

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 52**

Citations Affected: IC 16-41-6-1.

Synopsis: HIV testing. Proposed conference committee report for SB 52. 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. **(This conference committee report deletes language that would have removed documentation requirements concerning consent and counseling to pregnant women concerning HIV testing and that would have removed a requirement that a pregnant woman who refuses HIV testing do so in writing.)**

Effective: July 1, 2012.

Adopted Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 52 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 16-41-6-1, AS AMENDED BY P.L.94-2010,
3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2012]: Sec. 1. (a) Except as provided in IC 16-41-8-6,
5 IC 16-41-10-2.5, and subsection (b); a person may not perform a
6 screening or confirmatory test for the antibody or antigen to HHV
7 without the oral or written consent of the individual to be tested or a
8 representative as authorized under IC 16-36-1. A physician ordering
9 the test or the physician's authorized representative shall document
10 whether or not the individual has consented. The test for the antibody
11 or antigen to HHV may not be performed on a woman under section 5
12 or 6 of this chapter if the woman refuses under section 7 of this chapter
13 to consent to the test. As used in this section, "physician's authorized
14 representative" means:
15 (1) an advanced practice nurse (as defined by IC 25-23-1-1(b))
16 who is operating in collaboration with a licensed physician; or
17 (2) an individual acting under the supervision of a licensed
18 physician and within the individual's scope of employment.
19 (b) If a physician or the physician's authorized representative
20 determines that it is medically necessary to conduct an HIV test on
21 an individual under the care of a physician, the physician or
22 physician's authorized representative may order the test if the

1 physician or the physician's authorized representative:

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

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

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

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

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

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

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

- 26 (1) If ordered by a physician, who has obtained a health care
 27 consent under ~~IC 16-36-1~~ or an implied consent under **can be**
 28 **implied due to** emergency circumstances and the test is medically
 29 necessary to diagnose or treat the patient's condition.
 30 (2) Under a court order based on clear and convincing evidence
 31 of a serious and present health threat to others posed by an
 32 individual. A hearing held under this ~~subsection~~ **subdivision** shall
 33 be held in camera at the request of the individual.
 34 (3) If the test is done on blood collected or tested anonymously as
 35 part of an epidemiologic survey under IC 16-41-2-3 or
 36 IC 16-41-17-10(a)(5).
 37 (4) The test is ordered under section 4 of this chapter.
 38 (5) The test is required or authorized under IC 11-10-3-2.5.
 39 (6) **The individual upon whom the test will be performed is**
 40 **described in IC 16-41-8-6 or IC 16-41-10-2.5.**

41 (c) (7) A court ~~may order a person has ordered~~ **the individual to**
 42 **undergo testing for HIV under IC 35-38-1-10.5(a) or**
 43 **IC 35-38-2-2.3(a)(16).**

44 (8) **Both of the following are met:**

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

49 (B) **A health care provider acting within the scope of the**
 50 **health care provider's employment comes into contact with**
 51 **the blood or body fluids of the individual in a manner that**

1 **has been epidemiologically demonstrated to transmit HIV.**
2 **(e) The state department shall make HIV testing and treatment**
3 **information from the federal Centers for Disease Control and**
4 **Prevention available to health care providers.**

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

(Reference is to ESB 52 as reprinted February 15, 2012.)

Conference Committee Report
on
Engrossed Senate Bill 52

Signed by:

Senator Becker
Chairperson

Representative Brown T

Senator Breaux

Representative Brown C

Senate Conferees

House Conferees