

## Chapter 668

## (House Bill 518)

AN ACT concerning

**Public Health – Prenatal ~~Infectious Disease~~ HIV Testing**

FOR the purpose of ~~establishing the Prenatal Infectious Disease Testing Advisory Group in the Department of Health and Mental Hygiene; providing for the membership of the Advisory Group; specifying the terms of the initial members of the Advisory Group; providing for the appointment of the chair of the Advisory Group; providing that a majority of the members serving on the Advisory Group is a quorum; requiring the Advisory Group to determine the times and places of its meetings; prohibiting a member of the Advisory Group from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Advisory Group to make certain recommendations to the Department; requiring the Department of Health and Mental Hygiene, in consultation with stakeholders, to adopt certain regulations; requiring a certain health care provider to follow certain requirements for infectious disease prenatal HIV testing; requiring the Advisory Group Department to provide certain recommendations requirements to certain hospitals and certain organizations; repealing certain provisions of law that require certain health care providers to obtain certain consent, conduct certain tests and treatment, provide a certain referral, and provide certain counseling; repealing a certain provision of law relating to the liability of, and disciplinary action against, certain health care providers under certain circumstances; providing that certain health care providers may not be subject to certain disciplinary action for following certain requirements; defining a certain term; altering a certain definition; making a stylistic change; making certain provisions of this Act subject to a certain contingency; and generally relating to prenatal infectious disease HIV testing and the Prenatal Infectious Disease Testing Advisory Group.~~

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

BY repealing and reenacting, with amendments,  
Article – Health – General  
Section 18–338.2  
Annotated Code of Maryland  
(2015 Replacement Volume and 2016 Supplement)  
(As enacted by Section 1 of this Act)

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

~~(3)~~ (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~~ SERVICES 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:~~

~~(i) ONE OBSTETRICIAN GYNECOLOGIST, RECOMMENDED BY MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY;~~

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

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

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

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

~~(VI) ONE REPRESENTATIVE OF THE DEPARTMENT.~~

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

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

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

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

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

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

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

~~(6) A MEMBER OF THE ADVISORY GROUP:~~

~~(I) MAY NOT RECEIVE COMPENSATION; BUT~~

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

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

~~(ii) THE RECOMMENDATIONS MADE UNDER SUBPARAGRAPH (i) OF THIS PARAGRAPH SHALL BE IN ACCORDANCE WITH BEST PRACTICES FOR INFECTIOUS DISEASE TESTING DURING PRENATAL CARE.~~

~~(B) (8) (i) THE DEPARTMENT, IN CONSULTATION WITH STAKEHOLDERS, SHALL ADOPT REGULATIONS ESTABLISHING REQUIREMENTS FOR INFECTIOUS DISEASE PRENATAL HIV TESTING DURING PRENATAL CARE.~~

~~(ii) THE REGULATIONS SHALL BE BASED ON THE RECOMMENDATIONS MADE TO THE DEPARTMENT UNDER PARAGRAPH (7) OF THIS SUBSECTION.~~

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

~~1. Obtain consent from a pregnant patient for HIV testing in accordance with § 18-336 of this subtitle;~~

~~(ii) 2. Test the patient during the first and third trimesters, unless the patient declines the tests; and~~

~~(iii) 3. Provide a referral for treatment and supportive services, including case management services; AND~~

~~(ii) FOLLOW THE REQUIREMENTS FOR PRENATAL HIV TESTING THAT ARE ADOPTED BY THE DEPARTMENT.~~

(2) Paragraph ~~(i)~~ **(1)(i)** 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] ~~FOLLOW THE REQUIREMENTS FOR INFECTIOUS DISEASE TESTING THAT ARE ADOPTED BY THE DEPARTMENT UNDER SUBSECTION (B)(8) OF THIS SECTION.~~

~~(2)~~ **(3)** ~~THE ADVISORY GROUP~~ DEPARTMENT SHALL PROVIDE THE ~~RECOMMENDATIONS MADE~~ REQUIREMENTS ESTABLISHED UNDER SUBSECTION ~~(B)(7)(I)~~ **(B)** OF THIS SECTION TO:

- (I) HOSPITALS THAT OFFER OBSTETRIC SERVICES;**
- (II) THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS;**
- (III) THE AMERICAN COLLEGE OF NURSE MIDWIVES; AND**
- (IV) THE ASSOCIATION OF INDEPENDENT MIDWIVES OF MARYLAND.**

~~(e)~~ **(D)** 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)~~ **(E)** (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)] (F)** (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)] ~~(E)~~ (G) [(1)] A health care provider, including a health care facility, acting in good faith to provide the counseling required under subsection ~~(d)~~ (E) 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] **FOLLOWING THE REQUIREMENTS FOR INFECTIOUS DISEASE PRENATAL HIV TESTING ESTABLISHED in accordance with this section BY THE DEPARTMENT.**

SECTION 2. AND BE IT FURTHER ENACTED, 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, licensed direct–entry midwife, 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 services performed as part of a prenatal care program, including:

- (i) Screening;

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

(b) The Department, in consultation with stakeholders, shall adopt regulations establishing requirements for prenatal HIV testing.

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

(i) 1. Obtain consent from a pregnant patient for HIV testing in accordance with § 18–336 of this subtitle;

2. Test the patient during the first and third trimesters, unless the patient declines the tests; and

3. Provide a referral for treatment and supportive services, including case management services; and

(ii) Follow] FOLLOW the requirements for prenatal HIV testing that are adopted by the Department.

[(2) Paragraph (1)(i) 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.]

[(3)] (2) The Department shall provide the requirements established under subsection (b) of this section to:

(i) Hospitals that offer obstetric services;

(ii) The American College of Obstetricians and Gynecologists;

(iii) The American College of Nurse Midwives; and

(iv) The Association of Independent Midwives of Maryland.

[(d) 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.

(e) (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.]

[(f)] (D) (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.

[(g)] (E) [(1) A health care provider, including a health care facility, acting in good faith to provide the counseling required under subsection (e) 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 following the requirements for prenatal HIV testing established by the Department.

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

~~(1) two members in 2019;~~

~~(2) two members in 2020; and~~

~~(3) two members in 2021.~~

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Section 2 of this Act is contingent on the Department of Health and Mental Hygiene, in consultation with stakeholders, adopting regulations that are consistent with § 18-338.2 of the Health – General Article, as amended by Chapter 441 of the Acts of the General Assembly of 2016, before October 1, 2018.

(b) (1) The Department of Health and Mental Hygiene shall notify the Department of Legislative Services no later than 5 days before the regulations described in subsection (a) of this section will take effect.

(2) If notice of the taking effect of the regulations is received on or before October 1, 2018, Section 2 of this Act shall take effect on the date the regulations take effect. If notice of the taking effect of the regulations is not received by the Department of Legislative Services on or before October 1, 2018, Section 2 of this Act shall be null and void without the necessity of further action by the General Assembly.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this Act, this Act shall take effect October 1, 2017.

**Approved by the Governor, May 25, 2017.**