

(f) Rule of construction

Nothing in this section shall be construed to pre-empt State laws regarding HIV/AIDS counseling and testing.

(g) Definitions

In this section:

(1) The term “voluntary opt-out testing” means HIV/AIDS testing—

(A) that is administered to an individual seeking other health care services; and

(B) in which—

(i) pre-test counseling is not required but the individual is informed that the individual will receive an HIV/AIDS test and the individual may opt out of such testing; and

(ii) for those individuals with a positive test result, post-test counseling (including referrals for care) is provided and confidentiality is protected.

(2) The term “universal testing of newborns” means HIV/AIDS testing that is administered within 48 hours of delivery to—

(A) all infants born in the State; or

(B) all infants born in the State whose mother’s HIV/AIDS status is unknown at the time of delivery.

(h) Authorization of appropriations

Of the funds appropriated annually to the Centers for Disease Control and Prevention for HIV/AIDS prevention activities, \$30,000,000 shall be made available for each of the fiscal years 2007 through 2009 for grants under subsection (a), of which \$20,000,000 shall be made available for grants to States with the policies described in subsection (b)(1), and \$10,000,000 shall be made available for grants to States with the policies described in subsection (b)(2). Funds provided under this section are available until expended.

(July 1, 1944, ch. 373, title XXVI, §2625, as added Pub. L. 104-146, §7(b)(3), May 20, 1996, 110 Stat. 1369; amended Pub. L. 106-345, title II, §212(a), Oct. 20, 2000, 114 Stat. 1339; Pub. L. 109-415, title II, §209, title VII, §703, Dec. 19, 2006, 120 Stat. 2802, 2820; Pub. L. 111-87, §2(a)(1), (3)(A), Oct. 30, 2009, 123 Stat. 2885.)

AMENDMENTS

2009—Pub. L. 111-87 repealed Pub. L. 109-415, §703, and revived the provisions of this section as in effect on Sept. 30, 2009. See 2006 Amendment note and Effective Date of 2009 Amendment; Revival of Section note below.

2006—Pub. L. 109-415, §703, which directed repeal of this section effective Oct. 1, 2009, was itself repealed by Pub. L. 111-87, §2(a)(1), effective Sept. 30, 2009.

Pub. L. 109-415, §209, amended section catchline and text generally, substituting provisions relating to early diagnosis grant program for provisions requiring State certification of measures to adopt CDC guidelines for pregnant women not later than 120 days after May 20, 1996, and authorizing additional funds if such certification was provided.

2000—Subsec. (c)(1)(F). Pub. L. 106-345, §212(a)(1), added subpar. (F).

Subsec. (c)(2). Pub. L. 106-345, §212(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “For purposes of carrying out this subsection, there are authorized to be appropriated \$10,000,000 for each of the fiscal years 1996 through 2000. Amounts made available under section 300ff-77 of this title for carrying out this part are not

available for carrying out this section unless otherwise authorized.”

Subsec. (c)(4). Pub. L. 106-345, §212(a)(3), added par. (4).

EFFECTIVE DATE OF 2009 AMENDMENT; REVIVAL OF SECTION

For provisions that repeal by section 2(a)(1) of Pub. L. 111-87 of section 703 of Pub. L. 109-415 be effective Sept. 30, 2009, and that the provisions of this section as in effect on Sept. 30, 2009, be revived, see section 2(a)(2), (3)(A) of Pub. L. 111-87, set out as a note under section 300ff-11 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104-146, set out as an Effective Date of 1996 Amendment note under section 300ff-11 of this title.

PERINATAL TRANSMISSION OF HIV DISEASE; CONGRESSIONAL FINDINGS

Pub. L. 104-146, §7(a), May 20, 1996, 110 Stat. 1368, provided that: “The Congress finds as follows:

“(1) Research studies and statewide clinical experiences have demonstrated that administration of anti-retroviral medication during pregnancy can significantly reduce the transmission of the human immunodeficiency virus (commonly known as HIV) from an infected mother to her baby.

“(2) The Centers for Disease Control and Prevention have recommended that all pregnant women receive HIV counseling; voluntary, confidential HIV testing; and appropriate medical treatment (including anti-retroviral therapy) and support services.

“(3) The provision of such testing without access to such counseling, treatment, and services will not improve the health of the woman or the child.

“(4) The provision of such counseling, testing, treatment, and services can reduce the number of pediatric cases of acquired immune deficiency syndrome, can improve access to and provision of medical care for the woman, and can provide opportunities for counseling to reduce transmission among adults, and from mother to child.

“(5) The provision of such counseling, testing, treatment, and services can reduce the overall cost of pediatric cases of acquired immune deficiency syndrome.

“(6) The cancellation or limitation of health insurance or other health coverage on the basis of HIV status should be impermissible under applicable law. Such cancellation or limitation could result in disincentives for appropriate counseling, testing, treatment, and services.

“(7) For the reasons specified in paragraphs (1) through (6)—

“(A) routine HIV counseling and voluntary testing of pregnant women should become the standard of care; and

“(B) the relevant medical organizations as well as public health officials should issue guidelines making such counseling and testing the standard of care.”

§ 300ff-34. Perinatal transmission of HIV/AIDS; contingent requirement regarding State grants under this part**(a) Annual determination of reported cases**

A State shall annually determine the rate of reported cases of AIDS as a result of perinatal transmission among residents of the State.

(b) Causes of perinatal transmission

In determining the rate under subsection (a) of this section, a State shall also determine the possible causes of perinatal transmission. Such causes may include—

(1) the inadequate provision within the State of prenatal counseling and testing in accordance with the guidelines issued by the Centers for Disease Control and Prevention;

(2) the inadequate provision or utilization within the State of appropriate therapy or failure of such therapy to reduce perinatal transmission of HIV, including—

(A) that therapy is not available, accessible or offered to mothers; or

(B) that available therapy is offered but not accepted by mothers; or

(3) other factors (which may include the lack of prenatal care) determined relevant by the State.

(c) CDC reporting system

Not later than 4 months after May 20, 1996, the Director of the Centers for Disease Control and Prevention shall develop and implement a system to be used by States to comply with the requirements of subsections (a) and (b) of this section. The Director shall issue guidelines to ensure that the data collected is statistically valid.

(July 1, 1944, ch. 373, title XXVI, §2626, as added Pub. L. 104-146, §7(b)(3), May 20, 1996, 110 Stat. 1369; amended Pub. L. 104-166, §5(1), July 29, 1996, 110 Stat. 1449; Pub. L. 106-345, title II, §211(1), Oct. 20, 2000, 114 Stat. 1339; Pub. L. 109-415, title VII, §§702(3), 703, Dec. 19, 2006, 120 Stat. 2820; Pub. L. 111-87, §2(a)(1), (3)(A), Oct. 30, 2009, 123 Stat. 2885.)

AMENDMENTS

2009—Pub. L. 111-87 repealed Pub. L. 109-415, §703, and revived the provisions of this section as in effect on Sept. 30, 2009. See 2006 Amendment note and Effective Date of 2009 Amendment; Revival of Section note below.

2006—Pub. L. 109-415, §703, which directed repeal of this section effective Oct. 1, 2009, was itself repealed by Pub. L. 111-87, §2(a)(1), effective Sept. 30, 2009.

Pub. L. 109-415, §702(3), substituted “HIV/AIDS” for “HIV disease” in section catchline.

2000—Subsecs. (d) to (f). Pub. L. 106-345 struck out subsecs. (d) to (f), which related, respectively, to determination by Secretary, contingent applicability, and limitation regarding availability of funds.

1996—Subsec. (d). Pub. L. 104-166, §5(1)(A), substituted “(1) through (4)” for “(1) through (5)”.

Subsec. (f). Pub. L. 104-166, §5(1)(B), substituted “(1) through (4)” for “(1) through (5)” in introductory provisions.

EFFECTIVE DATE OF 2009 AMENDMENT; REVIVAL OF SECTION

For provisions that repeal by section 2(a)(1) of Pub. L. 111-87 of section 703 of Pub. L. 109-415 be effective Sept. 30, 2009, and that the provisions of this section as in effect on Sept. 30, 2009, be revived, see section 2(a)(2), (3)(A) of Pub. L. 111-87, set out as a note under section 300ff-11 of this title.

EFFECTIVE DATE

Section effective May 20, 1996, see section 13(b) of Pub. L. 104-146, set out as an Effective Date of 1996 Amendment note under section 300ff-11 of this title.

§§ 300ff-35, 300ff-36. Repealed. Pub. L. 106-345, title II, § 211(2), Oct. 20, 2000, 114 Stat. 1339

Section 300ff-35, act July 1, 1944, ch. 373, title XXVI, §2627, as added Pub. L. 104-146, §7(b)(3), May 20, 1996, 110

Stat. 1371, related to testing of pregnant women and newborn infants for HIV disease.

Section 300ff-36, act July 1, 1944, ch. 373, title XXVI, §2628, as added Pub. L. 104-146, §7(b)(3), May 20, 1996, 110 Stat. 1372, related to report to Congress by Institute of Medicine.

§ 300ff-37. State HIV testing programs established prior to or after May 20, 1996

Nothing in this subpart shall be construed to disqualify a State from receiving grants under this subchapter if such State has established at any time prior to or after May 20, 1996, a program of mandatory HIV testing.

(July 1, 1944, ch. 373, title XXVI, §2627, formerly §2629, as added Pub. L. 104-146, §7(b)(3), May 20, 1996, 110 Stat. 1372; renumbered §2627, Pub. L. 106-345, title II, §211(3), Oct. 20, 2000, 114 Stat. 1339; amended Pub. L. 109-415, title VII, §703, Dec. 19, 2006, 120 Stat. 2820; Pub. L. 111-87, §2(a)(1), (3)(A), Oct. 30, 2009, 123 Stat. 2885.)

PRIOR PROVISIONS

A prior section 2627 of act July 1, 1944, was classified to section 300ff-35 of this title prior to repeal by Pub. L. 106-345.

AMENDMENTS

2009—Pub. L. 111-87 repealed Pub. L. 109-415, §703, and revived the provisions of this section as in effect on Sept. 30, 2009. See 2006 Amendment note and Effective Date of 2009 Amendment; Revival of Section note below.

2006—Pub. L. 109-415, §703, which directed repeal of this section effective Oct. 1, 2009, was itself repealed by Pub. L. 111-87, §2(a)(1), effective Sept. 30, 2009.

EFFECTIVE DATE OF 2009 AMENDMENT; REVIVAL OF SECTION

For provisions that repeal by section 2(a)(1) of Pub. L. 111-87 of section 703 of Pub. L. 109-415 be effective Sept. 30, 2009, and that the provisions of this section as in effect on Sept. 30, 2009, be revived, see section 2(a)(2), (3)(A) of Pub. L. 111-87, set out as a note under section 300ff-11 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104-146, set out as an Effective Date of 1996 Amendment note under section 300ff-11 of this title.

§ 300ff-37a. Recommendations for reducing incidence of perinatal transmission

(a) Study by Institute of Medicine

(1) In general

The Secretary shall request the Institute of Medicine to enter into an agreement with the Secretary under which such Institute conducts a study to provide the following:

(A) For the most recent fiscal year for which the information is available, a determination of the number of newborn infants with HIV born in the United States with respect to whom the attending obstetrician for the birth did not know the HIV status of the mother.

(B) A determination for each State of any barriers, including legal barriers, that prevent or discourage an obstetrician from making it a routine practice to offer pregnant women an HIV test and a routine practice to test newborn infants for HIV/AIDS in