

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Perinatal HIV Prevention Act is amended by changing Sections 5, 10, 15, 30, and 35 as follows:

(410 ILCS 335/5)

Sec. 5. Definitions. In this Act:

"Birth center" means a facility licensed by the Department under paragraph (6) of Section 35 of the Alternative Health Care Delivery Act.

"Department" means the Department of Public Health.

"Health care professional" means a physician licensed to practice medicine in all its branches, a licensed physician assistant, or a licensed advanced practice nurse.

"Health care facility" or "facility" means any hospital, birth center, or other institution that is licensed or otherwise authorized to deliver health care services.

"Health care services" means any prenatal medical care or labor or delivery services to a pregnant woman and her newborn infant, including hospitalization.

"Opt-out testing" means an approach in which an HIV test is offered to the patient, such that the patient is notified that HIV testing may occur unless the patient opts out by declining

the test.

"Third trimester" means the 27th week of pregnancy through delivery.

(Source: P.A. 99-173, eff. 7-29-15.)

(410 ILCS 335/10)

Sec. 10. HIV counseling and offer of HIV testing required.

(a) Every health care professional who provides health care services to a pregnant woman shall, unless she already has a negative HIV status ~~has already been tested~~ during the third trimester of the current pregnancy, or is already HIV-positive, provide the woman with HIV counseling, as described in subpart (d) of this Section, and shall test her for HIV on an opt-out basis unless she refuses. The counseling and testing or refusal of testing shall comply with the requirements for informed consent in the AIDS Confidentiality Act and be documented in the pregnant woman's medical record as required by the AIDS Confidentiality Act. ~~A refusal may be verbal or in writing.~~

A health care professional shall provide the first opt-out HIV testing ~~counseling and recommend the testing~~ as early in the woman's pregnancy as possible. The health care professional providing health care services to a pregnant woman in the third trimester shall perform a second round of opt-out HIV testing, ideally by the 36th week of pregnancy, unless the pregnant woman already has a negative HIV status from the third trimester of the current pregnancy, or is already HIV-positive.

~~For women at continued risk of exposure to HIV infection in the judgment of the health care professional, a repeat test should be recommended late in pregnancy or at the time of labor and delivery. The counseling and testing or refusal of testing shall be documented in the woman's medical record.~~

(b) Every health care professional or facility that cares for a pregnant woman during labor or delivery shall, unless she ~~has~~ already has a negative HIV status from ~~been tested during~~ the third trimester of the current pregnancy, or is already HIV-positive, provide the woman with HIV counseling, as described in subpart (d) of this Section, and rapid opt-out HIV testing ~~unless she refuses.~~ The woman in labor or delivery may refuse the HIV test verbally or in writing. ~~A refusal may be verbal or in writing.~~ The counseling and testing or refusal of testing shall be documented in the laboring or delivering woman's medical record. The health care facility shall adopt a policy that provides that as soon as possible within medical standards after the infant's birth, the delivering mother's HIV test result, if available, shall be noted in the newborn infant's medical record. It shall also be noted in the newborn infant's medical record if the mother's third trimester HIV test result is not available because she was not tested in the third trimester ~~has not been tested~~ or has declined testing. Any testing or test results shall be documented in accordance with the AIDS Confidentiality Act.

(c) Every health care professional or facility caring for a

newborn infant shall, upon delivery or as soon as possible within medical standards after the infant's birth, provide counseling as described in subsection (d) of this Section to the parent or guardian of the infant and perform rapid HIV testing on the infant, when the HIV status of the infant's mother is unknown, or if the delivering woman did not undergo HIV testing in the third trimester of the current pregnancy.

(d) The counseling required under this Section must be provided in accordance with the AIDS Confidentiality Act and must include the following:

(1) For the health of the pregnant woman, the voluntary nature of the testing, the benefits of HIV testing, including the prevention of transmission, and the requirement that HIV testing be performed unless she refuses and the methods by which she can refuse.

(2) The benefit of HIV testing for herself and the newborn infant, including interventions to prevent HIV transmission.

(3) The side effects of interventions to prevent HIV transmission.

(4) The statutory confidentiality provisions that relate to HIV and acquired immune deficiency syndrome ("AIDS") testing.

(5) The requirement for mandatory testing of the newborn if the mother's HIV status during the third trimester of pregnancy is unknown and if the mother was not

rapidly tested for HIV at delivery ~~at the time of delivery.~~

(6) An explanation of the test, including its purpose, limitations, and the meaning of its results.

(7) An explanation of the procedures to be followed.

(8) The availability of additional or confirmatory testing, if appropriate. Counseling may be provided in writing, verbally, or by video, electronic, or other means. The pregnant or delivering woman must be offered an opportunity to ask questions about testing and to decline testing ~~for herself.~~

(e) All counseling and testing must be performed in accordance with the standards set forth in the AIDS Confidentiality Act, including the informed consent provisions of Sections 4, 7, and 8 of that Act, with the exception of the requirement of consent for testing of newborn infants.

Consent for testing of a newborn infant shall be presumed when a health care professional or health care facility seeks to perform a test on a newborn infant whose mother's HIV status is not known either in the third trimester of pregnancy or at delivery, provided that the counseling required under subsection (d) of this Section and the AIDS Confidentiality Act has taken place.

(f) The Illinois Department of Public Health shall adopt necessary rules to implement this Act by July 1, 2008.

(Source: P.A. 94-910, eff. 6-23-06; 95-702, eff. 6-1-08.)

(410 ILCS 335/15)

Sec. 15. Reporting.

(a) Health ~~A health care facilities facility~~ shall adopt a policy that provides that a report of a preliminarily HIV-positive woman identified by a rapid HIV test or ~~and~~ a report of a preliminarily HIV-exposed newborn infant identified by a rapid HIV test ~~conducted during labor and delivery or after delivery~~ shall be made to the Department's Perinatal HIV Hotline within 12 hours but not later than 24 hours of the test result ~~after birth~~. Section 15 of the AIDS Confidentiality Act applies to reporting under this Act, except that the immunities set forth in that Section do not apply in cases of willful or wanton misconduct.

(b) The Department shall adopt rules specifying the information required in reporting the preliminarily HIV-positive pregnant or post-partum woman and preliminarily HIV-exposed newborn infant and the method of reporting. In adopting the rules, the Department shall consider the need for information, protections for the privacy and confidentiality of the infant and parents, the need to provide access to care and follow-up services to the infant, and procedures for destruction of records maintained by the Department if, through subsequent HIV testing, the pregnant or post-partum woman or newborn infant is found to be HIV-negative.

(c) The confidentiality provisions of the AIDS Confidentiality Act shall apply to the reports of cases of

perinatal HIV made pursuant to this Section.

(d) Health care facilities shall monthly report aggregate statistics to the Department that include the number of pregnant or delivering ~~infected~~ women who presented with known HIV status;; the number of pregnant women rapidly tested for HIV in labor and delivery as either a first HIV test or a repeat third trimester HIV test; the number of newborn infants rapidly tested for HIV-exposure because the HIV status of the delivering woman was unknown in the third trimester, or the delivering woman refused testing; the number of preliminarily HIV-positive pregnant or delivering women and preliminarily HIV-exposed newborn infants identified;; the number of families referred to case management;; and other information the Department determines is necessary to measure progress under the provisions of this Act. Health care facilities must report the confirmatory test result when it becomes available for each preliminarily positive rapid HIV test performed on the pregnant or delivering woman and on a newborn.

(e) The Department or its authorized representative shall provide case management services to the preliminarily positive pregnant or post-partum woman or the parent or guardian of the preliminarily positive newborn infant to ensure access to treatment and care and other services where the pregnant or post-partum woman or the ~~as appropriate if the~~ parent or guardian of the newborn infant has consented to the services.

(f) Every health care facility caring for a newborn infant

whose mother had been diagnosed HIV positive prior to labor and delivery shall report a case of perinatal HIV exposure in accordance with the HIV/AIDS Registry Act, the Illinois Sexually Transmissible Disease Control Act, and rules to be developed by the Department. If after 18 months from the date that the report was submitted, a newborn infant is determined to not have HIV or AIDS, the Department shall remove the newborn infant's name from all reports, records, and files collected or created under this subsection (f).

(Source: P.A. 94-910, eff. 6-23-06; 95-702, eff. 6-1-08.)

(410 ILCS 335/30)

Sec. 30. Objections of parent or guardian to test. The provisions of this Act requiring testing for HIV shall not apply when a parent or guardian of a child objects to HIV testing ~~thereto~~ on the grounds that the test conflicts with the parent's ~~his or her~~ religious tenets and practices. A written statement of the objection shall be presented to the physician or other person whose duty it is to administer and report the tests under the provisions of this Act.

(Source: P.A. 94-910, eff. 6-23-06.)

(410 ILCS 335/35)

Sec. 35. Department report. The Department of Public Health shall prepare an annual report for the Governor and the General Assembly on the implementation of this Act that includes

information on the number of HIV-positive pregnant women who presented with known HIV status, the number of pregnant women rapidly tested for HIV in labor and delivery, the number of newborn infants rapidly tested for HIV exposure, the number of preliminarily HIV-positive pregnant women and preliminarily HIV-exposed newborn infants identified, the confirmatory test result for each preliminarily positive rapid HIV test performed on the woman and newborn, the number of families referred to case management, and other information the Department determines is necessary to measure progress under the provisions of this Act. The Department shall assess the needs of health care professionals and facilities for ongoing training in implementation of the provisions of this Act and make recommendations to improve the program.

(Source: P.A. 94-910, eff. 6-23-06.)

Section 99. Effective date. This Act takes effect upon becoming law.