty, consisting of negligence or  
4 failure to exercise due care, including negligent delegation to  
5 or supervision of employees or other individuals, whether or not  
6 injury results, or any conduct, practice, or condition that  
7 impairs, or may impair, the ability to safely and skillfully  
8 practice the health profession.

9 (b) Personal disqualifications, consisting of 1 or more of  
10 the following:

11 (i) Incompetence.

12 (ii) Subject to sections 16165 to 16170a, substance abuse as  
13 defined in section 6107.

14 (iii) Mental or physical inability reasonably related to and  
15 adversely affecting the licensee's ability to practice in a safe  
16 and competent manner.

17 (iv) Declaration of mental incompetence by a court of  
18 competent jurisdiction.

19 (v) Conviction of a misdemeanor punishable by imprisonment  
20 for a maximum term of 2 years; a misdemeanor involving the  
21 illegal delivery, possession, or use of a controlled substance;  
22 or a felony. A certified copy of the court record is conclusive  
23 evidence of the conviction.

24 (vi) Lack of good moral character.

25 (vii) Conviction of a criminal offense under sections 520b to  
26 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to  
27 750.520g. A certified copy of the court record is conclusive

1 evidence of the conviction.

2 (viii) Conviction of a violation of section 492a of the  
3 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy  
4 of the court record is conclusive evidence of the conviction.

5 (ix) Conviction of a misdemeanor or felony involving fraud in  
6 obtaining or attempting to obtain fees related to the practice of  
7 a health profession. A certified copy of the court record is  
8 conclusive evidence of the conviction.

9 (x) Final adverse administrative action by a licensure,  
10 registration, disciplinary, or certification board involving the  
11 holder of, or an applicant for, a license or registration  
12 regulated by another state or a territory of the United States,  
13 by the United States military, by the federal government, or by  
14 another country. A certified copy of the record of the board is  
15 conclusive evidence of the final action.

16 (xi) Conviction of a misdemeanor that is reasonably related  
17 to or that adversely affects the licensee's ability to practice  
18 in a safe and competent manner. A certified copy of the court  
19 record is conclusive evidence of the conviction.

20 (xii) Conviction of a violation of section 430 of the  
21 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy  
22 of the court record is conclusive evidence of the conviction.

23 (c) Prohibited acts, consisting of 1 or more of the  
24 following:

25 (i) Fraud or deceit in obtaining or renewing a license or  
26 registration.

27 (ii) Permitting the license or registration to be used by an

1 unauthorized person.

2 (iii) Practice outside the scope of a license.

3 (iv) Obtaining, possessing, or attempting to obtain or  
4 possess a controlled substance as defined in section 7104 or a  
5 drug as defined in section 7105 without lawful authority; or  
6 selling, prescribing, giving away, or administering drugs for  
7 other than lawful diagnostic or therapeutic purposes.

8 (d) Unethical business practices, consisting of 1 or more of  
9 the following:

10 (i) False or misleading advertising.

11 (ii) Dividing fees for referral of patients or accepting  
12 kickbacks on medical or surgical services, appliances, or  
13 medications purchased by or in behalf of patients.

14 (iii) Fraud or deceit in obtaining or attempting to obtain  
15 third party reimbursement.

16 (e) Unprofessional conduct, consisting of 1 or more of the  
17 following:

18 (i) Misrepresentation to a consumer or patient or in  
19 obtaining or attempting to obtain third party reimbursement in  
20 the course of professional practice.

21 (ii) Betrayal of a professional confidence.

22 (iii) Promotion for personal gain of an unnecessary drug,  
23 device, treatment, procedure, or service.

24 (iv) Either of the following:

25 (A) A requirement by a licensee other than a physician that  
26 an individual purchase or secure a drug, device, treatment,  
27 procedure, or service from another person, place, facility, or

1 business in which the licensee has a financial interest.

2 (B) A referral by a physician for a designated health  
3 service that violates section 1877 of part D of title XVIII of  
4 the social security act, 42 USC 1395nn, or a regulation  
5 promulgated under that section. Section 1877 of part D of title  
6 XVIII of the social security act, 42 USC 1395nn, and the  
7 regulations promulgated under that section, as they exist on June  
8 3, 2002, are incorporated by reference for purposes of this  
9 subparagraph. A disciplinary subcommittee shall apply section  
10 1877 of part D of title XVIII of the social security act, 42 USC  
11 1395nn, and the regulations promulgated under that section  
12 regardless of the source of payment for the designated health  
13 service referred and rendered. If section 1877 of part D of title  
14 XVIII of the social security act, 42 USC 1395nn, or a regulation  
15 promulgated under that section is revised after June 3, 2002, the  
16 department shall officially take notice of the revision. Within  
17 30 days after taking notice of the revision, the department shall  
18 decide whether or not the revision pertains to referral by  
19 physicians for designated health services and continues to  
20 protect the public from inappropriate referrals by physicians. If  
21 the department decides that the revision does both of those  
22 things, the department may promulgate rules to incorporate the  
23 revision by reference. If the department does promulgate rules to  
24 incorporate the revision by reference, the department shall not  
25 make any changes to the revision. As used in this subparagraph,  
26 "designated health service" means that term as defined in section  
27 1877 of part D of title XVIII of the social security act, 42 USC

1 1395nn, and the regulations promulgated under that section and  
2 "physician" means that term as defined in sections 17001 and  
3 17501.

4 (v) For a physician who makes referrals pursuant to section  
5 1877 of part D of title XVIII of the social security act, 42 USC  
6 1395nn, or a regulation promulgated under that section, refusing  
7 to accept a reasonable proportion of patients eligible for  
8 medicaid and refusing to accept payment from medicaid or medicare  
9 as payment in full for a treatment, procedure, or service for  
10 which the physician refers the individual and in which the  
11 physician has a financial interest. A physician who owns all or  
12 part of a facility in which he or she provides surgical services  
13 is not subject to this subparagraph if a referred surgical  
14 procedure he or she performs in the facility is not reimbursed at  
15 a minimum of the appropriate medicaid or medicare outpatient fee  
16 schedule, including the combined technical and professional  
17 components.

18 (f) Beginning June 3, 2003, the department ~~of consumer and~~  
19 ~~industry services~~ shall prepare the first of 3 annual reports on  
20 the effect of this amendatory act on access to care for the  
21 uninsured and medicaid patients. The department shall report on  
22 the number of referrals by licensees of uninsured and medicaid  
23 patients to purchase or secure a drug, device, treatment,  
24 procedure, or service from another person, place, facility, or  
25 business in which the licensee has a financial interest.

26 (g) Failure to report a change of name or mailing address  
27 within 30 days after the change occurs.

1 (h) A violation, or aiding or abetting in a violation, of  
2 this article or of a rule promulgated under this article.

3 (i) Failure to comply with a subpoena issued pursuant to  
4 this part, failure to respond to a complaint issued under this  
5 article or article 7, failure to appear at a compliance  
6 conference or an administrative hearing, or failure to report  
7 under section 16222 or 16223.

8 (j) Failure to pay an installment of an assessment levied  
9 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100  
10 to 500.8302, within 60 days after notice by the appropriate  
11 board.

12 (k) A violation of section 17013 or 17513.

13 (l) Failure to meet 1 or more of the requirements for  
14 licensure or registration under section 16174.

15 (m) A violation of section 17015 or 17515.

16 (n) A violation of section 17016 or 17516.

17 (o) Failure to comply with section 9206(3).

18 (p) A violation of section 5654 or 5655.

19 (q) A violation of section 16274.

20 (r) A violation of section 17020, ~~or~~ **17020A**, 17520, **OR**  
21 **17520A**.

22 (s) A violation of the medical records access act, **2004 PA**  
23 **47, MCL 333.26261 TO 333.26271**.

24 (t) A violation of section 17764(2).

25 Sec. 17020. (1) Except as otherwise provided for a test  
26 performed under section 5431 and except as otherwise provided by  
27 law, beginning ~~upon the expiration of 6 months after the~~

1 ~~effective date of the amendatory act that added this section~~  
2 **SEPTEMBER 15, 2000**, a physician or an individual to whom the  
3 physician has delegated authority to perform a selected act,  
4 task, or function under section 16215 shall not order a  
5 presymptomatic or predictive genetic test without first obtaining  
6 the written, informed consent of the test subject, pursuant to  
7 this section.

8 (2) For purposes of subsection (1), written, informed  
9 consent consists of a signed writing executed by the test subject  
10 or the legally authorized representative of the test subject that  
11 confirms that the physician or the individual acting under the  
12 delegatory authority of the physician has explained, and the test  
13 subject or the legally authorized representative of the test  
14 subject understands, at a minimum, all of the following:

15 (a) The nature and purpose of the presymptomatic or  
16 predictive genetic test.

17 (b) The effectiveness and limitations of the presymptomatic  
18 or predictive genetic test.

19 (c) The implications of taking the presymptomatic or  
20 predictive genetic test, including, but not limited to, the  
21 medical risks and benefits.

22 (d) The future uses of the sample taken from the test  
23 subject in order to conduct the presymptomatic or predictive  
24 genetic test and the information obtained from the presymptomatic  
25 or predictive genetic test.

26 (e) The meaning of the presymptomatic or predictive genetic  
27 test results and the procedure for providing notice of the

1 results to the test subject.

2 (f) Who will have access to the sample taken from the test  
3 subject in order to conduct the presymptomatic or predictive  
4 genetic test and the information obtained from the presymptomatic  
5 or predictive genetic test, and the test subject's right to  
6 confidential treatment of the sample and the information.

7 (3) ~~Within 6 months after the effective date of the~~  
8 ~~amendatory act that added this section~~ **BEFORE SEPTEMBER 15,**  
9 **2000,** the department of community health, in consultation with  
10 the Michigan board of medicine, the Michigan board of osteopathic  
11 medicine and surgery, at least 1 physician who is board certified  
12 by the American board of medical genetics, and appropriate  
13 professional organizations, shall develop and distribute a model  
14 informed consent form for purposes of this section that  
15 practitioners may adopt. The department of community health shall  
16 include in the model form at least all of the information  
17 required under subsection (2). The department of community health  
18 shall distribute the model form to physicians and other  
19 individuals subject to this section upon request and at no  
20 charge. The department of community health shall review the model  
21 form at least annually for 5 years after the first model form is  
22 distributed, and shall revise the model form if necessary to make  
23 the form reflect the latest developments in medical genetics.

24 (4) The department of community health, in consultation with  
25 the entities described in subsection (3), may also develop and  
26 distribute a pamphlet that provides further explanation of the  
27 information included in the model informed consent form.

1 (5) If a test subject or his or her legally authorized  
2 representative signs a copy of the model informed consent form  
3 developed and distributed under subsection (3), the physician or  
4 individual acting under the delegatory authority of the physician  
5 shall give the test subject a copy of the signed informed consent  
6 form and shall include the original signed informed consent form  
7 in the test subject's medical record.

8 (6) If a test subject or his or her legally authorized  
9 representative signs a copy of the model informed consent form  
10 developed and distributed under subsection (3), the test subject  
11 is barred from subsequently bringing a civil action for damages  
12 against the physician, or an individual to whom the physician  
13 delegated the authority to perform a selected act, task, or  
14 function under section 16215, who ordered the presymptomatic or  
15 predictive genetic test, based on failure to obtain informed  
16 consent for the presymptomatic or predictive genetic test.

17 (7) A physician's duty to inform a patient under this  
18 section does not require disclosure of information beyond what a  
19 reasonably well-qualified physician licensed under this article  
20 would know.

21 (8) Except as otherwise provided in subsection (9), as used  
22 in this section **AND SECTION 17020A:**

23 (a) "Genetic information" means information about a gene,  
24 gene product, or inherited characteristic which information is  
25 derived from a genetic test.

26 (b) "Genetic test" means the analysis of human DNA, RNA,  
27 chromosomes, and those proteins and metabolites used to detect

1 heritable or somatic disease-related genotypes or karyotypes for  
2 clinical purposes. A genetic test must be generally accepted in  
3 the scientific and medical communities as being specifically  
4 determinative for the presence, absence, or mutation of a gene or  
5 chromosome in order to qualify under this definition. Genetic  
6 test does not include a routine physical examination or a routine  
7 analysis, including, but not limited to, a chemical analysis, of  
8 body fluids, unless conducted specifically to determine the  
9 presence, absence, or mutation of a gene or chromosome.

10 (c) "Predictive genetic test" means a genetic test performed  
11 for the purpose of predicting the future probability that the  
12 test subject will develop a genetically related disease or  
13 disability.

14 (d) "Presymptomatic genetic test" means a genetic test  
15 performed before the onset of clinical symptoms or indications of  
16 disease.

17 (9) For purposes of subsection (8)(b), the term "genetic  
18 test" does not include a procedure performed as a component of  
19 biomedical research that is conducted pursuant to federal common  
20 rule under ~~21 C.F.R.~~ CFR parts 50 and 56 and 45 ~~C.F.R.~~ CFR  
21 part 46.

22 **SEC. 17020A. (1) THE FACT THAT A PRESYMPTOMATIC OR**  
23 **PREDICTIVE GENETIC TEST HAS BEEN ORDERED AND CONDUCTED UNDER**  
24 **SECTION 17020 AND THE RESULTS OF THAT TEST ARE PRIVILEGED AND**  
25 **CONFIDENTIAL. EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON SHALL**  
26 **NOT DISCLOSE THAT A TEST HAS BEEN ORDERED OR CONDUCTED OR THE**  
27 **RESULTS OF THAT TEST FOR PURPOSES OTHER THAN TREATMENT, PAYMENT,**

1 OR HEALTH CARE OPERATIONS AS PROVIDED UNDER THE HEALTH INSURANCE  
2 PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191,  
3 AND REGULATIONS PROMULGATED UNDER THAT ACT, 45 CFR PARTS 160 AND  
4 164, WITHOUT FIRST OBTAINING WRITTEN AUTHORIZATION FROM THE TEST  
5 SUBJECT OR HIS OR HER LEGALLY AUTHORIZED REPRESENTATIVE AS  
6 PROVIDED UNDER THIS SECTION.

7 (2) FOR PURPOSES OF SUBSECTION (1), WRITTEN AUTHORIZATION  
8 SHALL BE ON A FORM THAT IDENTIFIES TO WHOM THE INFORMATION IS TO  
9 BE DISCLOSED AND INCLUDES THE FOLLOWING NOTICE:

10 NOTICE OF RIGHTS WITH REGARD TO  
11 GENETIC TESTING AND INFORMATION

12 MICHIGAN LAW RESTRICTS REQUESTS BY HEALTH INSURERS, NONPROFIT  
13 HEALTH CARE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, AND  
14 EMPLOYERS FOR INDIVIDUALS TO SUBMIT TO GENETIC TESTING, TO  
15 DISCLOSE GENETIC INFORMATION, OR TO DISCLOSE WHETHER GENETIC  
16 TESTING HAS BEEN CONDUCTED OR THE RESULTS OF THAT GENETIC  
17 TESTING. INDIVIDUALS WHO HAVE QUESTIONS ABOUT THEIR RIGHTS MAY  
18 SEEK LEGAL ADVICE.

19 (3) FOR PURPOSES OF SUBSECTION (1), A GENERAL CONSENT OR  
20 AUTHORIZATION GIVEN FOR THE RELEASE OF MEDICAL RECORDS OR OTHER  
21 MEDICAL INFORMATION DOES NOT CONSTITUTE WRITTEN AUTHORIZATION FOR  
22 DISCLOSURE UNDER THIS SECTION. THE INFORMED CONSENT FORM REQUIRED  
23 UNDER SECTION 17020 FOR THE PERFORMANCE OF GENETIC TESTING SHALL  
24 SATISFY THE WRITTEN AUTHORIZATION REQUIREMENTS FOR DISCLOSURE  
25 UNDER THIS SECTION IF THAT INFORMED CONSENT FORM IDENTIFIES TO  
26 WHOM THE GENETIC INFORMATION IS BEING PROVIDED, INCLUDES THE

1 NOTICE DESCRIBED UNDER SUBSECTION (2), AND REQUIRES A SEPARATE  
2 SIGNATURE FOR DISCLOSURE THAN THE SIGNATURE REQUIRED FOR THE  
3 PERFORMANCE OF THE GENETIC TESTING. IF THE TEST SUBJECT OR HIS OR  
4 HER LEGALLY AUTHORIZED REPRESENTATIVE PROVIDES WRITTEN  
5 AUTHORIZATION UNDER THIS SECTION, THE PERSON SHALL DO EACH OF THE  
6 FOLLOWING:

7 (A) PROVIDE THE TEST SUBJECT WITH A COPY OF THE SIGNED  
8 WRITTEN AUTHORIZATION.

9 (B) MAINTAIN THE ORIGINAL SIGNED WRITTEN AUTHORIZATION IN  
10 THE TEST SUBJECT'S MEDICAL RECORD.

11 (C) PROVIDE THE TEST SUBJECT AND THE PERSON TO WHOM THE  
12 INFORMATION IS BEING DISCLOSED WITH THE FOLLOWING NOTICE:

13 RESTRICTIONS ON FURTHER DISCLOSURE OF  
14 GENETIC TESTING AND INFORMATION

15 THIS INFORMATION IS PRIVILEGED AND CONFIDENTIAL. THIS INFORMATION  
16 IS BEING PROVIDED TO YOU IN ACCORDANCE WITH MICHIGAN LAW AND  
17 SHALL NOT BE FURTHER DISCLOSED WITHOUT A SEPARATE WRITTEN  
18 AUTHORIZATION FROM THE TEST SUBJECT OR HIS OR HER LEGALLY  
19 AUTHORIZED REPRESENTATIVE. A GENERAL CONSENT OR AUTHORIZATION  
20 FOR THE RELEASE OF MEDICAL RECORDS OR OTHER INFORMATION IS NOT  
21 SUFFICIENT TO AUTHORIZE THE DISCLOSURE OF GENETIC TESTING AND  
22 INFORMATION.

23 (4) IF A TEST SUBJECT CONSENTS TO THE PERFORMANCE OF A  
24 GENETIC TEST FOR THE SOLE PURPOSE OF ASSISTING IN THE RECOVERY OR  
25 IDENTIFICATION OF HUMAN REMAINS FROM A DISASTER OR ASSISTING IN

1 THE IDENTIFICATION OF LIVING OR DECEASED MISSING PERSONS BY  
2 MATCHING FORENSIC DNA PROFILES IN THE EVENT OF AN EMERGENCY OR  
3 DISASTER, THOSE RESULTS AS WELL AS THE DNA PROFILES SHALL ONLY BE  
4 DISCLOSED AND USED FOR THOSE IDENTIFICATION PURPOSES, ARE NOT  
5 PUBLIC RECORDS, ARE NOT SUBJECT TO COURT SUBPOENA, AND ARE NOT  
6 DISCOVERABLE IN A LEGAL PROCEEDING. CONSENT PROVIDED FOR TESTING  
7 AND DNA PROFILING UNDER THIS SUBSECTION IS NOT CONSENT FOR  
8 SECONDARY RESEARCH UTILIZING THOSE RESULTS OR DNA PROFILES OR ANY  
9 OTHER USE EXCEPT FOR THE IDENTIFICATION OF LIVING OR DECEASED  
10 MISSING PERSONS.

11       Sec. 17520. (1) Except as otherwise provided for a test  
12 performed under section 5431 and except as otherwise provided by  
13 law, beginning ~~upon the expiration of 6 months after the~~  
14 ~~effective date of the amendatory act that added this section~~  
15 **SEPTEMBER 15, 2000**, a physician or an individual to whom the  
16 physician has delegated authority to perform a selected act,  
17 task, or function under section 16215 shall not order a  
18 presymptomatic or predictive genetic test without first obtaining  
19 the written, informed consent of the test subject, pursuant to  
20 this section.

21       (2) For purposes of subsection (1), written, informed  
22 consent consists of a signed writing executed by the test subject  
23 or the legally authorized representative of the test subject that  
24 confirms that the physician or the individual acting under the  
25 delegatory authority of the physician has explained, and the test  
26 subject or the legally authorized representative of the test  
27 subject understands, at a minimum, all of the following:

1 (a) The nature and purpose of the presymptomatic or  
2 predictive genetic test.

3 (b) The effectiveness and limitations of the presymptomatic  
4 or predictive genetic test.

5 (c) The implications of taking the presymptomatic or  
6 predictive genetic test, including, but not limited to, the  
7 medical risks and benefits.

8 (d) The future uses of the sample taken from the test  
9 subject in order to conduct the presymptomatic or predictive  
10 genetic test and the information obtained from the presymptomatic  
11 or predictive genetic test.

12 (e) The meaning of the presymptomatic or predictive genetic  
13 test results and the procedure for providing notice of the  
14 results to the test subject.

15 (f) Who will have access to the sample taken from the test  
16 subject in order to conduct the presymptomatic or predictive  
17 genetic test and the information obtained from the presymptomatic  
18 or predictive genetic test, and the test subject's right to  
19 confidential treatment of the sample and the information.

20 (3) ~~Within 6 months after the effective date of the~~  
21 ~~amendatory act that added this section~~ **BEFORE SEPTEMBER 15,**  
22 **2000,** the department of community health, in consultation with  
23 the Michigan board of medicine, the Michigan board of osteopathic  
24 medicine and surgery, at least 1 physician who is board certified  
25 by the American board of medical genetics, and appropriate  
26 professional organizations, shall develop and distribute a model  
27 informed consent form for purposes of this section that

1 practitioners may adopt. The department of community health shall  
2 include in the model form at least all of the information  
3 required under subsection (2). The department of community health  
4 shall distribute the model form to physicians and other  
5 individuals subject to this section upon request and at no  
6 charge. The department of community health shall review the model  
7 form at least annually for 5 years after the first model form is  
8 distributed, and shall revise the model form if necessary to make  
9 the form reflect the latest developments in medical genetics.

10 (4) The department of community health, in consultation with  
11 the entities described in subsection (3), may also develop and  
12 distribute a pamphlet that provides further explanation of the  
13 information included in the model informed consent form.

14 (5) If a test subject or his or her legally authorized  
15 representative signs a copy of the model informed consent form  
16 developed and distributed under subsection (3), the physician or  
17 individual acting under the delegatory authority of the physician  
18 shall give the test subject a copy of the signed informed consent  
19 form and shall include the original signed informed consent form  
20 in the test subject's medical record.

21 (6) If a test subject or his or her legally authorized  
22 representative signs a copy of the model informed consent form  
23 developed and distributed under subsection (3), the test subject  
24 is barred from subsequently bringing a civil action for damages  
25 against the physician, or an individual to whom the physician  
26 delegated the authority to perform a selected act, task, or  
27 function under section 16215, who ordered the presymptomatic or

1 predictive genetic test, based on failure to obtain informed  
2 consent for the presymptomatic or predictive genetic test.

3 (7) A physician's duty to inform a patient under this  
4 section does not require disclosure of information beyond what a  
5 reasonably well-qualified physician licensed under this article  
6 would know.

7 (8) Except as otherwise provided in subsection (9), as used  
8 in this section **AND SECTION 17520A**:

9 (a) "Genetic information" means information about a gene,  
10 gene product, or inherited characteristic which information is  
11 derived from a genetic test.

12 (b) "Genetic test" means the analysis of human DNA, RNA,  
13 chromosomes, and those proteins and metabolites used to detect  
14 heritable or somatic disease-related genotypes or karyotypes for  
15 clinical purposes. A genetic test must be generally accepted in  
16 the scientific and medical communities as being specifically  
17 determinative for the presence, absence, or mutation of a gene or  
18 chromosome in order to qualify under this definition. Genetic  
19 test does not include a routine physical examination or a routine  
20 analysis, including, but not limited to, a chemical analysis, of  
21 body fluids, unless conducted specifically to determine the  
22 presence, absence, or mutation of a gene or chromosome.

23 (c) "Predictive genetic test" means a genetic test performed  
24 for the purpose of predicting the future probability that the  
25 test subject will develop a genetically related disease or  
26 disability.

27 (d) "Presymptomatic genetic test" means a genetic test

1 performed before the onset of clinical symptoms or indications of  
2 disease.

3 (9) For purposes of subsection (8)(b), the term "genetic  
4 test" does not include a procedure performed as a component of  
5 biomedical research that is conducted pursuant to federal common  
6 rule under 21 ~~C.F.R.~~ **CFR** parts 50 and 56 and 45 ~~C.F.R.~~ **CFR**  
7 part 46.

8 **SEC. 17520A. (1) THE FACT THAT A PRESYMPTOMATIC OR**  
9 **PREDICTIVE GENETIC TEST HAS BEEN ORDERED AND CONDUCTED UNDER**  
10 **SECTION 17520 AND THE RESULTS OF THAT TEST ARE PRIVILEGED AND**  
11 **CONFIDENTIAL. EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON SHALL**  
12 **NOT DISCLOSE THAT A TEST HAS BEEN ORDERED OR CONDUCTED OR THE**  
13 **RESULTS OF THAT TEST FOR PURPOSES OTHER THAN TREATMENT, PAYMENT,**  
14 **OR HEALTH CARE OPERATIONS AS PROVIDED UNDER THE HEALTH INSURANCE**  
15 **PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191,**  
16 **AND REGULATIONS PROMULGATED UNDER THAT ACT, 45 CFR PARTS 160 AND**  
17 **164, WITHOUT FIRST OBTAINING WRITTEN AUTHORIZATION FROM THE TEST**  
18 **SUBJECT OR HIS OR HER LEGALLY AUTHORIZED REPRESENTATIVE AS**  
19 **PROVIDED UNDER THIS SECTION.**

20 (2) FOR PURPOSES OF SUBSECTION (1), WRITTEN AUTHORIZATION  
21 SHALL BE ON A FORM THAT IDENTIFIES TO WHOM THE INFORMATION IS TO  
22 BE DISCLOSED AND INCLUDES THE FOLLOWING NOTICE:

23 NOTICE OF RIGHTS WITH REGARD TO  
24 GENETIC TESTING AND INFORMATION

25 MICHIGAN LAW RESTRICTS REQUESTS BY HEALTH INSURERS, NONPROFIT  
26 HEALTH CARE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, AND

1 EMPLOYERS FOR INDIVIDUALS TO SUBMIT TO GENETIC TESTING, TO  
2 DISCLOSE GENETIC INFORMATION, OR TO DISCLOSE WHETHER GENETIC  
3 TESTING HAS BEEN CONDUCTED OR THE RESULTS OF THAT GENETIC  
4 TESTING. INDIVIDUALS WHO HAVE QUESTIONS ABOUT THEIR RIGHTS MAY  
5 SEEK LEGAL ADVICE.

6 (3) FOR PURPOSES OF SUBSECTION (1), A GENERAL CONSENT OR  
7 AUTHORIZATION GIVEN FOR THE RELEASE OF MEDICAL RECORDS OR OTHER  
8 MEDICAL INFORMATION DOES NOT CONSTITUTE WRITTEN AUTHORIZATION FOR  
9 DISCLOSURE UNDER THIS SECTION. THE INFORMED CONSENT FORM REQUIRED  
10 UNDER SECTION 17020 FOR THE PERFORMANCE OF GENETIC TESTING SHALL  
11 SATISFY THE WRITTEN AUTHORIZATION REQUIREMENTS FOR DISCLOSURE  
12 UNDER THIS SECTION IF THAT INFORMED CONSENT FORM IDENTIFIES TO  
13 WHOM THE GENETIC INFORMATION IS BEING PROVIDED, INCLUDES THE  
14 NOTICE DESCRIBED UNDER SUBSECTION (2), AND REQUIRES A SEPARATE  
15 SIGNATURE FOR DISCLOSURE THAN THE SIGNATURE REQUIRED FOR THE  
16 PERFORMANCE OF THE GENETIC TESTING. IF THE TEST SUBJECT OR HIS OR  
17 HER LEGALLY AUTHORIZED REPRESENTATIVE PROVIDES WRITTEN  
18 AUTHORIZATION UNDER THIS SECTION, THE PERSON SHALL DO EACH OF THE  
19 FOLLOWING:

20 (A) PROVIDE THE TEST SUBJECT WITH A COPY OF THE SIGNED  
21 WRITTEN AUTHORIZATION.

22 (B) MAINTAIN THE ORIGINAL SIGNED WRITTEN AUTHORIZATION IN  
23 THE TEST SUBJECT'S MEDICAL RECORD.

24 (C) PROVIDE THE TEST SUBJECT AND THE PERSON TO WHOM THE  
25 INFORMATION IS BEING DISCLOSED WITH THE FOLLOWING NOTICE:

26 RESTRICTIONS ON FURTHER DISCLOSURE OF

## 1 GENETIC TESTING AND INFORMATION

2 THIS INFORMATION IS PRIVILEGED AND CONFIDENTIAL. THIS INFORMATION  
3 IS BEING PROVIDED TO YOU IN ACCORDANCE WITH MICHIGAN LAW AND  
4 SHALL NOT BE FURTHER DISCLOSED WITHOUT A SEPARATE WRITTEN  
5 AUTHORIZATION FROM THE TEST SUBJECT OR HIS OR HER LEGALLY  
6 AUTHORIZED REPRESENTATIVE. A GENERAL CONSENT OR AUTHORIZATION FOR  
7 THE RELEASE OF MEDICAL RECORDS OR OTHER INFORMATION IS NOT  
8 SUFFICIENT TO AUTHORIZE THE DISCLOSURE OF GENETIC TESTING AND  
9 INFORMATION.

10 (4) IF A TEST SUBJECT CONSENTS TO THE PERFORMANCE OF A  
11 GENETIC TEST FOR THE SOLE PURPOSE OF ASSISTING IN THE RECOVERY OR  
12 IDENTIFICATION OF HUMAN REMAINS FROM A DISASTER OR ASSISTING IN  
13 THE IDENTIFICATION OF LIVING OR DECEASED MISSING PERSONS BY  
14 MATCHING DNA PROFILES IN THE EVENT OF AN EMERGENCY OR DISASTER,  
15 THOSE RESULTS AS WELL AS THE DNA PROFILES SHALL ONLY BE DISCLOSED  
16 AND USED FOR THOSE IDENTIFICATION PURPOSES, ARE NOT PUBLIC  
17 RECORDS, ARE NOT SUBJECT TO COURT SUBPOENA, AND ARE NOT  
18 DISCOVERABLE IN A LEGAL PROCEEDING. CONSENT PROVIDED FOR TESTING  
19 AND DNA PROFILING UNDER THIS SUBSECTION IS NOT CONSENT FOR  
20 SECONDARY RESEARCH UTILIZING THOSE RESULTS OR DNA PROFILES OR ANY  
21 OTHER USE EXCEPT FOR THE IDENTIFICATION OF LIVING OR DECEASED  
22 MISSING PERSONS.

23 SEC. 20170A. (1) ALL REPORTS, RECORDS, AND DATA PERTAINING  
24 TO GENETIC TESTING OR OTHER GENETIC INFORMATION ARE PRIVILEGED  
25 AND CONFIDENTIAL. EXCEPT AS OTHERWISE PROVIDED BY LAW, A HEALTH  
26 FACILITY OR AGENCY SHALL NOT DISCLOSE THE TEST RESULTS OF A

1 PRESYMPTOMATIC OR PREDICTIVE GENETIC TEST OR THE FACT THAT SUCH A  
2 TEST WAS ORDERED FOR PURPOSES OTHER THAN TREATMENT, PAYMENT, OR  
3 HEALTH CARE OPERATIONS AS PROVIDED UNDER THE HEALTH INSURANCE  
4 PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191,  
5 AND REGULATIONS PROMULGATED UNDER THAT ACT, 45 CFR PARTS 160 AND  
6 164, WITHOUT FIRST OBTAINING WRITTEN AUTHORIZATION FROM THE TEST  
7 SUBJECT OR HIS OR HER LEGALLY AUTHORIZED REPRESENTATIVE AS  
8 REQUIRED UNDER SECTION 17020A OR 17520A.

9 (2) IF THE TEST SUBJECT OR THE LEGALLY AUTHORIZED  
10 REPRESENTATIVE AGREES TO THE DISCLOSURE OF INFORMATION RELATING  
11 TO HIS OR HER GENETICS OR THE PRESYMPTOMATIC OR PREDICTIVE  
12 GENETIC TESTING, OR BOTH, HE OR SHE SHALL PROVIDE THE HEALTH  
13 FACILITY OR AGENCY WITH THE REQUISITE WRITTEN AUTHORIZATION.

14 (3) IF THE TEST SUBJECT OR HIS OR HER LEGALLY AUTHORIZED  
15 REPRESENTATIVE PROVIDES WRITTEN AUTHORIZATION FOR DISCLOSURE  
16 UNDER THIS SECTION, THE HEALTH FACILITY OR AGENCY SHALL DO EACH  
17 OF THE FOLLOWING:

18 (A) PROVIDE THE TEST SUBJECT WITH A COPY OF THE SIGNED  
19 WRITTEN AUTHORIZATION.

20 (B) MAINTAIN THE ORIGINAL SIGNED WRITTEN AUTHORIZATION IN  
21 THE TEST SUBJECT'S MEDICAL RECORD.

22 (C) PROVIDE THE TEST SUBJECT AND THE PERSON TO WHOM THE  
23 INFORMATION IS BEING DISCLOSED WITH THE FOLLOWING NOTICE:

24 RESTRICTIONS ON FURTHER DISCLOSURE OF  
25 GENETIC TESTING AND INFORMATION

26 THIS INFORMATION IS PRIVILEGED AND CONFIDENTIAL. THIS INFORMATION

1 IS BEING PROVIDED TO YOU IN ACCORDANCE WITH MICHIGAN LAW AND  
2 SHALL NOT BE FURTHER DISCLOSED WITHOUT A SEPARATE WRITTEN  
3 AUTHORIZATION FROM THE TEST SUBJECT OR HIS OR HER LEGALLY  
4 AUTHORIZED REPRESENTATIVE. A GENERAL CONSENT OR AUTHORIZATION FOR  
5 THE RELEASE OF MEDICAL RECORDS OR OTHER INFORMATION IS NOT  
6 SUFFICIENT TO AUTHORIZE THE DISCLOSURE OF GENETIC TESTING AND  
7 INFORMATION.

8 (4) IF A TEST SUBJECT CONSENTS TO THE PERFORMANCE OF A  
9 GENETIC TEST FOR THE SOLE PURPOSE OF ASSISTING IN THE RECOVERY OR  
10 IDENTIFICATION OF HUMAN REMAINS FROM A DISASTER OR ASSISTING IN  
11 THE IDENTIFICATION OF LIVING OR DECEASED MISSING PERSONS BY  
12 MATCHING DNA PROFILES IN THE EVENT OF AN EMERGENCY OR DISASTER,  
13 THOSE RESULTS AS WELL AS THE DNA PROFILES SHALL ONLY BE DISCLOSED  
14 AND USED FOR THOSE IDENTIFICATION PURPOSES, ARE NOT PUBLIC  
15 RECORDS, ARE NOT SUBJECT TO COURT SUBPOENA, AND ARE NOT  
16 DISCOVERABLE IN A LEGAL PROCEEDING. CONSENT PROVIDED FOR TESTING  
17 AND DNA PROFILING UNDER THIS SUBSECTION IS NOT CONSENT FOR  
18 SECONDARY RESEARCH UTILIZING THOSE RESULTS OR DNA PROFILES OR ANY  
19 OTHER USE EXCEPT FOR THE IDENTIFICATION OF LIVING OR DECEASED  
20 MISSING PERSONS.

21 (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), AS USED  
22 IN THIS SECTION:

23 (A) "GENETIC INFORMATION" MEANS INFORMATION ABOUT A GENE,  
24 GENE PRODUCT, OR INHERITED CHARACTERISTIC WHICH INFORMATION IS  
25 DERIVED FROM A GENETIC TEST.

26 (B) "GENETIC TEST" MEANS THE ANALYSIS OF HUMAN DNA, RNA,  
27 CHROMOSOMES, AND THOSE PROTEINS AND METABOLITES USED TO DETECT

1 HERITABLE OR SOMATIC DISEASE-RELATED GENOTYPES OR KARYOTYPES FOR  
2 CLINICAL PURPOSES. A GENETIC TEST MUST BE GENERALLY ACCEPTED IN  
3 THE SCIENTIFIC AND MEDICAL COMMUNITIES AS BEING SPECIFICALLY  
4 DETERMINATIVE FOR THE PRESENCE, ABSENCE, OR MUTATION OF A GENE OR  
5 CHROMOSOME IN ORDER TO QUALIFY UNDER THIS DEFINITION. GENETIC  
6 TEST DOES NOT INCLUDE A ROUTINE PHYSICAL EXAMINATION OR A ROUTINE  
7 ANALYSIS, INCLUDING, BUT NOT LIMITED TO, A CHEMICAL ANALYSIS, OF  
8 BODY FLUIDS, UNLESS CONDUCTED SPECIFICALLY TO DETERMINE THE  
9 PRESENCE, ABSENCE, OR MUTATION OF A GENE OR CHROMOSOME.

10 (C) "PREDICTIVE GENETIC TEST" MEANS A GENETIC TEST PERFORMED  
11 FOR THE PURPOSE OF PREDICTING THE FUTURE PROBABILITY THAT THE  
12 TEST SUBJECT WILL DEVELOP A GENETICALLY RELATED DISEASE OR  
13 DISABILITY.

14 (D) "PRESYMPTOMATIC GENETIC TEST" MEANS A GENETIC TEST  
15 PERFORMED BEFORE THE ONSET OF CLINICAL SYMPTOMS OR INDICATIONS OF  
16 DISEASE.

17 (6) FOR PURPOSES OF SUBSECTION (5) (B), THE TERM "GENETIC  
18 TEST" DOES NOT INCLUDE A PROCEDURE PERFORMED AS A COMPONENT OF  
19 BIOMEDICAL RESEARCH THAT IS CONDUCTED PURSUANT TO FEDERAL COMMON  
20 RULE UNDER 21 CFR PARTS 50 AND 56 AND 45 CFR PART 46.