

HOUSE BILL 518

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By: **Delegates Morhaim, Kelly, and West**
Introduced and read first time: January 27, 2017
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Prenatal Infectious Disease Testing**

3 FOR the purpose of establishing the Prenatal Infectious Disease Testing Advisory Group
4 in the Department of Health and Mental Hygiene; providing for the membership of
5 the Advisory Group; specifying the terms of the initial members of the Advisory
6 Group; providing for the appointment of the chair of the Advisory Group; providing
7 that a majority of the members serving on the Advisory Group is a quorum; requiring
8 the Advisory Group to determine the times and places of its meetings; prohibiting a
9 member of the Advisory Group from receiving certain compensation, but authorizing
10 the reimbursement of certain expenses; requiring the Advisory Group to make
11 certain recommendations to the Department; requiring the Department to adopt
12 certain regulations; requiring a certain health care provider to follow certain
13 requirements for infectious disease testing; requiring the Advisory Group to provide
14 certain recommendations to certain hospitals and certain organizations; repealing
15 certain provisions of law that require certain health care providers to obtain certain
16 consent, conduct certain tests and treatment, provide a certain referral, and provide
17 certain counseling; repealing a certain provision of law relating to the liability of,
18 and disciplinary action against, certain health care providers under certain
19 circumstances; providing that certain health care providers may not be subject to
20 certain disciplinary action for following certain requirements; defining a certain
21 term; altering a certain definition; and generally relating to prenatal infectious
22 disease testing and the Prenatal Infectious Disease Testing Advisory Group.

23 BY repealing and reenacting, with amendments,
24 Article – Health – General
25 Section 18–338.2
26 Annotated Code of Maryland
27 (2015 Replacement Volume and 2016 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
29 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Health – General

18–338.2.

(a) (1) In this section the following words have the meanings indicated.

(2) “ADVISORY GROUP” MEANS THE PRENATAL INFECTIOUS DISEASE TESTING ADVISORY GROUP.

[(2)] (3) “Health care facility” means a facility or office where health or medical care is provided to patients by a health care provider, including:

- (i) A hospital as defined in § 19–301 of this article;
- (ii) A facility operated by the Department or a health officer; and
- (iii) The office of a health care provider.

[(3)] (4) “Health care provider” means a physician, nurse, **LICENSED DIRECT-ENTRY MIDWIFE**, or designee of a health care facility.

[(4)] (5) “HIV” means the human immunodeficiency virus that causes acquired immune deficiency syndrome (AIDS).

[(5)] (6) “Prenatal care” means obstetric and gynecologic service performed as part of a prenatal care program, including:

- (i) Screening;
 - (ii) Physical examination;
 - (iii) Laboratory and diagnostic testing procedures and interpretation;
- and
- (iv) Counseling.

(B) (1) THERE IS A PRENATAL INFECTIOUS DISEASE TESTING ADVISORY GROUP IN THE DEPARTMENT.

(2) THE ADVISORY GROUP CONSISTS OF THE FOLLOWING MEMBERS APPOINTED BY THE GOVERNOR:

(1) ONE OBSTETRICIAN-GYNECOLOGIST, RECOMMENDED BY MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY;

1 (II) ONE PEDIATRICIAN, RECOMMENDED BY MEDCHI, THE
2 MARYLAND STATE MEDICAL SOCIETY;

3 (III) ONE NURSE MIDWIFE, RECOMMENDED BY THE STATE
4 BOARD OF NURSING;

5 (IV) ONE NURSE WITH EXPERIENCE IN OBSTETRICS,
6 RECOMMENDED BY THE STATE BOARD OF NURSING;

7 (V) ONE REPRESENTATIVE OF A LOCAL HEALTH DEPARTMENT;
8 AND

9 (VI) ONE REPRESENTATIVE OF THE DEPARTMENT.

10 (3) (I) THE TERM OF A MEMBER IS 4 YEARS.

11 (II) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY
12 THE TERMS PROVIDED FOR MEMBERS OF THE ADVISORY GROUP ON OCTOBER 1,
13 2017.

14 (III) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE
15 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

16 (IV) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN
17 SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED
18 AND QUALIFIES.

19 (4) FROM AMONG THE MEMBERS OF THE ADVISORY GROUP, THE
20 GOVERNOR SHALL APPOINT A CHAIR FOR A 2-YEAR TERM.

21 (5) (I) A MAJORITY OF THE MEMBERS THEN SERVING ON THE
22 ADVISORY GROUP IS A QUORUM.

23 (II) THE ADVISORY GROUP SHALL DETERMINE THE TIMES AND
24 PLACES OF ITS MEETINGS.

25 (6) A MEMBER OF THE ADVISORY GROUP:

26 (I) MAY NOT RECEIVE COMPENSATION; BUT

27 (II) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER
28 THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE
29 BUDGET.

1 **(7) (I) THE ADVISORY GROUP SHALL MAKE RECOMMENDATIONS**
2 **TO THE DEPARTMENT ON INFECTIOUS DISEASE TESTING DURING PRENATAL CARE,**
3 **INCLUDING RECOMMENDATIONS REGARDING CONSENT, THE STAGE OF PREGNANCY**
4 **AT WHICH TESTING SHOULD OCCUR, SUPPORT SERVICES, AND COUNSELING.**

5 **(II) THE RECOMMENDATIONS MADE UNDER SUBPARAGRAPH (I)**
6 **OF THIS PARAGRAPH SHALL BE IN ACCORDANCE WITH BEST PRACTICES FOR**
7 **INFECTIOUS DISEASE TESTING DURING PRENATAL CARE.**

8 **(8) (I) THE DEPARTMENT SHALL ADOPT REGULATIONS**
9 **ESTABLISHING REQUIREMENTS FOR INFECTIOUS DISEASE TESTING DURING**
10 **PRENATAL CARE.**

11 **(II) THE REGULATIONS SHALL BE BASED ON THE**
12 **RECOMMENDATIONS MADE TO THE DEPARTMENT UNDER PARAGRAPH (7) OF THIS**
13 **SUBSECTION.**

14 **[(b)] (C) (1) [Except as provided in paragraph (2) of this subsection, a] A**
15 **health care provider who provides prenatal medical care shall [:**

16 (i) Obtain consent from a pregnant patient for HIV testing in
17 accordance with § 18–336 of this subtitle;

18 (ii) Test the patient during the first and third trimesters, unless the
19 patient declines the tests; and

20 (iii) Provide a referral for treatment and supportive services,
21 including case management services.

22 (2) Paragraph (1) of this subsection:

23 (i) Applies to routine prenatal medical care visits; and

24 (ii) Does not apply to the incidental or episodic provision of prenatal
25 medical care given to a pregnant patient by a health care provider] **FOLLOW THE**
26 **REQUIREMENTS FOR INFECTIOUS DISEASE TESTING THAT ARE ADOPTED BY THE**
27 **DEPARTMENT UNDER SUBSECTION (B)(8) OF THIS SECTION.**

28 **(2) THE ADVISORY GROUP SHALL PROVIDE THE RECOMMENDATIONS**
29 **MADE UNDER SUBSECTION (B)(7)(I) OF THIS SECTION TO:**

30 **(I) HOSPITALS THAT OFFER OBSTETRIC SERVICES;**

1 (II) THE AMERICAN COLLEGE OF OBSTETRICIANS AND
2 GYNECOLOGISTS;

3 (III) THE AMERICAN COLLEGE OF NURSE MIDWIVES; AND

4 (IV) THE ASSOCIATION OF INDEPENDENT MIDWIVES OF
5 MARYLAND.

6 [(c) A health care provider who provides labor and delivery services to pregnant
7 women shall offer:

8 (1) A rapid HIV test to pregnant women with unknown or undocumented
9 HIV status during labor and delivery; and

10 (2) Antiretroviral prophylaxis prior to receiving the results of the
11 confirmatory test if a rapid HIV test during labor and delivery is positive.

12 (d) (1) As part of a health care provider's patient acceptance procedures or
13 protocol, a health care provider shall provide a pregnant woman with counseling concerning
14 being tested for the presence of HIV as part of the woman's prenatal care program.

15 (2) The counseling shall include:

16 (i) Information required for pretest counseling under § 18-336 of
17 this subtitle; and

18 (ii) Education on:

19 1. The effect of a positive HIV test result on the pregnant
20 woman and the fetus concerning the risk of transmission of HIV to the fetus; and

21 2. Recognized methods of reducing that risk, including the
22 use of pharmaceuticals during pregnancy known to reduce the risk of transmission of HIV
23 to the fetus.]

24 [(e)] (D) (1) Except as otherwise provided in paragraph (2) of this subsection,
25 the record of an HIV test performed under this section is confidential and not discoverable
26 or admissible in evidence in any criminal, civil, or administrative action.

27 (2) Provided that the identity or any other information that could readily
28 be associated with the identity of the pregnant woman is not disclosed, the results of an
29 HIV test performed under this section may be introduced into evidence in any criminal,
30 civil, or administrative action, including the adjudication of a workers' compensation claim.

31 [(f)] (E) [(1) A health care provider, including a health care facility, acting in
32 good faith to provide the counseling required under subsection (d) of this section may not

1 be held liable in any cause of action related to a woman's decision to consent or not to
2 consent to have an HIV test.

3 (2) A health care provider may not be subject to disciplinary action by the
4 professional licensing board that licenses the health care provider for [not testing a
5 pregnant patient for HIV during the third trimester] **FOLLOWING THE REQUIREMENTS**
6 **FOR INFECTIOUS DISEASE TESTING ESTABLISHED** in accordance with this section.

7 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
8 members of the Prenatal Infectious Disease Testing Advisory Group shall expire as follows:

9 (1) two members in 2019;

10 (2) two members in 2020; and

11 (3) two members in 2021.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2017.