

By Mr. Cohen of Newton, petition of David B. Cohen, Alvin E. Thompson, Joseph B. McIntyre, Joseph K. Mackey, John A. Businger and Geoffrey C. Beckwith for legislation to regulate HIV-related testing in determining eligibility for health care insurance. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT REGULATING ACCESS TO HEALTH CARE.

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 175 of the General Laws is hereby
2 amended by inserting after section 108E the following two
3 sections: —

4 Section 108F. No insurer shall directly or indirectly use any
5 HIV-related testing in determining insurability or in determining
6 classification of risks or rates, in connection with any policy of
7 accident and sickness insurance which provides hospital, medical
8 or surgical expense coverage, in any manner that is inconsistent
9 with rules and regulations promulgated by the commissioner.
10 Such rules and regulations may prohibit, limit or otherwise restrict
11 the use of such testing, and shall include but not be limited to
12 requirements for informed consent, confidentiality, standards for
13 disclosure, test protocols, and counseling to be paid by insurers.

14 Section 108G. The commissioner may promulgate rules and
15 regulations prohibiting any insurer in connection with any policy
16 of accident and sickness insurance which provides hospital,
17 medical or surgical expense coverage, from basing underwriting
18 decisions, classifications of risk or rates on nationality, sexual
19 orientation, or proxies for sexual orientation, such as lifestyle,
20 living arrangement, marital status, beneficiary designation,
21 employment or residence.

1 SECTION 2. Section 110 of said chapter 175 is hereby
2 amended by adding after subdivision (L), inserted by section 2
3 of chapter 363 of the acts of 1987, the following two
4 subdivisions: —

5 (M) No partially self-funded or self-insured health insurance
6 plan utilizing any contract regulated under this chapter as
7 individual or aggregate stop-loss coverage or otherwise shall
8 directly or indirectly use any HIV-related test in determining
9 insurability or in determining classification of risks or rates in any
10 manner that is inconsistent with rules and regulations
11 promulgated by the commissioner. Such rules and regulations
12 may prohibit, limit or otherwise restrict the use of such testing,
13 and shall include but not be limited to requirements of informed
14 consent, confidentiality, standards for disclosure, test protocols,
15 and counseling to be paid for under such partially self-funded or
16 self-insured health insurance plan.

17 (N) The commissioner may promulgate rules and regulations
18 prohibiting any partially self-funded or self-insured health
19 insurance plan utilizing any contract regulated under this chapter
20 as individual or aggregate stop-loss coverage from basing
21 underwriting decisions or rates on nationality, sexual orientation,
22 or proxies for sexual orientation, such as lifestyle, living
23 arrangements, marital status, beneficiary designation, employ-
24 ment, or residence.

1 SECTION 3. Chapter 176A of the General Laws is hereby
2 amended by inserting after section 8L, inserted by section 2 of
3 chapter 683 of the acts of 1987, the following two sections: —

4 Section 8M. No non-profit hospital services corporation shall
5 directly or indirectly use any HIV-related testing in determining
6 insurability or in determining classification of risks or rates in any
7 manner that is inconsistent with rules and regulations
8 promulgated by the commissioner. Such rules and regulations
9 may prohibit, limit or otherwise restrict the use of such testing,
10 and shall include but not be limited to requirements of informed
11 consent, confidentiality, standards for disclosure, test protocols,
12 and counseling to be paid for by insurers.

13 Section 8N. The commissioner may promulgate rules and
14 regulations prohibiting any non-profit hospital service corpora-
15 tion from basing underwriting decisions or rates on nationality,

16 sexual orientation, or proxies for sexual orientation, such as
17 lifestyle, living arrangement, marital status, beneficiary
18 designation, employment or residence.

1 SECTION 4. Chapter 176B of the General Laws is hereby
2 amended by inserting after section 4K, inserted by section 3 of
3 said chapter 683, the following two sections: —

4 Section 4L. No medical service corporation shall directly or
5 indirectly use any HIV-related testing in determining insurability
6 or in determining classification of risks or rates in any manner
7 that is inconsistent with rules and regulations promulgated by the
8 commissioner. Such rules and regulations may prohibit, limit or
9 otherwise restrict the use of such testing, and shall include but
10 not be limited to requirements of informed consent, confidential-
11 ity, standards for disclosure, test protocols, and counseling to be
12 paid for by insurers.

13 Section 4M. The commissioner may promulgate rules and
14 regulations prohibiting any medical service corporation from
15 basing underwriting decisions or rates on nationality, sexual
16 orientation, or proxies for sexual orientation, such as lifestyle,
17 living arrangement, marital status, beneficiary designation,
18 employment or residence.

1 SECTION 5. Chapter 176G of the General Laws is hereby
2 amended by inserting after section 4D, inserted by section 4 of
3 said chapter 683, the following two sections: —

4 Section 4E. No health maintenance organization shall directly
5 or indirectly use any HIV-related testing in determining
6 insurability or in determining classification of risks or rates in any
7 manner that is inconsistent with rules and regulations
8 promulgated by the commissioner. Such rules and regulations
9 may prohibit, limit or otherwise restrict the use of such testing,
10 and shall include but not be limited to requirements of informed
11 consent, confidentiality, standards for disclosure, test protocols,
12 and counseling to be paid for by insurers.

13 Section 4F. The commissioner may promulgate rules and
14 regulations prohibiting any health maintenance organization
15 from basing underwriting decisions or rates on nationality, sexual

16 orientation, or proxies for sexual orientation, such as lifestyle,
17 living arrangement, marital status, beneficiary designation,
18 employment or residence.

1 SECTION 6. Chapter 176I of the General Laws is hereby
2 amended by inserting after section 9, as appearing in section 65
3 of chapter 23 of the acts of 1988, the following two sections: —

4 Section 9A. No organization offering a health benefit plan that
5 includes a preferred provider arrangement shall directly or
6 indirectly use any HIV-related testing in determining insurability
7 or in determining classification of risks or rates in any manner
8 that is inconsistent with rules and regulations promulgated by the
9 commissioner. Such rules and regulations may prohibit, limit or
10 otherwise restrict the use of such testing, and shall include but
11 not be limited to requirements of informed consent, confidential-
12 ity, standards for disclosure, test protocols, and counseling to be
13 paid for by insurers.

14 Section 9B. The commissioner may promulgate rules and
15 regulations prohibiting any organization offering a health benefit
16 plan that includes a preferred provider arrangement from basing
17 underwriting decisions or rates on nationality, sexual orientation,
18 or proxies for sexual orientation, such as lifestyle, living
19 arrangement, marital status, beneficiary designation, employment
20 or residence.