

ASSEMBLY BILL

No. 682

Introduced by Assembly Members Berg, Garcia, and Huffman

February 21, 2007

An act to amend Sections 125090 and 125107 of, to repeal Section 125092 of, and to repeal and add Section 120990 of, the Health and Safety Code, relating to HIV/AIDS.

LEGISLATIVE COUNSEL'S DIGEST

AB 682, as introduced, Berg. HIV/AIDS testing.

Existing law prohibits, except in certain cases, a person from testing a person's blood for evidence of antibodies to probable causative agent of acquired immunodeficiency syndrome (AIDS) without the written consent of the subject of the test or the written consent of the subject, as provided, confirming that he or she obtained the consent from the subject.

This bill would delete those provisions, and, instead, require the provider of an human immunodeficiency virus (HIV) test to advise the patient that he or she has the right to decline the test.

Existing law requires the physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery, prior to obtaining a prescribed blood specimen, to ensure that the woman is informed of the intent to perform a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, and certain other information about the risks associated with the transmission of HIV, and specifies that a woman has a right to accept or refuse this testing. Existing law requires that acceptance of testing for HIV be documented in writing on a prescribed form, with a copy to be maintained in the

patient’s medical file. Existing law authorizes a multispecialty medical group that provides health care services to enrollees of a health care service plan to use a form incorporating specified HIV information.

This bill would delete those provisions regarding the acceptance of HIV testing by a patient, and would, instead, specify that a woman has a right to decline this testing.

Existing law requires the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or postpartum, after the results of HIV testing done pursuant to these provisions have been received, to explain the results and the implications for the mother’s and infant’s health, including any followup care that is needed. Existing law states that health care providers are strongly encouraged to seek consultation with other providers specializing in the care of HIV-positive women.

This bill would require that the woman also receive any followup testing that is needed. The bill would also state that health care providers are strongly encouraged to seek consultation with HIV specialists who provide care for pregnant and postpartum HIV-positive women.

Existing law requires a prenatal care provider, as defined, primarily responsible for providing prenatal care to a patient to offer HIV information and counseling to every pregnant patient, including specified items, and specifies what the counseling shall include.

This bill would eliminate the items required to be included in HIV counseling offered to pregnant and post partum women, and would, instead, require that a prenatal care provider, at a minimum, provide in-person oral or written HIV information and counseling to every pregnant patient.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 120990 of the Health and Safety Code
- 2 is repealed.
- 3 ~~120990. (a) Except in the case of a person treating a patient,~~
- 4 ~~no person shall test a person’s blood for evidence of antibodies to~~
- 5 ~~the probable causative agent of AIDS without the written consent~~
- 6 ~~of the subject of the test or the written consent of the subject, as~~
- 7 ~~provided in Section 121020, and the person giving the test shall~~
- 8 ~~have a written statement signed by the subject or conservator or~~

1 other person, as provided in Section 121020 confirming that he or
2 she obtained the consent from the subject. In the case of a physician
3 and surgeon treating a patient, the consent required under this
4 subdivision shall be informed consent, by the patient, conservator,
5 or other person provided for in Section 121020.

6 ~~This requirement does not apply to a test performed at an
7 alternative site, as established pursuant to Sections 120885 to
8 120895, inclusive. This requirement does not apply when testing
9 is performed as part of the medical examination performed pursuant
10 to Section 7152.5.~~

11 ~~(b) Nothing in this section shall preclude a medical examiner
12 or other physician from ordering or performing a blood test to
13 detect antibodies to the probable causative agent of AIDS on a
14 cadaver when an autopsy is performed or body parts are donated
15 pursuant to the Uniform Anatomical Gift Act, provided for pursuant
16 to Chapter 3.5 (commencing with Section 7150) of Part 1 of
17 Division 7.~~

18 ~~(c) The requirements of subdivision (a) do not apply when
19 blood is tested as part of a scientific investigation conducted either
20 by medical researchers operating under institutional review board
21 approval or by the department in accordance with a protocol for
22 unlinked testing. For purposes of this section, unlinked testing
23 means that blood samples are obtained anonymously or that the
24 individual's name and other identifying information is removed
25 in a manner that precludes the test results from ever being linked
26 to a particular individual in the study.~~

27 SEC. 2. Section 120990 is added to the Health and Safety Code,
28 to read:

29 120990. The provider of an HIV test shall advise the patient
30 that he or she has the right to decline the test.

31 SEC. 3. Section 125090 of the Health and Safety Code is
32 amended to read:

33 125090. (a) Subdivision (a) of Section 125085 shall not be
34 applicable if the licensed physician and surgeon or other person
35 engaged in the prenatal care of a pregnant woman or attending the
36 woman at the time of delivery has knowledge of the woman's
37 blood type and accepts responsibility for the accuracy of the
38 information.

39 (b) Subdivision (b) of Section 125085 shall not be applicable
40 if the licensed physician and surgeon or other person engaged in

1 the prenatal care of a pregnant woman or attending the woman at
2 the time of delivery has knowledge that the woman has previously
3 been determined to be chronically infected with hepatitis B or
4 human immunodeficiency virus (HIV) and accepts responsibility
5 for the accuracy of the information.

6 (c) Prior to obtaining a blood specimen collected pursuant to
7 subdivision (b) of Section 125085 or this section, the physician
8 and surgeon or other person engaged in the prenatal care of a
9 pregnant woman ~~or attending the woman at the time of delivery~~
10 shall ensure that the woman is informed of the intent to perform
11 a test for HIV infection, the routine nature of the test, the purpose
12 of the testing, the risks and benefits of the test, the risk of perinatal
13 transmission of HIV, that approved treatments are known to
14 decrease the risk of perinatal transmission of HIV, and that the
15 woman has a right to accept or refuse *decline* this testing. ~~The~~
16 ~~acceptance of testing for HIV shall be documented in writing on~~
17 ~~a form developed by the department and the Office of AIDS~~
18 ~~pursuant to Section 125092, or on a form that is substantially~~
19 ~~equivalent in content, and signed by the patient. A copy of this~~
20 ~~form shall be maintained in the medical record. A multispecialty~~
21 ~~medical group that provides health care services to enrollees of a~~
22 ~~health care service plan may use a form incorporating the~~
23 ~~information in this subdivision and in subdivision (d) instead of~~
24 ~~any separate form developed pursuant to Section 125092.~~

25 (d) If, during the final prenatal care ~~standard~~ *review of standard*
26 *of prenatal care* medical tests, the medical records of the pregnant
27 woman do not document a test for rhesus (Rh) *antibody* blood
28 type, a test for hepatitis B, or a test for HIV, the physician and
29 surgeon or other person engaged in the prenatal care of the woman
30 ~~or attending the woman at the time of labor or delivery~~ shall obtain
31 a blood specimen from the woman for the test ~~tests~~ that ~~has~~ *have*
32 not been documented. Prior to obtaining this blood specimen, the
33 provider shall ensure that the woman is informed of the intent to
34 perform the tests that have not been documented prior to this visit,
35 including a test for HIV infection, the routine nature of the test,
36 the purpose of the testing, the risks and benefits of the test, the risk
37 of perinatal transmission of HIV, that approved treatments are
38 known to decrease the risk of perinatal transmission of HIV, and
39 that the woman has a right to accept or refuse *decline* the HIV test.
40 ~~The acceptance of testing for HIV shall be documented in writing~~

1 on a form developed by the department and the Office of AIDS,
2 or on a form that is substantially equivalent in content, as described
3 in Section 125092, and signed by the patient. A copy of this form
4 shall be maintained in the medical record. The blood shall be tested
5 by a method that will ensure the earliest possible results, and the
6 results shall be reported to both of the following:

7 (1) The physician and surgeon or other person engaged in the
8 prenatal care of the woman or attending the woman at the time of
9 delivery.

10 (2) The woman tested.

11 (e) After the results of the tests done pursuant to this section
12 and Section 125085 have been received, the physician and surgeon
13 or other person engaged in the prenatal care of the pregnant woman
14 or attending the woman at the time of labor, delivery, or postpartum
15 care at the time the results are received shall ensure that the woman
16 receives information and counseling, as appropriate, to explain the
17 results and the implications for the mother's and infant's health,
18 including any followup *testing and* care that is indicated. If the
19 woman tests positive for HIV antibodies, she shall also receive,
20 whenever possible, a referral to a provider, provider group, or
21 institution specializing in prenatal *and postpartum* care for HIV
22 positive women *and their infants*. Health care providers are also
23 strongly encouraged to seek consultation with ~~other providers~~
24 ~~specializing in the care of pregnant HIV positive women~~ *HIV*
25 *specialists who provide care for pregnant and postpartum HIV*
26 *positive women and their infants*.

27 (f) The provisions of Section 125107 for counseling are equally
28 applicable to every pregnant patient covered by subdivisions (c)
29 and (d).

30 SEC. 4. Section 125092 of the Health and Safety Code is
31 repealed.

32 ~~125092. The department, in consultation with the Office of~~
33 ~~AIDS and with other stakeholders, including, but not limited to,~~
34 ~~representatives of professional medical and public health advocacy~~
35 ~~groups, providers of health care to women and infants infected~~
36 ~~with or exposed to HIV, and women living with HIV, shall develop~~
37 ~~culturally sensitive informational material adequate to fulfill the~~
38 ~~requirements of subdivisions (c) and (d) of Section 125090, in~~
39 ~~English, Spanish, and other languages used by the department~~
40 ~~when providing information to clients under the Medi-Cal program.~~

1 ~~This material shall also include information on available referral~~
 2 ~~and consultation resources of experts in prenatal HIV treatment.~~
 3 ~~This material shall be completed by December 31, 2004.~~

4 SEC. 5. Section 125107 of the Health and Safety Code is
 5 amended to read:

6 125107. (a) For purposes of this section, “prenatal care
 7 provider” means a licensed health care professional providing
 8 prenatal care within his or her lawful scope of practice. This
 9 definition shall not include a licensed health care professional who
 10 provides care other than prenatal care to a pregnant patient.

11 (b) The prenatal care provider primarily responsible for
 12 providing prenatal care to a pregnant patient shall offer, *at a*
 13 *minimum in-person, oral or written* human immunodeficiency
 14 virus (HIV) information and counseling to every pregnant patient.
 15 ~~This information and counseling shall include, but shall not be~~
 16 ~~limited to, all of the following:~~

- 17 ~~(1) A description of the modes of HIV transmission.~~
- 18 ~~(2) A discussion of risk reduction behavior modifications~~
 19 ~~including methods to reduce the risk of perinatal transmission.~~
- 20 ~~(3) If appropriate, referral information to other HIV prevention~~
 21 ~~and psychosocial services including anonymous and confidential~~
 22 ~~test sites approved by the Office of AIDS.~~

23 (c) Nothing in this section shall be construed to require
 24 mandatory testing. Any documentation or disclosure of HIV related
 25 information shall be made in accordance with Chapter 7
 26 (commencing with Section 120975) of Part 4 of Division 105
 27 regarding confidentiality and informed consent.

28 ~~(d) Notwithstanding Section 125090 or any other provision of~~
 29 ~~law, completion of a statement of acceptance of an HIV test~~
 30 ~~pursuant to Sections 125090 and 125092 shall be sufficient~~
 31 ~~documentation of consent for HIV testing of a pregnant woman~~
 32 ~~or of a woman at the time of labor and delivery, and no laboratory~~
 33 ~~or health care provider shall require any additional written consent~~
 34 ~~or written form as a condition for HIV testing from any woman~~
 35 ~~who is reasonably believed to be pregnant, who is receiving~~
 36 ~~prenatal care, or who is undergoing a panel of tests designated for~~
 37 ~~prenatal patients.~~