

As Introduced

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H. B. No. 40

Representatives West, Galonski

Cosponsors: Representatives Boyd, Crawley, Skindell, Weinstein, Kent, Lepore-Hagan, Patterson, Miller, A., Seitz, Leland

A BILL

To amend sections 3701.24 and 3701.50 and to enact 1
section 3701.2410 of the Revised Code regarding 2
testing pregnant women for HIV, syphilis, and 3
gonorrhea. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3701.24 and 3701.50 be amended 5
and section 3701.2410 of the Revised Code be enacted to read as 6
follows: 7

Sec. 3701.24. (A) As used in this section and sections 8
3701.241 to ~~3701.249~~3701.2410 of the Revised Code: 9

(1) "AIDS" means the illness designated as acquired 10
immunodeficiency syndrome. 11

(2) "HIV" means the human immunodeficiency virus 12
identified as the causative agent of AIDS. 13

(3) "AIDS-related condition" means symptoms of illness 14
related to HIV infection, including AIDS-related complex, that 15
are confirmed by a positive HIV test. 16

(4) "HIV test" means any test for the antibody or antigen to HIV that has been approved by the director of health under division (B) of section 3701.241 of the Revised Code.

(5) "Health care facility" has the same meaning as in section 1751.01 of the Revised Code.

(6) "Director" means the director of health or any employee of the department of health acting on the director's behalf.

(7) "Physician" means a person who holds a current, valid ~~certificate~~ license issued under Chapter 4731. of the Revised Code authorizing the practice of medicine ~~or and surgery and or~~ osteopathic medicine and surgery.

(8) "Nurse" means a registered nurse or licensed practical nurse who holds a license ~~or certificate~~ issued under Chapter 4723. of the Revised Code.

(9) "Anonymous test" means an HIV test administered so that the individual to be tested can give informed consent to the test and receive the results by means of a code system that does not link the identity of the individual tested to the request for the test or the test results.

(10) "Confidential test" means an HIV test administered so that the identity of the individual tested is linked to the test but is held in confidence to the extent provided by sections 3701.24 to 3701.248 of the Revised Code.

(11) "Health care provider" means an individual who provides diagnostic, evaluative, or treatment services. Pursuant to Chapter 119. of the Revised Code, the director may adopt rules further defining the scope of the term "health care provider."

(12) "Significant exposure to body fluids" means a 46
percutaneous or mucous membrane exposure of an individual to the 47
blood, semen, vaginal secretions, or spinal, synovial, pleural, 48
peritoneal, pericardial, or amniotic fluid of another 49
individual. 50

(13) "Emergency medical services worker" means all of the 51
following: 52

(a) A peace officer; 53

(b) An employee of an emergency medical service 54
organization, as defined in section 4765.01 of the Revised Code; 55

(c) A firefighter employed by a political subdivision; 56

(d) A volunteer firefighter, emergency operator, or rescue 57
operator; 58

(e) An employee of a private organization that renders 59
rescue services, emergency medical services, or emergency 60
medical transportation to accident victims and persons suffering 61
serious illness or injury. 62

(14) "Peace officer" has the same meaning as in division 63
(A) of section 109.71 of the Revised Code, except that it also 64
includes a sheriff and the superintendent and troopers of the 65
state highway patrol. 66

(B) Persons designated by rule adopted by the director 67
under section 3701.241 of the Revised Code shall report promptly 68
every case of AIDS, every AIDS-related condition, and every 69
confirmed positive HIV test to the department of health on forms 70
and in a manner prescribed by the director. In each county the 71
director shall designate the health commissioner of a health 72
district in the county to receive the reports. 73

(C) No person shall fail to comply with the reporting 74
requirements established under division (B) of this section. 75

(D) Information reported under this section that 76
identifies an individual is confidential and may be released 77
only with the written consent of the individual except as the 78
director determines necessary to ensure the accuracy of the 79
information, as necessary to provide treatment to the 80
individual, as ordered by a court pursuant to section 3701.243 81
or 3701.247 of the Revised Code, or pursuant to a search warrant 82
or a subpoena issued by or at the request of a grand jury, 83
prosecuting attorney, city director of law or similar chief 84
legal officer of a municipal corporation, or village solicitor, 85
in connection with a criminal investigation or prosecution. 86
Information that does not identify an individual may be released 87
in summary, statistical, or aggregate form. 88

Sec. 3701.2410. (A) As used in this section, "licensed 89
health care professional" includes all of the following: 90

(1) Physicians authorized under Chapter 4731. of the 91
Revised Code to practice medicine and surgery or osteopathic 92
medicine and surgery; 93

(2) Clinical nurse specialists, certified nurse-midwives, 94
and certified nurse practitioners licensed under Chapter 4723. 95
of the Revised Code; 96

(3) Physician assistants licensed under Chapter 4730. of 97
the Revised Code. 98

(B) Subject to division (D) of this section, a licensed 99
health care professional who provides prenatal care to a 100
pregnant woman shall comply with both of the following regarding 101
HIV testing: 102

(1) When the licensed health care professional first 103
examines the woman related to her pregnancy, the professional 104
shall cause an HIV test to be conducted unless the woman refuses 105
the test. 106

(2) When the licensed health care professional first 107
examines the woman related to her pregnancy during the third 108
trimester of gestation, the professional shall conduct an 109
assessment to determine whether any activities posing a risk of 110
infection with HIV have occurred more recently than would have 111
been detected by the most recent HIV test, if any, that was 112
conducted during the pregnancy. In conducting the assessment, 113
the licensed health care professional shall consider information 114
available from the United States centers for disease control and 115
prevention concerning risk factors for transmission. If the 116
licensed health care professional determines that activities 117
posing a risk of infection with HIV have occurred, or that no 118
HIV test has been conducted during the pregnancy, the 119
professional shall cause an HIV test to be conducted unless the 120
woman refuses the test. 121

(C) Subject to division (D) of this section, a licensed 122
health care professional who provides care to a pregnant woman 123
at delivery shall determine whether the woman's medical records 124
indicate that an HIV test was conducted during the third 125
trimester of gestation. If it is determined that an HIV test was 126
conducted during the third trimester, the licensed health care 127
professional shall consider information available from the 128
United States centers for disease control and prevention 129
concerning risk factors for transmission of HIV and shall ask 130
the woman whether any activities posing such a risk have 131
occurred more recently than would have been detected by that 132
test. If it is determined that no HIV test was conducted during 133

the third trimester, or that activities posing a risk of HIV 134
infection have occurred more recently than would have been 135
detected by the most recent HIV test, the licensed health care 136
professional shall cause an HIV test to be conducted at the time 137
of delivery unless the woman refuses the test. 138

(D) (1) Before an HIV test is conducted pursuant to 139
division (B) or (C) of this section, the licensed health care 140
professional shall inform the woman that the test will be 141
conducted and of her right to refuse. 142

(2) If a woman's medical records indicate that another 143
licensed health care professional has complied with the 144
requirements of divisions (B) and (C) of this section for the 145
pregnancy, the treating licensed health care professional is not 146
required to comply with the requirements of those divisions. 147

(E) If the results of an HIV test conducted pursuant to 148
this section are positive, the licensed health care professional 149
shall provide post-test counseling to the woman in accordance 150
with any rules adopted pursuant to section 3701.242 of the 151
Revised Code. 152

(F) A licensed health care professional who causes an HIV 153
test or assessment to be conducted pursuant to this section 154
shall record that information in the woman's medical records. If 155
a woman refuses an HIV test offered pursuant to this section, 156
the professional shall record her refusal in her medical 157
records. 158

(G) The director of health may adopt rules in accordance 159
with Chapter 119. of the Revised Code as the director considers 160
appropriate to implement this section. 161

Sec. 3701.50. ~~Every~~ (A) As used in this section, "licensed 162

health care professional" includes all of the following: 163

(1) Physicians authorized under Chapter 4731. of the 164
Revised Code to practice medicine and surgery or osteopathic 165
medicine and surgery; 166

(2) Clinical nurse specialists, certified nurse-midwives, 167
and certified nurse practitioners licensed under Chapter 4723. 168
of the Revised Code; 169

(3) Physician assistants licensed under Chapter 4730. of 170
the Revised Code. 171

(B) (1) Except as provided in divisions (B) (2) and (3) of 172
this section, every physician who attends any pregnant woman for 173
conditions relating to pregnancy during the period of gestation 174
shall take specimens of such woman at the time of first 175
examination or within ten days thereof, and shall submit such 176
specimens to an approved laboratory for standard syphilis and 177
gonorrhoea tests. 178

(2) If, in the opinion of the physician attending such 179
woman, her condition does not permit the taking of specimens for 180
submission to an approved laboratory, then no specimens shall be 181
taken prior to delivery. If no specimens are taken prior to 182
delivery because of the woman's condition, then such specimens 183
shall be taken as soon after delivery as the physician deems it 184
advisable. 185

(3) The health commissioner of the city or general health 186
district, wherein any person required to be tested for syphilis 187
and gonorrhoea under division (B) (1) of this section or section 188
3701.49 of the Revised Code resides, may waive ~~the those~~ 189
requirements ~~of such sections~~ if the commissioner is satisfied 190
by written affidavit or other written proof that the tests 191

required are contrary to the tenets or practices of the 192
religious creed of which the person is an adherent, and that the 193
public health and welfare would not be injuriously affected by 194
such waiver. 195

(C) (1) A licensed health care professional who provides 196
prenatal care to a pregnant woman during the third trimester of 197
gestation shall conduct an assessment when the professional 198
first examines the woman related to her pregnancy during that 199
trimester to determine whether any activities posing a risk of 200
infection with syphilis or gonorrhea have occurred more recently 201
than would have been detected by the most recent syphilis and 202
gonorrhea tests, if any, that were conducted during the 203
pregnancy. In conducting the assessment, the licensed health 204
care professional shall consider information available from the 205
United States centers for disease control and prevention 206
concerning risk factors for transmission of syphilis or 207
gonorrhea. 208

If the licensed health care professional determines that 209
activities posing a risk of syphilis or gonorrhea infection have 210
occurred more recently than would have been detected by the most 211
recent syphilis or gonorrhea tests, or that no syphilis and 212
gonorrhea tests have been conducted during the pregnancy, the 213
professional shall cause tests for syphilis and gonorrhea to be 214
conducted unless the professional determines that the pregnant 215
woman's condition does not permit the tests to be conducted or 216
the woman refuses the tests. 217

If the third trimester assessment is not conducted because 218
a licensed health care professional has determined that the 219
woman's condition does not permit the tests to be conducted, the 220
tests shall be conducted after delivery in accordance with 221

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| <u>division (B) (2) of this section.</u> | 222 |
| <u>(2) Before syphilis and gonorrhea tests are conducted</u> | 223 |
| <u>pursuant to division (C) (1) of this section, the licensed health</u> | 224 |
| <u>care professional shall inform the woman of the tests to be</u> | 225 |
| <u>conducted and her right to refuse.</u> | 226 |
| <u>(3) If a woman's medical records indicate that another</u> | 227 |
| <u>licensed health care professional has complied with the</u> | 228 |
| <u>requirements of division (C) (1) of this section for the</u> | 229 |
| <u>pregnancy, the treating licensed health care professional is not</u> | 230 |
| <u>required to comply with the requirements of that division.</u> | 231 |
| <u>(4) A licensed health care professional who causes tests</u> | 232 |
| <u>or an assessment to be conducted pursuant to division (C) (1) of</u> | 233 |
| <u>this section shall record that information in the woman's</u> | 234 |
| <u>medical records. If a woman refuses the tests, the refusal shall</u> | 235 |
| <u>be recorded in her medical records.</u> | 236 |
| Section 2. That existing sections 3701.24 and 3701.50 of | 237 |
| the Revised Code are hereby repealed. | 238 |