



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2800

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

410 ILCS 335/5
410 ILCS 335/10
410 ILCS 335/15
410 ILCS 335/30
410 ILCS 335/35

Amends the Perinatal HIV Prevention Act. Provides that every health care professional who provides health care services to a pregnant person, unless a pregnant person already has a documented negative HIV status (currently, already been tested) during the third trimester of the current pregnancy (currently, during the current pregnancy) or is already documented to be HIV-positive, shall provide specified HIV counseling and shall test the person for HIV on an opt-out basis (currently, unless she refuses). Adds provisions concerning when opt-out HIV testing and rapid opt-out HIV testing shall occur. Makes changes to provisions concerning specified HIV counseling requirements. Makes changes to provisions concerning reporting, including requiring that a specified report concerning a HIV-positive pregnant or post-partum person or HIV-exposed newborn shall be made by a health care facility to the Department of Public Health's Perinatal HIV Hotline within 12 hours but not later than 24 hours of test results (currently, a health facility shall report within 24 hours after birth if a woman is HIV-positive and the newborn is HIV-exposed). Provides that the provisions of the Act requiring testing for HIV (currently, provisions of the Act) shall not apply when a parent or guardian objects to HIV testing on certain grounds. Defines "birthing center", "opt-out testing", and "third trimester". Changes references from "pregnant woman" to "pregnant person" and makes other similar changes. Makes other changes. Effective immediately.

LRB100 08550 MJP 18675 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

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

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

6 (410 ILCS 335/5)

7 Sec. 5. Definitions. In this Act:

8 "Birthing center" means a designated site that is away from
9 the pregnant person's usual place of residence in which births
10 are planned to occur following a normal, uncomplicated, and
11 low-risk pregnancy.

12 "Department" means the Department of Public Health.

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

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

19 "Health care services" means any prenatal medical care,
20 emergency care, or labor or delivery services to a pregnant
21 person or a woman ~~and her~~ newborn infant, including
22 hospitalization.

23 "Opt-out testing" means an approach in which an HIV test is

1 offered to the patient, such that the patient is notified that
2 HIV testing may occur unless the patient opts out by declining
3 the test.

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

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

7 (410 ILCS 335/10)

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

9 (a) Every health care professional who provides health care
10 services to a pregnant person, including persons identified as
11 pregnant and being treated for other health conditions in an
12 emergency setting, ~~woman~~ shall, unless the pregnant person
13 already has a documented negative HIV status ~~she has already~~
14 ~~been tested~~ during the third trimester of the current
15 pregnancy, or is already documented to be HIV-positive, provide
16 the pregnant person ~~woman~~ with HIV counseling, as described in
17 subpart (d) of this Section, and shall test the pregnant person
18 ~~her~~ for HIV on an opt-out basis ~~unless she refuses.~~ The
19 counseling and testing or refusal of testing shall be
20 documented in the pregnant person's medical record. ~~A refusal~~
21 ~~may be verbal or in writing.~~

22 A health care professional shall provide the first opt-out
23 HIV testing ~~counseling and recommend the testing~~ as early in
24 the person's ~~woman's~~ pregnancy as possible. The health care
25 professional providing health care services to a pregnant

1 person in the third trimester shall perform a second round of
2 opt-out HIV testing, ideally by the 36th week of pregnancy,
3 unless the pregnant person already has a documented negative
4 HIV status from the third trimester of the current pregnancy,
5 or is already documented to be HIV-positive. ~~For women at~~
6 ~~continued risk of exposure to HIV infection in the judgment of~~
7 ~~the health care professional, a repeat test should be~~
8 ~~recommended late in pregnancy or at the time of labor and~~
9 ~~delivery. The counseling and testing or refusal of testing~~
10 ~~shall be documented in the woman's medical record.~~

11 (b) Every health care professional or facility that cares
12 for a pregnant person ~~woman~~ during labor or delivery shall,
13 unless the pregnant person ~~she has~~ already has a documented
14 negative HIV status from ~~been tested during~~ the third trimester
15 of the current pregnancy, or is already documented to be
16 HIV-positive, provide the pregnant person ~~woman~~ with HIV
17 counseling, as described in subpart (d) of this Section, and
18 rapid opt-out HIV testing ~~unless she refuses.~~ The person in
19 labor or delivery may refuse the HIV test verbally or in
20 writing. ~~A refusal may be verbal or in writing.~~ The counseling
21 and testing or refusal of testing shall be documented in the
22 laboring or delivering person's ~~woman's~~ medical record. The
23 health care facility shall adopt a policy that provides that as
24 soon as possible within medical standards after the infant's
25 birth, the delivering person's ~~mother's~~ HIV test result, if
26 available, shall be noted in the newborn infant's medical

1 record. It shall also be noted in the newborn infant's medical
2 record if the delivering person's third trimester ~~mother's~~ HIV
3 test result is not available because the delivering person was
4 not tested in the third trimester ~~she has not been tested~~ or
5 has declined testing. Any testing or test results shall be
6 documented in accordance with the AIDS Confidentiality Act.

7 (c) Every health care professional or facility caring for a
8 newborn infant shall, upon delivery or as soon as possible
9 within medical standards after the infant's birth, provide
10 counseling as described in subsection (d) of this Section to
11 the parent or guardian of the infant and perform rapid HIV
12 testing on the infant, when the HIV status of the infant's
13 mother is unknown, or if the delivering person did not undergo
14 HIV testing in the third trimester of the current pregnancy.

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

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

24 (2) The benefit of HIV testing for the pregnant person
25 ~~herself~~ and the newborn infant, including interventions to
26 prevent HIV transmission.

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

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

6 (5) The requirement for mandatory testing of the
7 newborn if the pregnant person's ~~mother's~~ HIV status during
8 the third trimester of pregnancy is not documented and the
9 pregnant person was not rapidly tested for HIV at delivery
10 ~~unknown at the time of delivery.~~

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

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

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

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

25 Consent for testing of a newborn infant shall be presumed
26 when a health care professional or health care facility seeks

1 to perform a test on a newborn infant when the ~~whose mother's~~
2 HIV status of the person who gave birth to the infant was ~~is~~
3 not documented either in the third trimester of pregnancy or at
4 delivery ~~known~~, provided that the counseling required under
5 subsection (d) of this Section and the AIDS Confidentiality Act
6 has taken place.

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

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

10 (410 ILCS 335/15)

11 Sec. 15. Reporting.

12 (a) Health ~~A health~~ care facilities ~~facility~~ shall adopt a
13 policy that provides that a report of a preliminarily
14 HIV-positive pregnant or post-partum person identified by a
15 rapid HIV test or ~~woman~~ and a report of a preliminarily
16 HIV-exposed newborn infant identified by a rapid HIV test
17 ~~conducted during labor and delivery or after delivery~~ shall be
18 made to the Department's Perinatal HIV Hotline within 12 hours
19 but not later than 24 hours of the test result ~~after birth~~.

20 Section 15 of the AIDS Confidentiality Act applies to reporting
21 under this Act, except that the immunities set forth in that
22 Section do not apply in cases of willful or wanton misconduct.

23 (b) The Department shall adopt rules specifying the
24 information required in reporting the preliminarily
25 HIV-positive pregnant or post-partum person ~~woman~~ and

1 preliminarily HIV-exposed newborn infant and the method of
2 reporting. In adopting the rules, the Department shall consider
3 the need for information, protections for the privacy and
4 confidentiality of the infant and parents, the need to provide
5 access to care and follow-up services to the infant, and
6 procedures for destruction of records maintained by the
7 Department if, through subsequent HIV testing, the pregnant or
8 post-partum person ~~woman~~ or newborn infant is found to be
9 HIV-negative.

10 (c) The confidentiality provisions of the AIDS
11 Confidentiality Act shall apply to the reports of cases of
12 perinatal HIV made pursuant to this Section.

13 (d) Health care facilities shall monthly report aggregate
14 statistics to the Department that include the number of
15 pregnant or delivering persons ~~infected women~~ who presented
16 with known HIV status;; the number of persons ~~pregnant women~~
17 rapidly tested for HIV in labor and delivery as either a first
18 HIV test or a repeat third trimester HIV test; the number of
19 newborn infants rapidly tested for HIV-exposure because the HIV
20 status of the delivering person was unknown in the third
21 trimester, or the delivering person refused testing; the
22 number of preliminarily HIV-positive pregnant or delivering
23 persons ~~women~~ and preliminarily HIV-exposed newborn infants
24 identified;; the number of families referred to case
25 management;; and other information the Department determines
26 is necessary to measure progress under the provisions of this

1 Act. Health care facilities must report the confirmatory test
2 result when it becomes available for each preliminarily
3 positive rapid HIV test performed on the pregnant or delivering
4 person ~~woman~~ and on a newborn.

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

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

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

23 (410 ILCS 335/30)

24 Sec. 30. Objections of parent or guardian to test. The
25 provisions of this Act requiring testing for HIV shall not

1 apply when a parent or guardian of a child objects to HIV
2 testing thereto on the grounds that the test conflicts with the
3 parent's ~~his or her~~ religious tenets and practices. A written
4 statement of the objection shall be presented to the physician
5 or other person whose duty it is to administer and report the
6 tests under the provisions of this Act.

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

8 (410 ILCS 335/35)

9 Sec. 35. Department report. The Department of Public Health
10 shall prepare an annual report for the Governor and the General
11 Assembly on the implementation of this Act that includes
12 information on the number of HIV-positive pregnant persons
13 ~~women~~ who presented with known HIV status, the number of
14 pregnant persons ~~women~~ rapidly tested for HIV in labor and
15 delivery, the number of newborn infants rapidly tested for HIV
16 exposure, the number of preliminarily HIV-positive pregnant
17 persons ~~women~~ and preliminarily HIV-exposed newborn infants
18 identified, the confirmatory test result for each
19 preliminarily positive rapid HIV test performed on the person
20 ~~woman~~ and newborn, the number of families referred to case
21 management, and other information the Department determines is
22 necessary to measure progress under the provisions of this Act.
23 The Department shall assess the needs of health care
24 professionals and facilities for ongoing training in
25 implementation of the provisions of this Act and make

1 recommendations to improve the program.

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

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