

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled

House Bill 518 (Delegate Morhaim, *et al.*)
Health and Government Operations Education, Health, and Environmental Affairs

Public Health - Prenatal HIV Testing

This bill requires the Department of Health and Mental Hygiene (DHMH), in consultation with stakeholders, to adopt regulations that establish requirements for prenatal HIV testing. A health care provider who offers prenatal medical care must follow these requirements in addition to existing requirements. However, the bill repeals existing testing and notification requirements if DHMH adopts the regulations by October 1, 2018, and notifies the Department of Legislative Services (DLS) at least five days before they take effect. If DLS does not receive such notice by October 1, 2018, existing requirements still apply.

Fiscal Summary

State Effect: DHMH can handle the bill’s requirements with existing resources. Revenues are not affected.

Local Effect: No material fiscal impact.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Under current law, “health care provider” means a physician, nurse, or designee of a health care facility. The bill expands this definition to include a licensed direct-entry midwife.

DHMH must provide the new requirements to (1) hospitals that offer obstetric services; (2) the American College of Obstetricians and Gynecologists; (3) the American College of Nurse Midwives; and (4) the Association of Independent Midwives of Maryland.

The bill modifies when a health care provider is subject to disciplinary action. Under current law, a health care provider may not be subject to disciplinary action by a professional licensing board for not testing a pregnant patient for HIV during the third trimester in accordance with specified requirements (as noted below). The bill establishes that a health care provider is not subject to disciplinary action by a professional licensing board for following the requirements for prenatal testing established by DHMH; this change is not contingent on the regulations being adopted.

Current HIV Testing Requirements for Pregnant Patients

The bill *repeals* the following provisions of law relating to HIV testing for pregnant patients *if* DHMH adopts the required regulations and notifies DLS by October 1, 2018; the effective date of the repeal is the same as the effective date of the regulations.

First, pursuant to Chapters 440 and 441 of 2016, a health care provider who provides prenatal care must (1) obtain consent from a pregnant patient for HIV testing in accordance with specified informed consent and pretest requirements relating to HIV testing and (2) test the patient during both the first and third trimesters unless the patient declines the tests. In addition, a health care provider must provide a referral for treatment and supportive services, including case management services. These provisions apply to routine prenatal medical care visits and not to incidental or episodic care by a health care provider.

Second, a health care provider who provides labor and delivery services must offer a rapid HIV test to a pregnant woman with unknown or undocumented HIV status during labor and delivery and antiretroviral prophylaxis prior to receiving the results of the confirmatory test if a rapid HIV test during labor and delivery is positive.

Third, as part of a health care provider's patient acceptance procedures or protocol, a health care provider must provide a pregnant woman with counseling concerning HIV testing as part of the prenatal care program. Counseling must include specified information required for pretest counseling, education on the effect of a positive HIV test result on the pregnant woman and the fetus concerning the risk of HIV transmission to the fetus, and recognized methods of reducing that risk.

Additionally, a health care provider, including a health care facility, acting in good faith to provide counseling regarding HIV testing may not be held liable in any cause of action related to a woman's decision to consent or not to consent to have an HIV test.

Background: The U.S. Centers for Disease Control and Prevention (CDC) recommends HIV screening for all women as a standard part of prenatal care in order to identify and treat HIV and prevent transmission of HIV to infants. Antiretroviral medications given to

women with HIV during pregnancy and delivery and to their newborns in the first weeks of life reduce the vertical transmission rate from 25% to 2% or less.

The American College of Obstetricians and Gynecologists recommends that all pregnant women be screened for HIV infection as early as possible during each pregnancy. Repeat HIV testing in the third trimester (preferably before 36 weeks of gestation) is recommended for women in areas with high HIV incidence or prevalence (elevated AIDS incidence or in health care facilities in which prenatal screening identifies at least one pregnant woman infected with HIV per 1,000 women screened) and women known to be at risk of acquiring HIV infection. Pregnant women at high risk of acquiring HIV include those (1) who have been diagnosed with another sexually transmitted disease in the past year; (2) who are injection drug users or whose sex partners are injection drug users; (3) who exchange sex for money or drugs; and (4) who have a new sex partner, more than one sex partner during this pregnancy, or sex partners known to be infected with HIV or at high risk of HIV.

According to CDC, Maryland ranked fifth in the nation in HIV diagnosis rates among adults and adolescents in 2015. DHMH reports that, from 2005 to 2015, 1,890 babies were born to HIV-positive mothers in Maryland, with 35 confirmed perinatal HIV transmissions. There were 11 confirmed perinatal HIV transmissions between 2010 and 2014 but none in 2015.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; American College of Obstetricians and Gynecologists; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

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