

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**Enrolled - Revised**

Senate Bill 856

(Senator Kelley, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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**Public Health - HIV Testing During Pregnancy**

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This bill requires a health care provider who provides prenatal care to (1) obtain consent from a pregnant patient for HIV testing in accordance with existing 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. These provisions apply to routine prenatal medical care visits and not to incidental or episodic care by a health care provider. 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 the bill.

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**Fiscal Summary**

**State Effect:** Potential indeterminate increase in Medicaid expenditures (typically 50% federal funds, 50% general funds) to the extent additional HIV testing is performed. Federal fund revenues increase accordingly.

**Local Effect:** No material fiscal impact.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill also repeals the following requirements for a health care provider who provides prenatal care: (1) notify each pregnant patient that she will be tested for HIV as part of the routine prenatal tests; (2) advise the patient of the right to refuse the test without penalty; (3) document in the medical record if the patient declines the test; (4) offer an HIV test in the third trimester to a pregnant woman who was not tested earlier; and

(5) consider routinely offering a repeat HIV test in the third trimester to all pregnant women at health care facilities in areas of high rates of HIV prevalence and who are at high risk of acquiring HIV. These provisions are largely replaced by requiring consent in accordance with existing informed consent and pretest requirements relating to HIV testing.

**Current Law:** Under § 18-336 of the Health-General Article, before testing an individual for HIV, a health care provider must (1) inform the individual, either verbally or in writing, that the health care provider is going to test for HIV unless the individual refuses; (2) provide verbal or written information or show a video that contains an explanation of HIV infection and the meaning of positive and negative test results; (3) offer the individual an opportunity to ask questions and decline HIV testing; and (4) document the individual's decision in the medical record if the individual refuses HIV testing.

A health care provider must also provide easily understood informational materials to an individual who receives HIV testing. A health care provider who obtains a result from an HIV test has to notify the individual from whom the sample was obtained of the result and take additional actions if the test is positive.

A health care provider who provides prenatal medical care must (1) notify each pregnant patient that she will be tested for HIV as part of the routine prenatal tests; (2) advise the patient of the right to refuse the test without penalty; (3) obtain informed consent from the patient to test her for HIV; (4) test the patient, unless the patient declines the test; (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; (7) consider routinely offering a repeat HIV test in the third trimester to all pregnant women at health care facilities in areas of high rates of HIV prevalence and who are at high risk of acquiring HIV; and (8) provide a referral for treatment and supportive services, including case management services.

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.

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.

The record of an HIV test is confidential and not discoverable or admissible in evidence in any criminal, civil, or administrative action unless the identity or any other information that could readily be associated with the identity of the pregnant woman is not disclosed. 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.

At least three other states require prenatal HIV testing during the third trimester. Florida requires a repeat HIV test at 28 to 32 weeks of gestation. Texas requires a repeat HIV test during the third trimester unless the patient refuses. In Kansas, when a health care professional determines that a pregnant woman is at high risk for acquiring HIV, a repeat test must be performed during the third trimester or at labor and delivery.

According to CDC, Maryland ranks third in the nation in HIV prevalence among adults and second in HIV prevalence among women. From 2005 to 2014, 1,735 babies were born to HIV-positive mothers in Maryland, with 35 confirmed perinatal HIV transmissions across 7 different counties and Baltimore City. Since 2010, there have been 7 confirmed perinatal HIV transmissions, 2 of which were from women who tested HIV negative in the first trimester and were not subsequently retested.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 180 (Delegate West, *et al.*) - Health and Government Operations.

**Information Source(s):** American College of Obstetricians and Gynecologists, U.S. Centers for Disease Control and Prevention, Maryland Association of County Health Officers, Department of Health and Mental Hygiene, Department of Legislative Services

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