

26:2-111.2

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 218
NJSA: 26:2-111.2 (Requires health care providers to test pregnant women for HIV as part of routine prenatal care unless woman refuses testing, and requires testing of certain newborns for HIV)

BILL NO: A4218 (Substituted for S2704)

SPONSOR(S) McKeon and Others

DATE INTRODUCED: May 14, 2007

COMMITTEE: **ASSEMBLY:** Health and Senior Services

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 13, 2007

SENATE: June 21, 2007

DATE OF APPROVAL: December 26, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Second reprint enacted)

A4218

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL NOTE: No

S2704

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes 12-26-07](#)

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"HIV tests mandated for infants and moms," The Star-Ledger, 12-27-07, p.1

"HIV tests for mom, infants mandated," The Times, 12-27-07, p.A01

"New Jersey requires H.I.V. test in pregnancy," The New York Times, 12-27-07, p.3

"N.J. will test to avert HIV in newborns," The Record, 12-27-07, p.A01

"HIV testing to be routine for pregnant women, babies," Courier News, 12-27-07, p.____

"HIV tests to be more common," Asbury Park Press, 12-27-07, p.A3

"N.J. makes HIV tests routine for mom, baby," The Press, 12-27-07, p.A1

"Law gives N.J. dual anti-HV weapon," The Philadelphia Inquirer, 12-27-07, p.B1

"Prebirth HIV test required," Home News Tribune, 12-27-07, p.A1

"HIV test made law for some newborns," Courier-Post, 12-27-07, p.1A

"HIV test to become routine for moms," The Trentonian, 12-27-07, p.9

RWH 5/14/08

(CORRECTED COPY)

P.L. 2007, CHAPTER 218, *approved December 26, 2007*
Assembly, No. 4218 (*Second Reprint*)

1 AN ACT concerning testing of pregnant women and newborns for
2 HIV, amending P.L.1995, c.174 and supplementing Title 26 of
3 the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1995, c.174 (C.26:5C-15) is amended to
9 read as follows:

10 1. As used in this act:

11 "AIDS" means acquired immune deficiency syndrome as defined
12 by the Centers for Disease Control and Prevention of the United
13 States Public Health Service.

14 "Commissioner" means the Commissioner of Health and Senior
15 Services.

16 "Department" means the Department of Health and Senior
17 Services.

18 "HIV" means the human immunodeficiency virus or any other
19 related virus identified as a probable causative agent of AIDS.
20 (cf: P.L.1995, c.174, s.1)

21
22 2. Section 2 of P.L.1995, c.174 (C.26:5C-16) is amended to read
23 as follows:

24 2. It is the policy of this State that²:² testing of all pregnant
25 women for HIV shall be part of routine prenatal care; and, in the
26 absence of a specific ¹[written]¹objection to the testing by the
27 pregnant woman, all pregnant women shall be tested for HIV as
28 early as possible in their pregnancy, and again during the third
29 trimester of their pregnancy²; testing of all pregnant women for
30 HIV shall be voluntary and free of coercion; and a pregnant woman
31 shall not be denied testing for HIV on the basis of her economic
32 status².

33 a. (1) A physician or other health care practitioner who is the
34 primary caregiver for a pregnant woman **[or a woman who seeks**
35 **treatment within four weeks of giving birth,]** shall, in accordance
36 with guidelines developed by the commissioner, provide the woman
37 with information about HIV and AIDS ², including an explanation
38 of HIV infection and the meanings of positive and negative test
39 results², and also inform the woman of the benefits of being tested
40 for HIV **[and present her with the option of being tested]** as early

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted June 14, 2007.

²Senate floor amendments adopted June 21, 2007.

1 as possible in the course of her pregnancy and a second time during
2 the third trimester, the medical treatment available to treat HIV
3 infection if diagnosed early, ²[and]² the reduced rate of
4 transmission of HIV to a fetus if an HIV-infected pregnant woman
5 receives treatment for HIV ², and the interventions that are
6 available to reduce the risk of transmission of HIV to the fetus and
7 newborn. The information shall be provided orally or in writing,
8 and the woman shall be offered an opportunity to ask questions².

9 The physician or other health care practitioner shall also advise
10 the woman that HIV testing is recommended for all pregnant
11 women both early in their pregnancy and during the third trimester,
12 and that she will receive HIV tests as part of the routine panel of
13 prenatal tests unless she specifically ²[refuses] declines² to be
14 tested for HIV.

15 ¹[The woman shall, on a form and in a manner prescribed by the
16 commissioner, acknowledge receipt of the information and
17 [indicate her preference regarding testing], when applicable,
18 indicate her refusal to be tested.] If a woman ²[refuses] declines²
19 to be tested for HIV, the ²[refusal] declination² shall be
20 documented in her medical record.¹ A woman shall not be denied
21 appropriate prenatal or other medical care because she [decides
22 not] ²[refuses] declines² to be tested for HIV.

23 (2) A pregnant woman, who presents herself for delivery and
24 has not been tested for HIV during the course of her pregnancy,
25 shall be given the information ¹[and counseling]¹ specified in
26 paragraph (1) of this subsection as soon as may be medically
27 appropriate and, unless she ²[refuses] declines² ¹[in writing] to be
28 tested for HIV¹ after receiving that information ¹[and counseling]¹,
29 shall be tested for HIV as soon as may be medically appropriate.

30 b. The commissioner shall establish guidelines regarding
31 notification to a woman whose test result is positive, and to provide,
32 to the maximum extent possible, for counseling about the
33 significance of the test result.

34 c. Information about a woman which is obtained pursuant to
35 this section shall be held confidential in accordance with the
36 provisions of P.L.1989, c.303 (C.26:5C-5 et seq.).

37 (cf: P. L.1995, c.174, s.2)

38

39 3. Section 6 of P.L.1995, c.174 (C.26:5C-20) is amended to
40 read as follows:

41 6. The commissioner, pursuant to the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
43 rules and regulations to effect this act. The regulations shall be
44 consistent with the latest recommendations for HIV testing of
45 pregnant women prepared by the United States Centers for Disease
46 Control and Prevention.

47 (cf: P.L.1995, c.174, s.6)

1 4. (New section) a. The Commissioner of Health and Senior
2 Services shall require each birthing facility in the State to
3 administer to '[every] a' newborn in its care a test for human
4 immunodeficiency virus (HIV) 'if the HIV status of the mother of
5 the newborn is unknown'.

6 ²A newborn shall not be denied testing for HIV on the basis of
7 the newborn's economic status.²

8 b. The commissioner shall establish a comprehensive program
9 for the 'follow-up' testing of newborns '[for the presence of HIV]
10 who test positive for HIV pursuant to subsection a. of this section or
11 whose mother is HIV-positive', which shall include, but not be
12 limited to, procedures for the administration of HIV testing,
13 counseling of the newborn's mother, tracking the newborn,
14 disclosure of HIV test results to the mother, facility compliance
15 reviews, and educational activities related to the HIV testing.

16 c. The provisions of this section shall not apply to a newborn
17 whose parents object to the test as being in conflict with their
18 religious tenets and practices. The parents shall provide the health
19 care facility with a written statement of the objection, and the
20 statement shall be included in the newborn's medical record.

21 d. As used in this section, "birthing facility" means an inpatient
22 or ambulatory health care facility licensed by the Department of
23 Health and Senior Services that provides birthing and newborn care
24 services.

25 e. The Commissioner of Health and Senior Services shall adopt
26 rules and regulations, pursuant to the "Administrative Procedure
27 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out
28 the purposes of this section.

29

30 5. This act shall take effect on the 180th day after enactment
31 but the commissioner may take such anticipatory administrative
32 action in advance thereof as shall be necessary for the
33 implementation of this act.

34

35

36

37

38 _____
39 Requires health care providers to test pregnant women for HIV
40 as part of routine prenatal care unless woman refuses testing, and
requires testing of certain newborns for HIV.

ASSEMBLY, No. 4218

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 14, 2007

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman CHARLES T. EPPS, JR.

District 31 (Hudson)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Requires health care providers to test pregnant women for HIV as part of routine prenatal care unless woman refuses testing, and requires testing of all newborns for HIV.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/12/2007)

1 AN ACT concerning testing of pregnant women and newborns for
2 HIV, amending P.L.1995, c.174 and supplementing Title 26 of
3 the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1995, c.174 (C.26:5C-15) is amended to
9 read as follows:

10 1. As used in this act:

11 "AIDS" means acquired immune deficiency syndrome as defined
12 by the Centers for Disease Control and Prevention of the United
13 States Public Health Service.

14 "Commissioner" means the Commissioner of Health and Senior
15 Services.

16 "Department" means the Department of Health and Senior
17 Services.

18 "HIV" means the human immunodeficiency virus or any other
19 related virus identified as a probable causative agent of AIDS.

20 (cf: P.L.1995, c.174, s.1)

21

22 2. Section 2 of P.L.1995, c.174 (C.26:5C-16) is amended to
23 read as follows:

24 2. It is the policy of this State that testing of all pregnant
25 women for HIV shall be part of routine prenatal care; and, in the
26 absence of a specific written objection to the testing by the pregnant
27 woman, all pregnant women shall be tested for HIV as early as
28 possible in their pregnancy, and again during the third trimester of
29 their pregnancy.

30 a. (1) A physician or other health care practitioner who is the
31 primary caregiver for a pregnant woman **[**or a woman who seeks
32 treatment within four weeks of giving birth,**]** shall, in accordance
33 with guidelines developed by the commissioner, provide the woman
34 with information about HIV and AIDS, and also inform the woman
35 of the benefits of being tested for HIV **[**and present her with the
36 option of being tested**]** as early as possible in the course of her
37 pregnancy and a second time during the third trimester, the medical
38 treatment available to treat HIV infection if diagnosed early, and
39 the reduced rate of transmission of HIV to a fetus if an HIV-
40 infected pregnant woman receives treatment for HIV.

41 The physician or other health care practitioner shall also advise
42 the woman that HIV testing is recommended for all pregnant
43 women both early in their pregnancy and during the third trimester,
44 and that she will receive HIV tests as part of the routine panel of
45 prenatal tests unless she specifically refuses to be tested for HIV.

EXPLANATION – Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 The woman shall, on a form and in a manner prescribed by the
2 commissioner, acknowledge receipt of the information and
3 【indicate her preference regarding testing】, when applicable,
4 indicate her refusal to be tested. A woman shall not be denied
5 appropriate prenatal or other medical care because she 【decides
6 not】 refuses to be tested for HIV.

7 (2) A pregnant woman, who presents herself for delivery and
8 has not been tested for HIV during the course of her pregnancy,
9 shall be given the information and counseling specified in
10 paragraph (1) of this subsection as soon as may be medically
11 appropriate and, unless she refuses in writing after receiving that
12 information and counseling, shall be tested for HIV as soon as may
13 be medically appropriate.

14 b. The commissioner shall establish guidelines regarding
15 notification to a woman whose test result is positive, and to provide,
16 to the maximum extent possible, for counseling about the
17 significance of the test result.

18 c. Information about a woman which is obtained pursuant to
19 this section shall be held confidential in accordance with the
20 provisions of P.L.1989, c.303 (C.26:5C-5 et seq.).

21 (cf: P.L.1995, c.174, s.2)

22

23 3. Section 6 of P.L.1995, c.174 (C.26:5C-20) is amended to
24 read as follows:

25 6. The commissioner, pursuant to the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
27 rules and regulations to effect this act. The regulations shall be
28 consistent with the latest recommendations for HIV testing of
29 pregnant women prepared by the United States Centers for Disease
30 Control and Prevention.

31 (cf: P.L.1995, c.174, s.6)

32

33 4. (New section) a. The Commissioner of Health and Senior
34 Services shall require each birthing facility in the State to
35 administer to every newborn in its care a test for human
36 immunodeficiency virus (HIV).

37 b. The commissioner shall establish a comprehensive program
38 for the testing of newborns for the presence of HIV, which shall
39 include, but not be limited to, procedures for the administration of
40 HIV testing, counseling of the newborn's mother, tracking the
41 newborn, disclosure of HIV test results to the mother, facility
42 compliance reviews, and educational activities related to the HIV
43 testing.

44 c. The provisions of this section shall not apply to a newborn
45 whose parents object to the test as being in conflict with their
46 religious tenets and practices. The parents shall provide the health
47 care facility with a written statement of the objection, and the
48 statement shall be included in the newborn's medical record.

1 d. As used in this section, “birthing facility” means an inpatient
2 or ambulatory health care facility licensed by the Department of
3 Health and Senior Services that provides birthing and newborn care
4 services.

5 e. The Commissioner of Health and Senior Services shall adopt
6 rules and regulations, pursuant to the “Administrative Procedure
7 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out
8 the purposes of this section.

9
10 5. This act shall take effect on the 180th day after enactment
11 but the commissioner may take such anticipatory administrative
12 action in advance thereof as shall be necessary for the
13 implementation of this act.

14
15

16 STATEMENT

17

18 This bill amends P.L.1995, c.174 (C.26:5C-15 et seq.)
19 concerning voluntary testing of pregnant women for HIV to
20 incorporate the recent recommendations of the Centers for Disease
21 Control and Prevention (CDC) on HIV screening for pregnant
22 women. The bill also requires all birthing facilities in the State to
23 test every newborn in their care for human immunodeficiency virus
24 (HIV).

25 The CDC recommends that all pregnant women be screened for
26 HIV infection, and that screening occur after a women is notified
27 that she will receive an HIV test as part of the routine panel of
28 prenatal tests unless she declines, which is referred to as “opt-out
29 screening.” Under current State law, pregnant women are
30 counseled by their health care providers about testing for HIV
31 infection, but they must give consent to be tested and “opt-in” for
32 HIV screening.

33 The requirements in this bill for HIV testing of newborns are
34 based on the universal newborn HIV testing program established in
35 New York in 1997. That program, which also encourages the
36 prenatal testing of mothers, has been very successful in reducing the
37 number of HIV-infected infants in New York. Universal HIV
38 testing of newborns, regardless of whether the mother’s HIV status
39 is known at the time of birth, serves as a safety net to ensure that all
40 newborns who may be at risk of contracting HIV receive prompt
41 access to treatment, and that their mothers also receive necessary
42 counseling and treatment for HIV.

43 Specifically, the bill provides the following:

- 44 • It is the policy of this State that testing of all pregnant women for
45 HIV shall be part of routine prenatal care; and, in the absence of
46 a specific written objection to the testing by the pregnant woman,
47 all pregnant women shall be tested for HIV as early as possible

- 1 in the course of their pregnancy, and again during their third
2 trimester.
- 3 • A physician or other health care practitioner who is the primary
4 caregiver for a pregnant woman shall, in accordance with
5 guidelines developed by the Commissioner of Health and Senior
6 Services, provide the woman with information about HIV and
7 AIDS, and also inform the woman of:
 - 8 -- the benefits of being tested for HIV as early as possible in the
9 course of her pregnancy and a second time during her third
10 trimester,
 - 11 -- the medical treatment available to treat HIV infection if
12 diagnosed early, and
 - 13 -- the reduced rate of transmission of HIV to a fetus if an HIV-
14 infected pregnant woman receives treatment for HIV.
 - 15 • The physician or other health care practitioner shall also advise
16 the woman that HIV testing is recommended for all pregnant
17 women both early in the pregnancy and during the third
18 trimester, and that she will receive HIV tests as part of the
19 routine panel of prenatal tests unless she specifically refuses to
20 be tested for HIV.
 - 21 • A woman will not be denied appropriate prenatal or other
22 medical care because she refuses to be tested for HIV.
 - 23 • A pregnant woman, who presents herself for delivery and has not
24 been tested for HIV during the course of her pregnancy, shall be
25 given the information and counseling specified in the bill as soon
26 as may be medically appropriate and, unless she refuses in
27 writing after receiving that information and counseling, shall be
28 tested for HIV as soon as may be medically appropriate.
 - 29 • The commissioner shall adopt regulations to carry out the
30 purposes of the bill, which regulations shall be consistent with
31 the latest recommendations for HIV testing of pregnant women
32 prepared by the CDC.
 - 33 • The commissioner shall establish a comprehensive program for
34 the testing of newborns for the presence of HIV, which shall
35 include, but not be limited to, procedures for the administration
36 of HIV testing, counseling of the newborn's mother, tracking the
37 newborn, disclosure of HIV test results to the mother, facility
38 compliance reviews, and educational activities related to the HIV
39 testing.
 - 40 • The provisions of the bill would not apply to a newborn whose
41 parents object to the test as being in conflict with their religious
42 tenets and practices. The parents shall provide the health care
43 facility with a written statement of the objection, and the
44 statement shall be included in the newborn's medical record.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4218

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2007

The Assembly Health and Senior Services Committee reports favorably and with amendments Assembly Bill No. 4218.

As amended by the committee, this bill amends P.L.1995, c.174 (C.26:5C-15 et seq.) concerning voluntary testing of pregnant women for HIV to incorporate the recent recommendations of the federal Centers for Disease Control and Prevention (CDC) on HIV screening for pregnant women. The bill also requires all birthing facilities in the State to test a newborn in their care for human immunodeficiency virus (HIV) if the mother's HIV status is unknown.

The CDC recommends that all pregnant women be screened for HIV infection, and that screening occur after a woman is notified that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines, which is referred to as "opt-out screening." Under current State law, pregnant women are counseled by their health care providers about testing for HIV infection, but they must give consent to be tested and "opt-in" for HIV screening.

Specifically, the bill provides as follows:

- It is the policy of this State that testing of all pregnant women for HIV is to be part of routine prenatal care; and, in the absence of a specific objection to the testing by the pregnant woman, all pregnant women are to be tested for HIV as early as possible in the course of their pregnancy, and again during their third trimester.
- A physician or other health care practitioner who is the primary caregiver for a pregnant woman, in accordance with guidelines developed by the Commissioner of Health and Senior Services, is to provide the woman with information about HIV and AIDS, and also inform the woman of:
 - the benefits of being tested for HIV as early as possible in the course of her pregnancy and a second time during her third trimester,
 - the medical treatment available to treat HIV infection if diagnosed early, and
 - the reduced rate of transmission of HIV to a fetus if an HIV-infected pregnant woman receives treatment for HIV.

- The physician or other health care practitioner is to also advise the woman that HIV testing is recommended for all pregnant women both early in the pregnancy and during the third trimester, and that she will receive HIV tests as part of the routine panel of prenatal tests unless she specifically refuses to be tested for HIV.
- A woman will not be denied appropriate prenatal or other medical care because she refuses to be tested for HIV.
- A pregnant woman, who presents herself for delivery and has not been tested for HIV during the course of her pregnancy, is to be given the information specified in the bill as soon as may be medically appropriate and, unless she refuses after receiving that information, is to be tested for HIV as soon as may be medically appropriate.
- The commissioner is to adopt regulations to carry out the purposes of the bill which are consistent with the latest recommendations for HIV testing of pregnant women prepared by the CDC.
- All birthing facilities in the State are to test a newborn for HIV if the mother's HIV status is unknown.
- The commissioner is to establish a comprehensive program for the follow-up testing of newborns who test positive for HIV or whose mother is HIV-positive, which is to include, but not be limited to, procedures for the administration of HIV testing, counseling of the newborn's mother, tracking the newborn, disclosure of HIV test results to the mother, facility compliance reviews, and educational activities related to the HIV testing.
- The provisions of the bill would not apply to a newborn whose parents object to the test as being in conflict with their religious tenets and practices. The parents must provide the health care facility with a written statement of the objection, and the statement is to be included in the newborn's medical record.

As reported by the committee, this bill is identical to Senate Bill No. 2704 (1R) (Codey/Weinberg), which is pending before the Senate.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- delete the requirement that the pregnant women who refuses to be tested for HIV provide her refusal in writing, and require, instead, that her refusal be documented in her medical record;
- delete the requirement that a pregnant woman who presents herself for delivery and has not been tested for HIV, be given counseling about HIV testing (the requirement that she be given information about the testing is retained in the bill);
- delete the requirement that all newborns be tested for HIV, and require, instead, that a newborn be tested if the mother's HIV status is unknown; and

-- clarify that the commissioner is to establish a comprehensive program for follow-up testing of newborns who test positive for HIV or whose mothers are HIV-positive.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4218

with Senate Floor Amendments
(Proposed By Senator WEINBERG)

ADOPTED: JUNE 21, 2007

These amendments:

-- specify that it is the policy of this State that: HIV testing of pregnant women shall be voluntary and free of coercion; and that a pregnant woman shall not be denied testing for HIV based on her economic status;

-- specify that the information provided to a pregnant woman regarding HIV testing shall include an explanation of HIV infection and the meanings of positive and negative test results, and the interventions that are available to reduce the risk of transmission of HIV to the fetus and newborn. The information shall be provided orally or in writing, and the woman shall be offered an opportunity to ask questions;

-- with respect to a pregnant woman who chooses not to be tested for HIV, replace the word "refuses" with "declines"; and

-- specify that a newborn shall not be denied testing for HIV on the basis of the newborn's economic status.

SENATE, No. 2704

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 14, 2007

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex)

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senators Karcher, Allen and Turner

SYNOPSIS

Requires health care providers to test pregnant women for HIV as part of routine prenatal care unless woman refuses testing, and requires testing of all newborns for HIV.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/8/2007)

1 AN ACT concerning testing of pregnant women and newborns for
2 HIV, amending P.L.1995, c.174 and supplementing Title 26 of
3 the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1995, c.174 (C.26:5C-15) is amended to read
9 as follows:

10 1. As used in this act:

11 "AIDS" means acquired immune deficiency syndrome as
12 defined by the Centers for Disease Control and Prevention of the
13 United States Public Health Service.

14 "Commissioner" means the Commissioner of Health and Senior
15 Services.

16 "Department" means the Department of Health and Senior
17 Services.

18 "HIV" means the human immunodeficiency virus or any other
19 related virus identified as a probable causative agent of AIDS.

20 (cf: P.L.1995, c.174, s.1)

21

22 2. Section 2 of P.L.1995, c.174 (C.26:5C-16) is amended to read
23 as follows:

24 2. It is the policy of this State that testing of all pregnant women
25 for HIV shall be part of routine prenatal care; and, in the absence of
26 a specific written objection to the testing by the pregnant woman,
27 all pregnant women shall be tested for HIV as early as possible in
28 their pregnancy, and again during the third trimester of their
29 pregnancy.

30 a. (1) A physician or other health care practitioner who is the
31 primary caregiver for a pregnant woman **[or a woman who seeks**
32 **treatment within four weeks of giving birth,]** shall, in accordance
33 with guidelines developed by the commissioner, provide the woman
34 with information about HIV and AIDS, and also inform the woman
35 of the benefits of being tested for HIV **[and present her with the**
36 **option of being tested]** as early as possible in the course of her
37 pregnancy and a second time during the third trimester, the medical
38 treatment available to treat HIV infection if diagnosed early, and
39 the reduced rate of transmission of HIV to a fetus if an HIV-
40 infected pregnant woman receives treatment for HIV.

41 The physician or other health care practitioner shall also advise
42 the woman that HIV testing is recommended for all pregnant
43 women both early in their pregnancy and during the third trimester,
44 and that she will receive HIV tests as part of the routine panel of
45 prenatal tests unless she specifically refuses to be tested for HIV.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 The woman shall, on a form and in a manner prescribed by the
2 commissioner, acknowledge receipt of the information and
3 【indicate her preference regarding testing】, when applicable,
4 indicate her refusal to be tested. A woman shall not be denied
5 appropriate prenatal or other medical care because she 【decides
6 not】 refuses to be tested for HIV.

7 (2) A pregnant woman, who presents herself for delivery and
8 has not been tested for HIV during the course of her pregnancy,
9 shall be given the information and counseling specified in
10 paragraph (1) of this subsection as soon as may be medically
11 appropriate and, unless she refuses in writing after receiving that
12 information and counseling, shall be tested for HIV as soon as may
13 be medically appropriate.

14 b. The commissioner shall establish guidelines regarding
15 notification to a woman whose test result is positive, and to provide,
16 to the maximum extent possible, for counseling about the
17 significance of the test result.

18 c. Information about a woman which is obtained pursuant to
19 this section shall be held confidential in accordance with the
20 provisions of P.L.1989, c.303 (C.26:5C-5 et seq.).

21 (cf: P. L.1995, c.174, s.2)

22

23 3. Section 6 of P.L.1995, c.174 (C.26:5C-20) is amended to read
24 as follows:

25 6. The commissioner, pursuant to the "Administrative Procedure
26 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
27 regulations to effect this act. The regulations shall be consistent
28 with the latest recommendations for HIV testing of pregnant women
29 prepared by the United States Centers for Disease Control and
30 Prevention.

31 (cf: P.L.1995, c.174, s.6)

32

33 4. (New section) a. The Commissioner of Health and Senior
34 Services shall require each birthing facility in the State to
35 administer to every newborn in its care a test for human
36 immunodeficiency virus (HIV).

37 b. The commissioner shall establish a comprehensive program
38 for the testing of newborns for the presence of HIV, which shall
39 include, but not be limited to, procedures for the administration of
40 HIV testing, counseling of the newborn's mother, tracking the
41 newborn, disclosure of HIV test results to the mother, facility
42 compliance reviews, and educational activities related to the HIV
43 testing.

44 c. The provisions of this section shall not apply to a newborn
45 whose parents object to the test as being in conflict with their
46 religious tenets and practices. The parents shall provide the health
47 care facility with a written statement of the objection, and the
48 statement shall be included in the newborn's medical record.

1 d. As used in this section, “birthing facility” means an inpatient
2 or ambulatory health care facility licensed by the Department of
3 Health and Senior Services that provides birthing and newborn care
4 services.

5 e. The Commissioner of Health and Senior Services shall adopt
6 rules and regulations, pursuant to the “Administrative Procedure
7 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out
8 the purposes of this section.

9
10 5. This act shall take effect on the 180th day after enactment but
11 the commissioner may take such anticipatory administrative action
12 in advance thereof as shall be necessary for the implementation of
13 this act.

14
15
16 STATEMENT

17
18 This bill amends P.L.1995, c.174 (C.26:5C-15 et seq.)
19 concerning voluntary testing of pregnant women for HIV to
20 incorporate the recent recommendations of the Centers for Disease
21 Control and Prevention (CDC) on HIV screening for pregnant
22 women. The bill also requires all birthing facilities in the State to
23 test every newborn in their care for human immunodeficiency virus
24 (HIV).

25 The CDC recommends that all pregnant women be screened for
26 HIV infection, and that screening occur after a women is notified
27 that she will receive an HIV test as part of the routine panel of
28 prenatal tests unless she declines, which is referred to as “opt-out
29 screening.” Under current State law, pregnant women are
30 counseled by their health care providers about testing for HIV
31 infection, but they must give consent to be tested and “opt-in” for
32 HIV screening.

33 The requirements in this bill for HIV testing of newborns are
34 based on the universal newborn HIV testing program established in
35 New York in 1997. That program, which also encourages the
36 prenatal testing of mothers, has been very successful in reducing the
37 number of HIV-infected infants in New York. Universal HIV
38 testing of newborns, regardless of whether the mother’s HIV status
39 is known at the time of birth, serves as a safety net to ensure that all
40 newborns who may be at risk of contracting HIV receive prompt
41 access to treatment, and that their mothers also receive necessary
42 counseling and treatment for HIV.

43 Specifically, the bill provides the following:

- 44 • It is the policy of this State that testing of all pregnant women for
45 HIV shall be part of routine prenatal care; and, in the absence of
46 a specific written objection to the testing by the pregnant woman,
47 all pregnant women shall be tested for HIV as early as possible
48 in the course of their pregnancy, and again during their third
49 trimester.

- 1 • A physician or other health care practitioner who is the primary
2 caregiver for a pregnant woman shall, in accordance with
3 guidelines developed by the Commissioner of Health and Senior
4 Services, provide the woman with information about HIV and
5 AIDS, and also inform the woman of:
6 -- the benefits of being tested for HIV as early as possible in the
7 course of her pregnancy and a second time during her third
8 trimester,
9 -- the medical treatment available to treat HIV infection if
10 diagnosed early, and
11 -- the reduced rate of transmission of HIV to a fetus if an HIV-
12 infected pregnant woman receives treatment for HIV.
- 13 • The physician or other health care practitioner shall also advise
14 the woman that HIV testing is recommended for all pregnant
15 women both early in the pregnancy and during the third
16 trimester, and that she will receive HIV tests as part of the
17 routine panel of prenatal tests unless she specifically refuses to
18 be tested for HIV.
- 19 • A woman will not be denied appropriate prenatal or other
20 medical care because she refuses to be tested for HIV.
- 21 • A pregnant woman, who presents herself for delivery and has not
22 been tested for HIV during the course of her pregnancy, shall be
23 given the information and counseling specified in the bill as soon
24 as may be medically appropriate and, unless she refuses in
25 writing after receiving that information and counseling, shall be
26 tested for HIV as soon as may be medically appropriate.
- 27 • The commissioner shall adopt regulations to carry out the
28 purposes of the bill, which regulations shall be consistent with
29 the latest recommendations for HIV testing of pregnant women
30 prepared by the CDC.
- 31 • The commissioner shall establish a comprehensive program for
32 the testing of newborns for the presence of HIV, which shall
33 include, but not be limited to, procedures for the administration
34 of HIV testing, counseling of the newborn's mother, tracking the
35 newborn, disclosure of HIV test results to the mother, facility
36 compliance reviews, and educational activities related to the HIV
37 testing.
- 38 • The provisions of the bill would not apply to a newborn whose
39 parents object to the test as being in conflict with their religious
40 tenets and practices. The parents shall provide the health care
41 facility with a written statement of the objection, and the
42 statement shall be included in the newborn's medical record.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2704

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 7, 2007

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2704.

As amended by committee, this bill amends P.L.1995, c.174 (C.26:5C-15 et seq.) concerning voluntary testing of pregnant women for HIV to incorporate the recent recommendations of the Centers for Disease Control and Prevention (CDC) on HIV screening for pregnant women. The bill also requires all birthing facilities in the State to test a newborn in their care for human immunodeficiency virus (HIV) if the mother's HIV status is unknown.

The CDC recommends that all pregnant women be screened for HIV infection, and that screening occur after a woman is notified that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines, which is referred to as "opt-out screening." Under current State law, pregnant women are counseled by their health care providers about testing for HIV infection, but they must give consent to be tested and "opt-in" for HIV screening.

Specifically, the bill provides the following:

- It is the policy of this State that testing of all pregnant women for HIV shall be part of routine prenatal care; and, in the absence of a specific objection to the testing by the pregnant woman, all pregnant women shall be tested for HIV as early as possible in the course of their pregnancy, and again during their third trimester.
- A physician or other health care practitioner who is the primary caregiver for a pregnant woman shall, in accordance with guidelines developed by the Commissioner of Health and Senior Services, provide the woman with information about HIV and AIDS, and also inform the woman of:
 - the benefits of being tested for HIV as early as possible in the course of her pregnancy and a second time during her third trimester,

- the medical treatment available to treat HIV infection if diagnosed early, and
 - the reduced rate of transmission of HIV to a fetus if an HIV-infected pregnant woman receives treatment for HIV.
 - The physician or other health care practitioner shall also advise the woman that HIV testing is recommended for all pregnant women both early in the pregnancy and during the third trimester, and that she will receive HIV tests as part of the routine panel of prenatal tests unless she specifically refuses to be tested for HIV.
 - A woman will not be denied appropriate prenatal or other medical care because she refuses to be tested for HIV.
 - A pregnant woman, who presents herself for delivery and has not been tested for HIV during the course of her pregnancy, shall be given the information specified in the bill as soon as may be medically appropriate and, unless she refuses after receiving that information, shall be tested for HIV as soon as may be medically appropriate.
 - The commissioner shall adopt regulations to carry out the purposes of the bill, which regulations shall be consistent with the latest recommendations for HIV testing of pregnant women prepared by the CDC.
 - All birthing facilities in the State would be required to test a newborn for HIV if the mother's HIV status is unknown.
 - The commissioner shall establish a comprehensive program for the follow-up testing of newborns who test positive for HIV or whose mother is HIV-positive, which shall include, but not be limited to, procedures for the administration of HIV testing, counseling of the newborn's mother, tracking the newborn, disclosure of HIV test results to the mother, facility compliance reviews, and educational activities related to the HIV testing.
 - The provisions of the bill would not apply to a newborn whose parents object to the test as being in conflict with their religious tenets and practices. The parents shall provide the health care facility with a written statement of the objection, and the statement shall be included in the newborn's medical record.
- The committee amended the bill to:
- delete the requirement that the pregnant women who refuses to be tested for HIV provide her refusal in writing, and provide, instead, that her refusal be documented in her medical record;
 - delete the requirement that a pregnant woman who presents herself for delivery and has not been tested for HIV, be given counseling about HIV testing (the requirement that she be given information about the testing is retained in the bill);
 - delete the requirement that all newborns be tested for HIV, and provide, instead, that a newborn shall be tested if the mother's HIV status is unknown; and

-- clarify that the commissioner shall establish a comprehensive program for follow-up testing of newborns who test positive for HIV or whose mothers are HIV-positive.

STATEMENT TO
[First Reprint]
SENATE, No. 2704

with Senate Floor Amendment
(Proposed By Senator WEINBERG)

ADOPTED: JUNE 18, 2007

These amendments:

-- specify that it is the policy of this State that: HIV testing of pregnant women shall be voluntary and free of coercion; and that a pregnant woman shall not be denied testing for HIV based on her economic status;

-- specify that the information provided to a pregnant woman regarding HIV testing shall include an explanation of HIV infection and the meanings of positive and negative test results, and the interventions that are available to reduce the risk of transmission of HIV to the fetus and newborn. The information shall be provided orally or in writing, and the woman shall be offered an opportunity to ask questions;

-- with respect to a pregnant woman who chooses not to be tested for HIV, replace the word "refuses" with "declines"; and

-- specify that a newborn shall not be denied testing for HIV on the basis of the newborn's economic status.

Dec-26-07 Governor Codey Signs HIV Screening Legislation for Pregnant Women and Newborns

NEWS RELEASE

Governor Richard J. Codey
December 26, 2007

FOR MORE INFORMATION:

Press Office
609-777-2600

GOVERNOR CODEY SIGNS HIV SCREENING LEGISLATION FOR PREGNANT WOMEN AND NEWBORNS

NEWARK— Governor Richard J. Codey today signed legislation requiring health providers to test pregnant women for HIV (Human Immunodeficiency Virus) as part of routine prenatal care. The bill, A4218, also requires testing of newborns whose mother's HIV status is either positive or unknown at the time of delivery.

"Since the early '90's we've made great strides in reducing the HIV transmission rate to newborns. But even one infected baby is one too many," said Governor Codey. "Today, New Jersey becomes the first state to require universal opt-out HIV testing for pregnant women, a move that has the potential to dramatically reduce the transmission of HIV from a pregnant mother to her newborn."

According to a September 2006 Morbidity and Mortality Weekly Report (MMWR), the CDC (Centers for Disease Control) estimates that perinatal transmission rates can be reduced to less than two percent with universal screening of pregnant women in combination with prophylactic administration of antiretroviral drugs, a Cesarean delivery and avoidance of breast feeding.

The legislation requires that all pregnant women be tested for HIV as early as possible in their pregnancy and again during their third trimester. In addition, each birthing facility in the state is now required to test any newborn whose mother's HIV status is either positive or unknown at the time of delivery.

"Early detection is the key to helping people living with HIV/AIDS to live longer with a better quality of life. Currently we have the treatment available to help prevent the transmission of HIV from mothers to their babies," said Senator Loretta Weinberg (D -Bergen), a primary sponsor of the bill. "This measure is a

huge step forward in terms of protecting all babies while helping to educate mothers.”

The measure moves New Jersey from “opt in” status to “opt out” status, meaning women will automatically be tested unless they choose not to be. Physicians and health care practitioners now are required to provide women with information about HIV and AIDS, the benefits of being tested, the medical treatment available to treat HIV infection, and the reduced rate of transmission to a fetus if an HIV-infected pregnant woman receives treatment.

Only New York, Connecticut, Illinois and Indiana require some form of newborn testing. Of those four states, none require universal opt-out testing for pregnant mothers.

“Early detection and treatment are integral parts of the fight against HIV and AIDS,” said Assemblyman John F. McKeon (D-West Orange). “New Jersey faces some of the nation's highest HIV rates among women. We must act now to get mothers tested to prevent mother-to-infant HIV transmission.”

“We must do all that we can to prevent the transmission of HIV by making testing part of routine medical care,” said Assemblyman Charles T. Epps, Jr. (D-Hudson). “Requiring this testing will help to enhance detection, prevent HIV transmission to newborns, and improve the quality of health care delivery in New Jersey for women and babies.”

“New Jersey's best defense against HIV and AIDS is to reduce the number of people who become infected,” said Assemblyman Robert M. Gordon (D-Bergen). “This comprehensive approach will ensure that all women have access to testing to further stem the spread of HIV and protect the health of newborns.”

Assemblyman Neil Cohen (D-Union) was also a primary sponsor of the legislation.

The Commissioner of the Department of Health and Senior Services is responsible for adopting regulations to carry out the testing requirements, as well as guidelines for the information that physicians must provide their patients on testing, treatment and counseling.