

Chapter 440

(Senate Bill 856)

AN ACT concerning

Public Health – HIV Testing During Pregnancy

FOR the purpose of requiring certain health care providers to obtain consent for HIV testing in accordance with certain provisions of law and to test pregnant patients, except under certain circumstances, during the first and third trimesters of pregnancy; repealing certain provisions of law made obsolete by this Act; providing that certain health care providers may not be subject to certain disciplinary action under certain circumstances; and generally relating to HIV testing during pregnancy.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 18–338.2

Annotated Code of Maryland

(2015 Replacement Volume)

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

Article – Health – General

18–338.2.

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

(2) “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) “Health care provider” means a physician, nurse, or designee of a health care facility.

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

(5) “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)** ~~**(1)**~~ **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,** A health care provider who provides prenatal medical care shall:

~~**(1)**~~ **(I)** [Notify each pregnant patient that she will be tested for HIV infection as part of the routine prenatal blood tests;

(2) Advise the pregnant patient that she has the right to refuse the test for HIV infection without penalty;

(3) Obtain [informed] consent from [the] A pregnant patient [to test her] for HIV [infection] **TESTING IN ACCORDANCE WITH § 18–336 OF THIS SUBTITLE;**

~~[(4)] ~~**(2)**~~~~ **(II)** Test the patient **DURING THE FIRST AND THIRD TRIMESTERS**, unless the patient declines the [test] **TESTS; AND**

~~[(5)]~~ Document in the medical record if the patient declines the test;

(6) Offer an HIV test in the third trimester to a pregnant woman who was not tested earlier in her pregnancy;

(7) Consider routinely offering a repeat HIV test in the third trimester to all pregnant women:

- (i) At health care facilities in areas of high rates of HIV prevalence;
- and
- (ii) Who are at a high risk of acquiring HIV; and]

~~[(8)] ~~**(3)**~~~~ **(III)** Provide a referral for treatment and supportive services, including case management services.

(2) **PARAGRAPH (1) OF THIS SUBSECTION:**

(I) APPLIES TO ROUTINE PRENATAL MEDICAL CARE VISITS;

AND

(II) DOES NOT APPLY TO THE INCIDENTAL OR EPISODIC PROVISION OF PRENATAL MEDICAL CARE GIVEN TO A PREGNANT PATIENT BY A HEALTH CARE PROVIDER.

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

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

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

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

(2) The counseling shall include:

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

(ii) Education on:

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

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

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

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

(f) **(1)** A health care provider, including a health care facility, acting in good faith to provide the counseling required under subsection (d) of this section 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.

(2) A HEALTH CARE PROVIDER MAY NOT BE SUBJECT TO DISCIPLINARY ACTION BY THE PROFESSIONAL LICENSING BOARD THAT LICENSES THE HEALTH CARE PROVIDER FOR NOT TESTING A PREGNANT PATIENT FOR HIV DURING THE THIRD TRIMESTER IN ACCORDANCE WITH THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.

Approved by the Governor, May 10, 2016.