



Reprinted
February 15, 2012

ENGROSSED SENATE BILL No. 52

DIGEST OF SB 52 (Updated February 14, 2012 2:57 pm - DI 77)

Citations Affected: IC 16-41.

Synopsis: HIV testing. Allows a physician or physician's authorized representative to test an individual for HIV if certain conditions are met unless the individual to be tested refuses to consent to the test. (Current law prohibits a physician from performing the test without the oral or written consent of the individual.) Requires a refusal by an individual to have the test to be documented in the individual's medical record. Requires the physician or authorized representative to: (1) discuss with the patient the availability of counseling concerning the test results; (2) notify the patient of the test results; and (3) inform a patient with a test result indicating that the patient is HIV infected of treatment and referral options available to the patient. Provides that under certain circumstances, a physician may order an HIV test for a patient without informing the patient or despite the individual's refusal of the test. Removes documentation requirements concerning consent and counseling to pregnant women concerning HIV testing. Removes requirement that a pregnant woman who refuses HIV testing must refuse in writing. (The introduced version of this bill was prepared by the health finance commission.)

Effective: July 1, 2012.

Becker, Miller, Breaux, Rogers, Wyss
(HOUSE SPONSORS — BROWN T, BROWN C, CROUCH)

January 4, 2012, read first time and referred to Committee on Health and Provider Services.

January 12, 2012, amended, reported favorably — Do Pass.

January 17, 2012, read second time, ordered engrossed.

January 18, 2012, engrossed.

January 19, 2012, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

January 31, 2012, read first time and referred to Committee on Public Health.

February 9, 2012, amended, reported — Do Pass.

February 14, 2012, read second time, amended, ordered engrossed.

ES 52—LS 6238/DI 104+



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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 52

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-41-6-1, AS AMENDED BY P.L.94-2010,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 1. (a) ~~Except as provided in IC 16-41-8-6,~~
4 ~~IC 16-41-10-2.5, and subsection (b),~~ a person may not perform a
5 screening or confirmatory test for the antibody or antigen to HIV
6 without the oral or written consent of the individual to be tested or a
7 representative as authorized under IC 16-36-1. A physician ordering
8 the test or the physician's authorized representative shall document
9 whether or not the individual has consented. The test for the antibody
10 or antigen to HIV may not be performed on a woman under section 5
11 or 6 of this chapter if the woman refuses under section 7 of this chapter
12 to consent to the test. **As used in this section, "physician's authorized
13 representative" means:**

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

ES 52—LS 6238/DI 104+



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

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

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

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

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

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

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

28 (b) The test for the antibody or antigen to HIV may be performed if
 29 one (1) of the following conditions exists:

- 30 (1) If ordered by a physician, who has obtained a health care
 31 consent under IC 16-36-1 or an implied consent under **can be**
 32 **implied due to** emergency circumstances and the test is medically
 33 necessary to diagnose or treat the patient's condition.
 34 (2) Under a court order based on clear and convincing evidence
 35 of a serious and present health threat to others posed by an
 36 individual. A hearing held under this ~~subsection~~ **subdivision** shall
 37 be held in camera at the request of the individual.
 38 (3) If the test is done on blood collected or tested anonymously as
 39 part of an epidemiologic survey under IC 16-41-2-3 or
 40 IC 16-41-17-10(a)(5).
 41 (4) The test is ordered under section 4 of this chapter.
 42 (5) The test is required or authorized under IC 11-10-3-2.5.



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(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.

~~(e)~~ **(7) A court may order a person 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)(16).**

(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.

SECTION 2. IC 16-41-6-8, AS AMENDED BY P.L.112-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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

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- 1 referral options available to the pregnant woman; and
- 2 (3) shall:
 - 3 (A) provide the pregnant woman with a description of the
 - 4 methods of HIV transmission;
 - 5 (B) discuss risk reduction behavior modifications with the
 - 6 pregnant woman, including methods to reduce the risk of
 - 7 perinatal HIV transmission and HIV transmission through
 - 8 breast milk; and
 - 9 (C) provide the pregnant woman with referral information to
 - 10 other HIV prevention, health care, and psychosocial services.
- 11 (f) The provisions of IC 16-41-2-3 apply to a positive HIV test under
- 12 section 5 or 6 of this chapter.
- 13 (g) The results of a test performed under section 5 or 6 of this
- 14 chapter are confidential.
- 15 (h) As a routine component of prenatal care, every individual
- 16 described in subsection (a) is required to provide information and
- 17 counseling regarding HIV and the standard licensed diagnostic test for
- 18 HIV and to offer and recommend the standard licensed diagnostic test
- 19 for HIV.
- 20 (i) An individual described in subsection (a) shall document:
 - 21 (1) the oral or written consent of the pregnant woman to be tested;
 - 22 and
 - 23 (2) that the pregnant woman was counseled and provided the
 - 24 required information set forth in subsection (b) to ensure that an
 - 25 informed decision has been made.
- 26 (j) A pregnant woman who refuses a test under this section must do
- 27 so in writing.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 52, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "Unless".

Page 1, delete line 5.

Page 1, line 6, delete "IC 16-36-1-2) refuses in writing to have".

Page 1, line 6, strike "a screening or confirmatory".

Page 1, line 7, strike "test for the antibody or antigen to HIV".

Page 1, line 9, delete "performed, a physician may perform the".

Page 1, line 10, delete "screening or test. The".

Page 1, line 10, strike "physician ordering the test or the physician's".

Page 1, strike line 11.

Page 1, line 12, strike "has".

Page 1, line 15, delete "refused." and insert "**As used in this section, "physician's authorized representative" means an individual who is acting:**

(1) under the supervision of a licensed physician; and

(2) 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



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the patient of treatment and referral options available to the patient.

(d) A physician or a physician's authorized representative may order a 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 or the representative of the patient's refusal of the HIV test if any of the following conditions apply:"

Page 1, line 16, strike "(b)".

Page 1, line 16, delete "If one (1) of the following conditions exists, a".

Page 1, line 16, strike "test for the".

Page 1, line 17, strike "antibody or antigen to HIV may be performed".

Page 2, line 1, delete "regardless of the individual's written".

Page 2, delete line 2.

Page 2, line 3, after "physician" insert ",".

Page 2, line 3, strike "who has obtained a health care".

Page 2, line 4, strike "under IC 16-36-1 or".

Page 2, line 4, strike "implied consent".

Page 2, line 4, after "implied consent under" insert "**can be implied due to**".

Page 2, line 4, reset in roman "emergency".

Page 2, line 5, reset in roman "circumstances".

Page 2, after line 20, begin a new line block indented and insert:

"(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 an 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.

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

and when so amended that said bill do pass.

(Reference is to SB 52 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 52, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 13, delete "means an individual who is acting:" and insert "**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"

Page 1, line 14, delete "(1)" and insert "**(2) an individual acting"**.

Page 1, line 14, delete "physician;" and insert "**physician"**.

Page 1, line 15, delete "(2)".

Page 1, run in lines 14 through 15.

Page 2, line 22, delete "a" and insert "**an"**.

Page 2, line 24, delete "patient" and insert "**patient's"**.

Page 2, line 24, delete "representative of the patient's" and insert "**patient's representative's"**.

Page 3, line 11, delete "an" and insert "**the"**.

and when so amended that said bill do pass.

(Reference is to SB 52 as printed January 13, 2012.)

BROWN T, Chair

Committee Vote: yeas 10, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 52 be amended to read as follows:

Page 3, after line 19, begin a new paragraph and insert:

"SECTION 2. IC 16-41-6-8, AS AMENDED BY P.L.112-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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.

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(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."

Renumber all SECTIONS consecutively.

(Reference is to ESB 52 as printed February 10, 2012.)

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