

## **IC 16-41-6**

### **Chapter 6. Communicable Disease: Mandatory Testing of Individuals With Communicable or Dangerous Diseases**

#### **IC 16-41-6-0.5**

##### **"Standard licensed diagnostic test for HIV"**

Sec. 0.5. As used in this chapter, "standard licensed diagnostic test for HIV" means a test recognized by the state department as a standard licensed diagnostic test for the antibody or antigen to HIV. *As added by P.L.237-2003, SEC.5.*

#### **IC 16-41-6-1**

##### **HIV screening and testing**

Sec. 1. (a) As used in this section, "physician's authorized representative" means:

- (1) an advanced practice nurse (as defined by IC 25-23-1-1(b)) who is operating in collaboration with a licensed physician; or
- (2) an individual acting under the supervision of a licensed physician and within the individual's scope of employment.

(b) If a physician or the physician's authorized representative determines that it is medically necessary to conduct an HIV test on an individual under the care of a physician, the physician or physician's authorized representative may order the test if the physician or the physician's authorized representative:

- (1) informs the patient of the test;
- (2) provides an explanation of the test; and
- (3) informs the patient of the patient's right to refuse the test.

Subject to subsection (d), if the patient refuses the test, the physician or the physician's authorized representative may not perform the test and shall document the patient's refusal in the patient's medical record.

(c) After ordering an HIV test for a patient, the physician or the physician's authorized representative shall:

- (1) discuss with the patient the availability of counseling concerning the test results; and
- (2) notify the patient of the test results.

If a test conducted under this section indicates that a patient is HIV infected, in addition to the requirements set forth in IC 16-41-2, the physician or the physician's authorized representative shall inform the patient of treatment and referral options available to the patient.

(d) A physician or a physician's authorized representative may order an HIV test to be performed without informing the patient or the patient's representative (as defined in IC 16-36-1-2) of the test or regardless of the patient's or the patient's representative's refusal of the HIV test if any of the following conditions apply:

- (1) If ordered by a physician, consent can be implied due to emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.
- (2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an

individual. A hearing held under this subdivision shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(6) The individual upon whom the test will be performed is described in IC 16-41-8-6 or IC 16-41-10-2.5.

(7) A court has ordered the individual to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(17).

(8) Both of the following are met:

(A) The individual is not capable of providing consent and an authorized representative of the individual is not immediately available to provide consent or refusal of the test.

(B) A health care provider acting within the scope of the health care provider's employment comes into contact with the blood or body fluids of the individual in a manner that has been epidemiologically demonstrated to transmit HIV.

(e) The state department shall make HIV testing and treatment information from the federal Centers for Disease Control and Prevention available to health care providers.

(f) The state department may adopt rules under IC 4-22-2 necessary to implement this section.

*As added by P.L.2-1993, SEC.24. Amended by P.L.106-1998, SEC.1; P.L.293-2001, SEC.3; P.L.212-2003, SEC.4; P.L.237-2003, SEC.6; P.L.97-2004, SEC.67; P.L.125-2007, SEC.1; P.L.94-2010, SEC.4; P.L.116-2012, SEC.1; P.L.147-2012, SEC.4.*

## **IC 16-41-6-2**

### **Informed consent; court ordered examinations**

Sec. 2. (a) As used in this section, "informed consent" means authorization for physical examination, made without undue inducement or any form of force, fraud, constraint, deceit, duress, or coercion after the following:

(1) A fair explanation of the examination, including the purpose, potential uses, limitations, and the fair meaning of the examination results.

(2) A fair explanation of the procedures to be followed, including the following:

(A) The voluntary nature of the examination.

(B) The right to withdraw consent to the examination process at any time.

(C) The right to anonymity to the extent provided by law with respect to participation in the examination and disclosure of examination results.

(D) The right to confidential treatment to the extent provided by law of information identifying the subject of the examination and the results of the examination.

(b) If the state health commissioner, the state health commissioner's legally authorized agent, or local health official has reasonable grounds to believe that an individual may have a communicable disease or other disease that is a danger to health, the state health commissioner, the state health commissioner's legally authorized agent, or local health officer may ask the individual for written informed consent to be examined to prevent the transmission of the disease to other individuals.

(c) If the individual, when requested, refuses such an examination, the state health commissioner, the state health commissioner's legally authorized agent, or local health officer may compel the examination only upon a court order based on clear and convincing evidence of a serious and present health threat to others posed by the individual.

(d) A hearing held under this section shall be held in camera at the request of the individual.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-6-2.5**

##### **Repealed**

*(Repealed by P.L.237-2003, SEC.18.)*

#### **IC 16-41-6-3**

##### **Violations**

Sec. 3. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

*As added by P.L.2-1993, SEC.24.*

#### **IC 16-41-6-4**

##### **Testing newborn infants; confidentiality; notice; information on treatment options; objecting; rules; application for funds under Ryan White Care Amendments**

Sec. 4. (a) Subject to subsection (f), if:

(1) the mother of a newborn infant has not had a test performed under section 5 or 6 of this chapter;

(2) the mother of a newborn infant has refused a test for the newborn infant to detect HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary;

the physician overseeing the care of the newborn infant may order a confidential test for the newborn infant in order to detect HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide HIV information and counseling to the mother. The

information and counseling must include the following:

- (A) The purpose of the test.
- (B) The risks and benefits of the test.
- (C) A description of the methods of HIV transmission.
- (D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.
- (E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) If a test ordered under subsection (a) is positive, the person who provides the results of the test shall inform the mother of the newborn infant of treatment options or referral options available to the newborn infant.

(f) If a parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

(g) The state department shall adopt rules under IC 4-22-2 to carry out this section.

(h) The results of a test performed under this section are confidential.

(i) The state department shall apply for funds under Section 2625 of the Ryan White CARE Amendments of 1996 (42 U.S.C. 300ff-21 et seq.) to pay for all tests conducted under subsection (a).

*As added by P.L.106-1998, SEC.2. Amended by P.L.237-2003, SEC.7; P.L.220-2011, SEC.319.*

#### **IC 16-41-6-5**

#### **Ordering and submitting a pregnant woman's blood sample for testing**

Sec. 5. (a) This section applies to:

- (1) a physician licensed under IC 25-22.5; or
- (2) an advanced practice nurse licensed under IC 25-23;

who provides prenatal care within the scope of the provider's license.

(b) Subject to section 8 of this chapter, an individual described in subsection (a) who:

- (1) diagnoses the pregnancy of a woman; or
- (2) is primarily responsible for providing prenatal care to a pregnant woman;

shall order to be taken a sample of the pregnant woman's blood and shall submit the sample to an approved laboratory for a standard licensed diagnostic test for HIV.

*As added by P.L.237-2003, SEC.8.*

#### **IC 16-41-6-6**

#### **No written evidence of testing; ordering and submitting sample**

Sec. 6. Subject to section 8 of this chapter, if, at the time of

delivery, there is no written evidence that a standard licensed diagnostic test for HIV has been performed under section 5 of this chapter, the physician or advanced practice nurse in attendance at the delivery shall order to be taken a sample of the woman's blood at the time of the delivery and shall submit the sample to an approved laboratory for a standard licensed diagnostic test for HIV.

*As added by P.L.237-2003, SEC.9.*

#### **IC 16-41-6-7**

##### **Right to refuse test**

Sec. 7. A pregnant woman has a right to refuse a test under section 5 or 6 of this chapter.

*As added by P.L.237-2003, SEC.10.*

#### **IC 16-41-6-8**

##### **Informing pregnant woman of information; documenting information given and a refusal of test; information if test results positive; confidentiality**

Sec. 8. (a) This section applies to a physician or an advanced practice nurse who orders an HIV test under section 5 or 6 of this chapter or to the physician's or nurse's designee.

(b) An individual described in subsection (a) shall:

(1) inform the pregnant woman that:

(A) the individual is required by law to order an HIV test unless the pregnant woman refuses; and

(B) the pregnant woman has a right to refuse the test; and

(2) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(c) An individual described in subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsection (b).

(d) If a pregnant woman refuses to consent to an HIV test, the refusal must be noted by an individual described in subsection (a) in the pregnant woman's medical records.

(e) If a test ordered under section 5 or 6 of this chapter is positive, an individual described in subsection (a):

(1) shall inform the pregnant woman of the test results;

(2) shall inform the pregnant woman of the treatment options or referral options available to the pregnant woman; and

(3) shall:

(A) provide the pregnant woman with a description of the methods of HIV transmission;

(B) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk; and

(C) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services.

(f) The provisions of IC 16-41-2-3 apply to a positive HIV test under section 5 or 6 of this chapter.

(g) The results of a test performed under section 5 or 6 of this chapter are confidential.

(h) As a routine component of prenatal care, every individual described in subsection (a) is required to provide information and counseling regarding HIV and the standard licensed diagnostic test for HIV and to offer and recommend the standard licensed diagnostic test for HIV.

(i) An individual described in subsection (a) shall document:

(1) the oral or written consent of the pregnant woman to be tested; and

(2) that the pregnant woman was counseled and provided the required information set forth in subsection (b) to ensure that an informed decision has been made.

(j) A pregnant woman who refuses a test under this section must do so in writing.

*As added by P.L.237-2003, SEC.11. Amended by P.L.97-2004, SEC.68; P.L.112-2011, SEC.1.*

#### **IC 16-41-6-9**

##### **Information on confidential part of birth certificate**

Sec. 9. The state department shall require, on the confidential part of each birth certificate and stillbirth certificate retained by the state department, in addition to the information otherwise required to be included on the certificate, the following information:

(1) Whether a standard licensed diagnostic test for HIV was performed on the woman who bore the child.

(2) If a standard licensed diagnostic test for HIV was performed:

(A) the date the blood specimen was taken; and

(B) whether the test was performed during pregnancy or at the time of delivery.

(3) If a standard licensed diagnostic test for HIV was not performed, the reason the test was not performed.

*As added by P.L.237-2003, SEC.12.*

#### **IC 16-41-6-10**

##### **Distributing information on HIV treatment options**

Sec. 10. The state department shall distribute to physicians and to other individuals who are allowed by law to attend a pregnant woman information available from the federal Centers for Disease Control and Prevention that explains the treatment options available to an individual who has a positive test for HIV.

*As added by P.L.237-2003, SEC.13.*

#### **IC 16-41-6-11**

##### **Rules**

Sec. 11. (a) The state department shall adopt rules under IC 4-22-2 that include procedures:

- (1) to inform the woman of the test results under this chapter, whether they are positive or negative;
- (2) for explaining the side effects of any treatment for HIV if the test results under this chapter are positive; and
- (3) to establish a process for a woman who tests positive under this chapter to appeal the woman's status on a waiting list on a treatment program for which the woman is eligible. The rule must:

(A) include a requirement that the state department make a determination in the process described in this subdivision not later than seventy-two (72) hours after the state department receives all the requested medical information; and

(B) set forth the necessary medical information that must be provided to the state department and reviewed by the state department in the process described in this subdivision.

(b) The state department shall maintain rules under IC 4-22-2 that set forth standards to provide to women who are pregnant, before delivery, at delivery, and after delivery, information concerning HIV. The rules must include:

- (1) an explanation of the nature of AIDS and HIV;
- (2) information concerning discrimination and legal protections;
- (3) information concerning the duty to notify persons at risk as described in IC 16-41-7-1;
- (4) information about risk behaviors for HIV transmission;
- (5) information about the risk of transmission through breast feeding;
- (6) notification that if the woman chooses not to be tested for HIV before delivery, at delivery the child will be tested subject to section 4 of this chapter;
- (7) procedures for obtaining informed, written consent for testing under this chapter;
- (8) procedures for post-test counseling by a health care provider when the test results are communicated to the woman, whether the results are positive or negative;
- (9) procedures for referral for physical and emotional services if the test results are positive;
- (10) procedures for explaining the importance of immediate entry into medical care if the test results are positive; and
- (11) procedures for explaining that giving birth by cesarean section may lessen the likelihood of passing on HIV to the child during childbirth, especially when done in combination with medications, if the test results are positive.

*As added by P.L.237-2003, SEC.14.*

#### **IC 16-41-6-12**

#### **Completing HIV test history and assessment form; retaining copy of form in patient's medical file; systemwide evaluation of prenatal HIV testing**

Sec. 12. (a) The state department shall provide that an HIV test

history and assessment form from the patient's medical records or an interview with the patient must be filled out. The state department shall develop the form to determine if:

- (1) the patient is HIV positive and has been informed; or
- (2) the patient was tested during the current pregnancy and tested negative or was not tested during the current pregnancy and the HIV status is unknown.

(b) The form required under subsection (a) must identify what special support or assistance for continued medical care the patient might need as a result of a positive test.

(c) A copy of the form must be:

- (1) kept in the patient's medical file;
- (2) kept in the baby's medical file; and
- (3) given to the doctor in the hospital designated to administer the newborn HIV testing program.

(d) The state department must maintain a systemwide evaluation of prenatal HIV testing in Indiana. The state department shall prescribe the HIV test history and assessment form and a newborn blood screening form. The state department shall remove all identifying information from the maternal test history before the state department performs its analyses and shall not maintain HIV test history data with identifying information.

*As added by P.L.237-2003, SEC.15.*

### **IC 16-41-6-13**

#### **Treatment program access for women who test positive for HIV**

Sec. 13. (a) Women who:

- (1) meet all qualifications to participate in the children's health insurance program, the AIDS drug assistance program, the health insurance assistance program, or any other health care program of the state; and
- (2) test positive under section 5 or 6 of this chapter;

shall be given first priority on a waiting list for the program if a waiting list exists. If a program does not have a waiting list, the woman described in this subsection shall be automatically approved and accepted into the program.

(b) If the state department determines during the process described in section 11(a)(3) of this chapter that the treatment of a woman who tests positive under this chapter should not be interrupted because of medical necessity, the woman may enter a program described in subsection (a) regardless of the existence of a waiting list for the program.

*As added by P.L.237-2003, SEC.16.*