

AMENDED IN ASSEMBLY MAY 4, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2809

**Introduced by Assembly Member ~~Robert Pacheco~~ Members
*Robert Pacheco and Wesson***

**(Principal coauthors: Assembly Members Aanestad, Bates,
Vincent, and Wright)**

**(Coauthors: Assembly Members Battin, Campbell, Cox,
Cunneen, ~~and Runner~~ *Runner, and Zettel*)**

(Coauthors: Senators Leslie and Monteith)

February 28, 2000

An act to amend ~~Sections 120990, 125085, 125090, 125100,~~
~~and Section 125107~~ of the Health and Safety Code, relating to
HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2809, as amended, Robert Pacheco. Human immunodeficiency virus (HIV): 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.~~

~~Existing law specifies that the requirement for the test of a pregnant woman's blood sample to determine the presence~~

~~of the hepatitis B surface antigen does not apply in circumstances where the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending that woman at the time of delivery has knowledge that the woman has previously been determined to be chronically infected with hepatitis B and accepts responsibility for the accuracy of the information.~~

~~This bill would revise that exclusion to refer also to infection with HIV, and would delete the requirement that the infection be chronic.~~

~~The bill would also authorize a pregnant woman to refuse testing for HIV after receiving counseling on HIV from the prenatal care provider primarily responsible for providing prenatal care to the pregnant woman.~~

~~Existing law generally prohibits the testing of blood for HIV without the written consent of the subject.~~

~~This bill would make that prohibition inapplicable to the testing of the blood of a pregnant woman.~~

~~Existing law requires specified medical entities and professionals to maintain and make information available to the State Department of Health Services regarding testing, treatment, and prevention of perinatally transmitted hepatitis B. Existing law requires the department to make funds available to requesting counties for testing, treatment, and prevention of hepatitis B.~~

~~This bill would also require specified medical entities and professionals to maintain and make information available to the department regarding testing, treatment, and prevention of HIV. This bill would also require the department to make funds available to requesting counties for testing, treatment, and prevention of HIV.~~

This bill would require the department to adopt a form, which would be required to be used by health care providers providing HIV testing and counseling services, that documents that written patient consent for this testing was sought and when it was given.

~~Existing law requires prenatal care providers, as defined, who are primarily responsible for providing prenatal care to a pregnant patient to offer a HIV test, information, counseling, and referral services that include providing~~



certain information to every pregnant woman patient during prenatal care.

This bill would require that the information and counseling that is provided under these provisions be ~~provided~~ *offered* as early ~~in the patient's pregnancy as is practical, or as possible during prenatal care~~ and at the time of labor or delivery ~~with any test approved by the federal Food and Drug Administration that will ensure results will be available to the provider within a 24-hour period,~~ *unless a positive HIV test result is already documented in the patient's medical record or the patient has AIDS as diagnosed by a physician.* The bill would require that certain additional information be provided when HIV tests are offered under these provisions, and would extend the requirements to provide information and counseling and offer an HIV test to apply to other health care providers approved by the department. The bill would also require certain prenatal care providers to verify HIV-related information in the medical files of the patient and provide posttest counseling in cases in which HIV tests are positive.

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

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

- 1 SECTION 1. The Legislature finds and declares all of
- 2 the following:
- 3 (a) The human immunodeficiency virus (HIV)
- 4 infection rate among women of childbearing years is
- 5 estimated at 0.6 per 1,000. ~~Universal testing of pregnant~~
- 6 ~~women could prevent~~ *Testing of pregnant women can*
- 7 *reduce* the perinatal transmission of HIV to the newborn
- 8 since ~~treatment before testing~~ *HIV-infected women*
- 9 *during pregnancy* or at the time of labor and delivery can
- 10 ~~prevent~~ *reduce* transmission to the newborn.
- 11 (b) A study conducted by the National Institutes of
- 12 Health (NIH) has shown that treatment of pregnant
- 13 women with zidovudine (AZT) can reduce transmission
- 14 of HIV from ~~25~~ *almost 23* percent to less than 8 percent.



1 (c) Another NIH study, concluded in 1999, has shown
2 a further reduction of transmission of HIV to
3 approximately 2 percent with a single dose of nevirapine
4 administered at the time of labor and delivery and to the
5 newborn after delivery.

6 (d) The cost of an HIV test in the standard prenatal
7 panel is estimated to cost three dollars (\$3) to five dollars
8 (\$5). The average total lifetime charges for the care of a
9 child with HIV infection is estimated at four hundred
10 ninety-one thousand nine hundred thirty-six dollars
11 (\$491,936), making early detection through ~~universal~~
12 *routine* HIV screening of pregnant women a
13 cost-effective policy.

14 ~~SEC. 2. Section 120990 of the Health and Safety Code~~
15 ~~is amended to read:~~

16 ~~120990. (a) Except in the case of a person treating a~~
17 ~~patient, no person shall test a person's blood for evidence~~
18 ~~of antibodies to the probable causative agent of AIDS~~
19 ~~without the written consent of the subject of the test or~~
20 ~~the written consent of the subject, as provided in Section~~
21 ~~121020, and the person giving the test shall have a written~~
22 ~~statement signed by the subject or conservator or other~~
23 ~~person, as provided in Section 121020 confirming that he~~
24 ~~or she obtained the consent from the subject. In the case~~
25 ~~of a physician and surgeon treating a patient, the consent~~
26 ~~required under this subdivision shall be informed~~
27 ~~consent, by the patient, conservator, or other person~~
28 ~~provided for in Section 121020.~~

29 ~~This requirement does not apply to a test performed at~~
30 ~~an alternative site, as established pursuant to Sections~~
31 ~~120885 to 120895, inclusive. This requirement also does~~
32 ~~not apply to any blood and blood products specified in~~
33 ~~paragraph (2) of subdivision (a) of Section 1603.1. This~~
34 ~~requirement does not apply when testing is performed as~~
35 ~~part of the medical examination performed pursuant to~~
36 ~~Section 7152.5. This requirement does not apply when~~
37 ~~testing a pregnant woman pursuant to Section 125080.~~

38 ~~(b) Nothing in this section shall preclude a medical~~
39 ~~examiner or other physician from ordering or performing~~
40 ~~a blood test to detect antibodies to the probable causative~~



1 agent of AIDS on a cadaver when an autopsy is performed
2 or body parts are donated pursuant to the Uniform
3 Anatomical Gift Act, provided for pursuant to Chapter 3.5
4 (commencing with Section 7150) of Part 1 of Division 7.

5 (e) The requirements of subdivision (a) do not apply
6 when blood is tested as part of a scientific investigation
7 conducted either by medical researchers operating
8 under institutional review board approval or by the
9 department in accordance with a protocol for unlinked
10 testing. For purposes of this section, unlinked testing
11 means that blood samples are obtained anonymously or
12 that the individual's name and other identifying
13 information is removed in a manner that precludes the
14 test results from ever being linked to a particular
15 individual in the study.

16 SEC. 3. Section 125085 of the Health and Safety Code
17 is amended to read:

18 125085. (a) A blood specimen obtained pursuant to
19 Section 125080 shall be submitted to a clinical laboratory
20 licensed by the department or to an approved public
21 health laboratory for a determination of rhesus (Rh)
22 blood type and the results shall be reported to both of the
23 following:

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

27 (2) The woman tested.

28 (b) In addition, a blood specimen obtained pursuant to
29 Section 125080 shall be submitted to a clinical laboratory
30 licensed by the department or to an approved public
31 health laboratory for a test to determine the presence of
32 hepatitis B surface antigen and the human
33 immunodeficiency virus (HIV). In the event that other
34 tests to determine hepatitis B infection or HIV infection
35 become available, the department may approve
36 additional tests.

37 SEC. 4. Section 125090 of the Health and Safety Code
38 is amended to read:

39 125090. (a) Subdivision (a) of Section 125085 shall
40 not be applicable if the licensed physician and surgeon or



1 other person engaged in the prenatal care of a pregnant
2 woman or attending the woman at the time of delivery
3 has knowledge of the woman's blood type and accepts
4 responsibility for the accuracy of the information.

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

13 (c) A pregnant woman may refuse testing for HIV on
14 a blood specimen collected pursuant to Section 125080
15 after receiving the information and counseling described
16 in subdivision (b) of Section 125107.

17 SEC. 5. Section 125100 of the Health and Safety Code
18 is amended to read:

19 125100. (a) Clinical laboratories licensed by the
20 department, approved public health laboratories, local
21 health departments, physicians and surgeons, or other
22 persons engaged in the prenatal care of a pregnant
23 woman or in the care of an infant shall maintain and make
24 available to the department information necessary to
25 evaluate, for public health purposes, the effectiveness of
26 testing and followup treatment for the prevention of
27 perinatally transmitted hepatitis B infection and
28 perinatally transmitted human immunodeficiency virus
29 (HIV) infection.

30 (b) The department shall make available, to the extent
31 state funds are appropriated therefor in the annual
32 Budget Act or federal funds are available for that
33 purpose, money to each county requesting funds for
34 testing and followup treatment for the prevention of
35 perinatally transmitted hepatitis B infection or
36 perinatally transmitted HIV infection or for any functions
37 performed pursuant to subdivision (a). The money shall
38 be allocated by the department on the basis of the
39 incidence of perinatally transmitted hepatitis B infection
40 and the incidence of perinatally transmitted HIV and the



1 ~~need for necessary followup treatment and evaluation in~~
2 ~~the requesting county.~~

3 ~~SEC. 6.—~~

4 *SEC. 2.* Section 125107 of the Health and Safety Code
5 is amended to read:

6 125107. (a) For purposes of this section, “prenatal
7 care provider” means a licensed health care professional
8 providing prenatal care within his or her lawful scope of
9 practice. This definition shall not include a licensed
10 health care professional who provides care other than
11 prenatal care to a pregnant patient.

12 (b) The prenatal care provider primarily responsible
13 for providing prenatal care to a pregnant patient or
14 another health care provider approved by the State
15 Department of Health Services, *in consultation with the*
16 *State Office of AIDS*, shall offer human
17 immunodeficiency virus (HIV) information and
18 counseling to every pregnant patient as early ~~in the~~
19 ~~patient’s pregnancy as is practical, or at the time of labor~~
20 ~~or delivery with any test approved by the Food and Drug~~
21 ~~Administration that will ensure that results will be~~
22 ~~available to the provider within a 24 hour period. This as~~
23 *possible during prenatal care and at the time of labor and*
24 *delivery, unless a positive HIV test result is already*
25 *documented in the patient’s medical record or the*
26 *patient has AIDS, as diagnosed by a physician. This*
27 information and counseling shall include, but shall not be
28 limited to, all of the following:

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

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

33 (3) Referral information to other HIV prevention and
34 psychosocial services, if appropriate, including
35 anonymous and confidential test sites approved by the
36 Office of AIDS of the State Department of Health
37 Services.

38 ~~(4) The treatment that is currently approved that has~~
39 ~~been shown~~



1 (4) Any approved treatments or methods approved
2 that are used to prevent or reduce the perinatal
3 transmission of HIV from an infected mother to a
4 newborn.

5 (c) The prenatal care provider primarily responsible
6 for providing prenatal care to a pregnant patient or
7 another health care provider approved by the State
8 Department of Health Services ~~shall offer~~, in
9 consultation with the State Office of AIDS, shall offer to
10 every pregnant patient an HIV test as defined in Section
11 120775 ~~to every pregnant patient~~, and in addition, if the
12 patient is in labor and delivery, an HIV test approved by
13 the federal Food and Drug Administration that will
14 ensure results will be available to the provider within a
15 24-hour period, unless a positive HIV test result is already
16 documented in the patient's medical record or the
17 patient has AIDS as diagnosed by a physician. The
18 offering of an HIV test shall include discussion of all of the
19 following:

20 (1) The purpose of the test and the routine nature of
21 the test.

22 (2) The risks and benefits of ~~the test~~ being tested.

23 (3) The voluntary nature of the test.

24 (d) If the pregnant woman voluntarily consents to
25 testing, the provider shall arrange for HIV testing directly
26 or by referral, including, but not limited to, referral to
27 anonymous and confidential test sites approved by the
28 Office of AIDS of the State Department of Health
29 Services.

30 (e) The prenatal care provider primarily responsible
31 for providing prenatal care to a pregnant patient or
32 another health care provider approved by the State
33 Department of Health Services, in consultation with the
34 State Office of AIDS, shall document in the patient's
35 medical record that HIV information and counseling has
36 been offered. The prenatal care provider or another
37 health care provider approved by the State Department
38 of Health Services, in consultation with the State Office
39 of AIDS, shall also document the offering of the HIV
40 antibody test in the patient's medical record.



1 (f) The perinatal care provider responsible for
2 providing care to a pregnant patient at the time of labor
3 and delivery shall, *as early as possible during prenatal*
4 *care and* at the time of labor and delivery, verify that the
5 medical record documents that the pregnant patient has
6 been offered HIV counseling and testing ~~or that an HIV~~
7 ~~test result is documented in the patient's medical record.~~
8 . *If the offer of HIV counseling and testing is not*
9 *verifiable, the perinatal care provider shall offer*
10 *counseling and testing pursuant to subdivisions (b), (c),*
11 *(d), and (e).*

12 (g) Should a pregnant patient test positive for HIV,
13 the prenatal care provider primarily responsible for
14 providing prenatal care to the pregnant patient shall
15 provide the posttest counseling. The posttest counseling
16 shall include all appropriate referrals for medical
17 ~~treatment care~~ and psychosocial services needed for the
18 mother ~~and the newborn~~. The posttest counseling shall
19 also include referrals for evaluation and medical care, ~~if~~
20 ~~appropriate, for the newborn to a medical center with~~
21 ~~appropriate specialty services that are approved by the~~
22 ~~department.~~ *including appropriate specialty service, for*
23 *the newborn.*

24 (h) Nothing in this section shall be construed to
25 require testing, the documentation or disclosure of
26 whether the patient had an HIV test, or the result of an
27 HIV test except to the patient ~~or to the department~~
28 ~~pursuant to subdivision (a) of Section 125100. Any . Any~~
29 documentation or disclosure of HIV related information
30 shall be made in accordance with Chapter 7
31 (commencing with Section 120975) of Part 4 of Division
32 105 regarding confidentiality and informed consent.

33 (i) *The department, in consultation with the State*
34 *Office of AIDS, HIV and perinatal care providers, and*
35 *HIV advocacy groups, shall adopt a form, available in all*
36 *languages in which materials are made available under*
37 *the Medi-Cal program, for use pursuant to this section, in*
38 *order to record both of the following:*

39 (1) *The offering of counseling and testing to a*
40 *pregnant patient by a health care provider.*



1 (2) *If given, a patient's informed voluntary written*
2 *consent to testing, as required pursuant to Section 120990.*

3 (j) *The form adopted pursuant to subdivision (i) shall*
4 *contain a notice, which shall be prominently printed in*
5 *not less than 12-point upper case type, that consent for the*
6 *HIV test is wholly voluntary.*

7 (k) *Every health care provider performing HIV*
8 *counseling and testing services shall be required to utilize*
9 *the form adopted pursuant to subdivision (i).*

