

AMENDED IN ASSEMBLY MAY 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1676

Introduced by Assembly Member Dutra

February 21, 2003

An act to amend Section 121015 of the Health and Safety Code, An act to amend Sections 125085, 125090, and 125107 of, and to add Section 125092 to, the Health and Safety Code, relating to AIDS.

LEGISLATIVE COUNSEL'S DIGEST

AB 1676, as amended, Dutra. ~~AIDS: disclosure~~ *Human immunodeficiency virus: maternal and newborn health.*

Existing law requires a physician and surgeon to obtain a blood specimen from a pregnant woman before or at the time of delivery. Existing law requires the blood specimen to be tested for rhesus (Rh) blood type and the presence of the hepatitis B surface antigen.

This bill would require that the blood specimen also be tested for the presence of the human immunodeficiency virus (HIV). Under the bill, HIV testing would not be required if the pregnant woman has been previously determined to be chronically infected with HIV, as specified. The bill would require certain medical care providers to ensure that the woman is informed of, among other things, the purpose of testing and that the woman has a right to refuse testing.

This bill would also require the department, in consultation with the Office of AIDS and other specified organizations, to develop, by December 31, 2004, culturally sensitive informational material concerning HIV testing to assist the medical care provider in fulfilling his or her obligations under these provisions. The bill would require that

the materials provide information on available referral and consultation resources of experts in prenatal HIV treatment.

This bill would require that once the results of any tests conducted are received, the physician and surgeon or applicable care provider shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications to the mother’s and infant’s health, including any followup care that is indicated.

~~Existing law permits the county health officer to alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on a test to detect infection by the probable causative agent of acquired immune deficiency syndrome (AIDS) about his or her exposure. Existing law requires the county health officer to refer any person to whom a disclosure is made pursuant to this provision for appropriate care and followup.~~

~~This bill would, in addition, require the county health officer to provide any person to whom a disclosure is made pursuant to this provision with appropriate counseling.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.~~ Section 121015 of the Health and Safety Code
 2 *SECTION 1. The Legislature finds and declares all of the*
 3 *following:*

4 (a) *Women, particularly women of color, are the fastest*
 5 *growing population with AIDS both in the United States and in*
 6 *California. The percentage of annually reported female AIDS*
 7 *cases in California has risen every year since 1983.*

8 (b) *Universal testing of pregnant women helps decrease the risk*
 9 *of perinatal transmission of HIV to newborns since treatment*
 10 *before, during, and after labor and delivery can help decrease the*
 11 *risk of transmission to the newborn.*

12 (c) *Even if a woman receives no prenatal care, doctors can take*
 13 *steps to prevent HIV transmission to newborns. If the virus is*
 14 *identified in a woman during childbirth or immediately afterward,*
 15 *her baby can be treated during the first 24 hours after birth,*
 16 *thereby substantially reducing the risk of mother-to-child*
 17 *transmission.*



1 (d) *Although the number of infants born with HIV since 1991*
2 *has decreased from 1,760 to as few as 280 infants nationwide in*
3 *2000, the infection of many of these children could have been*
4 *prevented if testing and early treatment had been conducted.*

5 (e) *Recognizing that voluntary systems do not work as well as*
6 *opt-out systems, the United States Centers for Disease Control and*
7 *Prevention specifically urges the testing of all pregnant women for*
8 *HIV within the routine battery of prenatal tests, rather than relying*
9 *upon them to volunteer.*

10 SEC. 2. *Section 125085 of the Health and Safety Code is*
11 *amended to read:*

12 125085. (a) ~~A~~ *As early as possible during prenatal care, a*
13 *blood specimen obtained pursuant to Section 125080 shall be*
14 *submitted to a clinical laboratory licensed by the department or to*
15 *an approved public health laboratory for a determination of rhesus*
16 *(Rh) blood type and the results shall be reported to both of the*
17 *following:*

18 (1) *The physician and surgeon or other person engaged in the*
19 *prenatal care of the woman or attending the woman at the time of*
20 *delivery.*

21 (2) *The woman tested.*

22 (b) (1) *In addition, as early as possible during prenatal care,*
23 *a blood specimen obtained pursuant to Section 125080 shall be*
24 *submitted to a clinical laboratory licensed by the department or to*
25 *an approved public health laboratory for a test to determine the*
26 *presence of hepatitis B surface antigen; and the human*
27 *immunodeficiency virus (HIV), and the results shall be reported to*
28 *both of the following:*

29 (A) *The physician and surgeon or other person engaged in the*
30 *prenatal care of the women or attending the woman at the time of*
31 *delivery.*

32 (B) *The woman tested.*

33 (2) *In the event that other tests to determine hepatitis B*
34 *infection or HIV infection become available, the department may*
35 *approve additional tests.*

36 SEC. 3. *Section 125090 of the Health and Safety Code is*
37 *amended to read:*

38 125090. (a) *Subdivision (a) of Section 125085 shall not be*
39 *applicable if the licensed physician and surgeon or other person*
40 *engaged in the prenatal care of a pregnant woman or attending the*



1 woman at the time of delivery has knowledge of the woman's
2 blood type and accepts responsibility for the accuracy of the
3 information.

4 (b) Subdivision (b) of Section 125085 shall not be applicable
5 if the licensed physician and surgeon or other person engaged in
6 the prenatal care of a pregnant woman or attending the woman at
7 the time of delivery has knowledge that the woman has previously
8 been determined to be chronically infected with hepatitis ~~(B)~~ B or
9 human immunodeficiency virus (HIV) and accepts responsibility
10 for the accuracy of the information.

11 (c) *Prior to obtaining a blood specimen collected pursuant to*
12 *subdivision (b) of Section 125085 or this section, the physician and*
13 *surgeon or other person engaged in the prenatal care of a pregnant*
14 *woman or attending the woman at the time of delivery shall ensure*
15 *that the woman is informed of the intent to perform a test for HIV*
16 *infection, the routine nature of the test, the purpose of the testing,*
17 *the risks and benefits of the test, the risk of perinatal transmission*
18 *of HIV, that approved treatments are known to decrease the risk of*
19 *perinatal transmission of HIV, and that the woman has a right to*
20 *accept or refuse this testing. The acceptance of testing for HIV*
21 *shall be documented in writing on a form developed by the*
22 *department and the Office of AIDS pursuant to Section 125092, or*
23 *on a form that is substantially equivalent in content, and signed by*
24 *the patient. A copy of this form shall be maintained in the medical*
25 *record. A multispecialty medical group that provides health care*
26 *services to enrollees of a health care service plan may use a form*
27 *incorporating the information in this subdivision and in*
28 *subdivision (d) instead of any separate form developed pursuant*
29 *to Section 125092.*

30 (d) *If, during the final prenatal care standard medical tests, the*
31 *medical records of the pregnant woman do not document a test for*
32 *rhesus (Rh) blood type, a test for hepatitis B, or a test for HIV, the*
33 *physician and surgeon or other person engaged in the prenatal*
34 *care of the woman or attending the woman at the time of labor or*
35 *delivery shall obtain a blood specimen from the woman for the test*
36 *that has not been documented. Prior to obtaining this blood*
37 *specimen, the provider shall ensure that the woman is informed of*
38 *the intent to perform the tests that have not been documented prior*
39 *to this visit, including a test for HIV infection, the routine nature*
40 *of the test, the purpose of the testing, the risks and benefits of the*



1 test, the risk of perinatal transmission of HIV, that approved
2 treatments are known to decrease the risk of perinatal transmission
3 of HIV, and that the woman has a right to accept or refuse the HIV
4 test. The acceptance of testing for HIV shall be documented in
5 writing on a form developed by the department and the Office of
6 AIDS, or on a form that is substantially equivalent in content, as
7 described in Section 125092, and signed by the patient. A copy of
8 this form shall be maintained in the medical record. The blood
9 shall be tested by a method that will ensure the earliest possible
10 results, and the results shall be reported to both of the following:

11 (1) The physician and surgeon or other person engaged in the
12 prenatal care of the woman or attending the woman at the time of
13 delivery.

14 (2) The woman tested.

15 (e) After the results of the tests done pursuant to this section and
16 Section 125085 have been received, the physician and surgeon or
17 other person engaged in the prenatal care of the pregnant woman
18 or attending the woman at the time of labor, delivery, or
19 postpartum care at the time the results are received shall ensure
20 that the woman receives information and counseling, as
21 appropriate, to explain the results and the implications for the
22 mother's and infant's health, including any followup care that is
23 indicated. If the woman tests positive for HIV antibodies, she shall
24 also receive, whenever possible, a referral to a provider, provider
25 group, or institution specializing in prenatal care for HIV positive
26 women. Health care providers are also strongly encouraged to
27 seek consultation with other providers specializing in the care of
28 pregnant HIV positive women.

29 (f) The provisions of Section 125107 for counseling are equally
30 applicable to every pregnant patient covered by subdivisions (c)
31 and (d).

32 SEC. 4. Section 125092 is added to the Health and Safety
33 Code, to read:

34 125092. The department, in consultation with the Office of
35 AIDS and with other stakeholders, including, but not limited to,
36 representatives of professional medical and public health
37 advocacy groups, providers of health care to women and infants
38 infected with or exposed to HIV, and women living with HIV, shall
39 develop culturally sensitive informational material adequate to
40 fulfill the requirements of subdivisions (c) and (d) of Section



1 125090, in English, Spanish, and other languages used by the
2 department when providing information to clients under the
3 Medi-Cal program. This material shall also include information
4 on available referral and consultation resources of experts in
5 prenatal HIV treatment. This material shall be completed by
6 December 31, 2004.

7 SEC. 5. Section 125107 of the Health and Safety Code is
8 amended to read:

9 125107. (a) For purposes of this section, “prenatal care
10 provider” means a licensed health care professional providing
11 prenatal care within his or her lawful scope of practice. This
12 definition shall not include a licensed health care professional who
13 provides care other than prenatal care to a pregnant patient.

14 (b) The prenatal care provider primarily responsible for
15 providing prenatal care to a pregnant patient shall offer human
16 immunodeficiency virus (HIV) information and counseling to
17 every pregnant patient. This information and counseling shall
18 include, but shall not be limited to, all of the following:

19 (1) A description of the modes of HIV transmission.

20 (2) A discussion of risk reduction behavior modifications
21 including methods to reduce the risk of perinatal transmission.

22 (3) ~~Referral~~ If appropriate, referral information to other HIV
23 prevention and psychosocial services, ~~if appropriate,~~ including
24 anonymous and confidential test sites approved by the Office of
25 AIDS of the State Department of Health Services.

26 ~~(c) The prenatal care provider primarily responsible for~~
27 ~~providing prenatal care to a pregnant patient shall offer an HIV test~~
28 ~~as defined in Section 120775 to every pregnant patient, unless a~~
29 ~~positive HIV test result is already documented in the patient’s~~
30 ~~medical record or the patient has AIDS as diagnosed by a~~
31 ~~physician. The offering of an HIV test shall include discussion of~~
32 ~~all of the following:~~

33 ~~(1) The purpose of the test.~~

34 ~~(2) The risks and benefits of the test.~~

35 ~~(3) The voluntary nature of the test.~~

36 ~~(d) If the pregnant woman voluntarily consents to testing, the~~
37 ~~provider shall arrange for HIV testing directly or by referral,~~
38 ~~including, but not limited to, referral to anonymous and~~
39 ~~confidential test sites approved by the Office of AIDS of the State~~
40 ~~Department of Health Services.~~



1 ~~(e) The prenatal care provider primarily responsible for~~
2 ~~providing prenatal care to a pregnant patient shall document in the~~
3 ~~patient's medical record that HIV information and counseling has~~
4 ~~been offered. The prenatal care provider shall also document the~~
5 ~~offering of the HIV antibody test in the patient's medical record.~~

6 ~~(f)–~~

7 (c) Nothing in this section shall be construed to require testing,
8 the documentation or disclosure of whether the patient had an HIV
9 test, or the result of an HIV test except to the patient *mandatory*
10 *testing*. Any documentation or disclosure of HIV related
11 information shall be made in accordance with Chapter 7
12 (commencing with Section 120975) of Part 4 of Division 105
13 regarding confidentiality and informed consent.

14 (d) *Notwithstanding Section 125090 or any other provision of*
15 *law, completion of a statement of acceptance of an HIV test*
16 *pursuant to Sections 125090 and 125092 shall be sufficient*
17 *documentation of consent for HIV testing of a pregnant woman or*
18 *of a woman at the time of labor and delivery, and no laboratory or*
19 *health care provider shall require any additional written consent*
20 *or written form as a condition for HIV testing from any woman who*
21 *is reasonably believed to be pregnant, who is receiving prenatal*
22 *care, or who is undergoing a panel of tests designated for prenatal*
23 *patients.*

24 is amended to read:

25 ~~121015. (a) Notwithstanding Section 120980 or any other~~
26 ~~provision of law, no physician and surgeon who has the results of~~
27 ~~a confirmed positive test to detect infection by the probable~~
28 ~~causative agent of acquired immune deficiency syndrome of a~~
29 ~~patient under his or her care shall be held criminally or civilly~~
30 ~~liable for disclosing to a person reasonably believed to be the~~
31 ~~spouse, or to a person reasonably believed to be a sexual partner~~
32 ~~or a person with whom the patient has shared the use of~~
33 ~~hypodermic needles, or to the county health officer, that the patient~~
34 ~~has tested positive on a test to detect infection by the probable~~
35 ~~causative agent of acquired immune deficiency syndrome, except~~
36 ~~that no physician and surgeon shall disclose any identifying~~
37 ~~information about the individual believed to be infected.~~

38 (b) ~~No physician and surgeon shall disclose the information~~
39 ~~described in subdivision (a) unless he or she has first discussed the~~
40 ~~test results with the patient and has offered the patient appropriate~~



1 educational and psychological counseling, that shall include
2 information on the risks of transmitting the human
3 immunodeficiency virus to other people and methods of avoiding
4 those risks, and has attempted to obtain the patient's voluntary
5 consent for notification of his or her contacts. The physician and
6 surgeon shall notify the patient of his or her intent to notify the
7 patient's contacts prior to any notification. When the information
8 is disclosed to a person reasonably believed to be a spouse, or to
9 a person reasonably believed to be a sexual partner, or a person
10 with whom the patient has shared the use of hypodermic needles,
11 the physician and surgeon shall refer that person for appropriate
12 care, counseling, and followup. This section shall not apply to
13 disclosures made other than for the purpose of diagnosis, care, and
14 treatment of persons notified pursuant to this section, or for the
15 purpose of interrupting the chain of transmission.

16 (c) This section is permissive on the part of the attending
17 physician, and all requirements and other authorization for the
18 disclosure of test results to detect infection by the probable
19 causative agent of acquired immune deficiency syndrome are
20 limited to the provisions contained in this chapter, Chapter 10
21 (commencing with Section 121075) and Sections 1603.1 and
22 1603.3. No physician has a duty to notify any person of the fact that
23 a patient is reasonably believed to be infected by the probable
24 causative agent of acquired immune deficiency syndrome.

25 (d) The county health officer may alert any persons reasonably
26 believed to be a spouse, sexual partner, or partner of shared needles
27 of an individual who has tested positive on a test to detect infection
28 by the probable causative agent of acquired immune deficiency
29 syndrome about their exposure, without disclosing any identifying
30 information about the individual believed to be infected or the
31 physician making the report, and shall provide any person to
32 whom a disclosure is made pursuant to this subdivision with
33 appropriate counseling and followup and refer any person to
34 whom a disclosure is made pursuant to this subdivision for
35 appropriate care. Upon completion of the county health officer's
36 efforts to contact any person pursuant to this subdivision, all
37 records regarding that person maintained by the county health
38 officer pursuant to this subdivision, including but not limited to
39 any individual identifying information, shall be expunged by the
40 county health officer.



1 ~~(c) The county health officer shall keep confidential the~~
2 ~~identity and the seropositivity status of the individual tested and~~
3 ~~the identities of the persons contacted, as long as records of~~
4 ~~contacts are maintained.~~

5 ~~(f) Except as provided in Section 1603.1 or 1603.3, no person~~
6 ~~shall be compelled in any state, county, city, or local civil,~~
7 ~~criminal, administrative, legislative, or other proceedings to~~
8 ~~identify or provide identifying characteristics that would identify~~
9 ~~any individual reported or person contacted pursuant to this~~
10 ~~section.~~

