

Assembly Bill No. 1676

CHAPTER 749

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

[Approved by Governor October 9, 2003. Filed with
Secretary of State October 10, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1676, Dutra. 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 report a positive test result to the local health officer, and 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Women, particularly women of color, are the fastest growing population with AIDS both in the United States and in California. The



percentage of annually reported female AIDS cases in California has risen every year since 1983.

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

(c) Even in cases where a woman receives no prenatal care, doctors can take steps to prevent HIV transmission to newborns. If the virus is identified in a woman during childbirth or immediately afterward, her baby can be treated during the first 24 hours after birth and alternatives to breastfeeding can be discussed, thereby substantially reducing the risk of mother-to-child transmission.

(d) Although the number of infants born with HIV since 1991 has decreased from 1,760 to as few as 280 infants nationwide in 2000, maternal transmission of HIV can be reduced with early detection and treatment.

(e) This year, the United States Centers for Disease Control and Prevention (CDC) revised their recommendations on HIV testing of pregnant women. The CDC now specifically urges the testing of all pregnant women for HIV within the routine battery of prenatal tests.

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

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

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

(2) The woman tested.

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

(A) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery who ordered the test, and who shall subsequently inform the woman tested.

(B) A positive test result shall be reported to the local health officer, with the information required and within the timeframes established by



the department, pursuant to Chapter 4 (commencing with Section 2500) of Title 17 of the California Code of Regulations.

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

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

125090. (a) Subdivision (a) of Section 125085 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge of the woman's blood type and accepts responsibility for the accuracy of the information.

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

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

(d) If, during the final prenatal care standard medical tests, the medical records of the pregnant woman do not document a test for rhesus (Rh) blood type, a test for hepatitis B, or a test for HIV, the physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of labor or delivery shall obtain a blood specimen from the woman for the test that has not been documented. Prior to obtaining this blood specimen, the provider shall ensure that the



woman is informed of the intent to perform the tests that have not been documented prior to this visit, including a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to accept or refuse the HIV test. The acceptance of testing for HIV shall be documented in writing on a form developed by the department and the Office of AIDS, or on a form that is substantially equivalent in content, as described in Section 125092, and signed by the patient. A copy of this form shall be maintained in the medical record. The blood shall be tested by a method that will ensure the earliest possible results, and the results shall be reported to both of the following:

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

(2) The woman tested.

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

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

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

125092. The department, in consultation with the Office of AIDS and with other stakeholders, including, but not limited to, representatives of professional medical and public health advocacy groups, providers of health care to women and infants infected with or exposed to HIV, and women living with HIV, shall develop culturally sensitive informational material adequate to fulfill the requirements of subdivisions (c) and (d) of Section 125090, in English, Spanish, and other languages used by the department when providing information to clients under the Medi-Cal program. This material shall also include information on available referral and consultation resources of experts

in prenatal HIV treatment. This material shall be completed by December 31, 2004.

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

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

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

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

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

(3) If appropriate, referral information to other HIV prevention and psychosocial services including anonymous and confidential test sites approved by the Office of AIDS.

(c) Nothing in this section shall be construed to require mandatory testing. Any documentation or disclosure of HIV related information shall be made in accordance with Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 regarding confidentiality and informed consent.

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

