



January 13, 2012

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## SENATE BILL No. 52

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DIGEST OF SB 52 (Updated January 11, 2012 1:28 pm - DI 104)

**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 refusal of the test. (The introduced version of this bill was prepared by the health finance commission.)

**Effective:** July 1, 2012.

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### Becker, Miller, Breaux, Rogers

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January 4, 2012, read first time and referred to Committee on Health and Provider Services.  
January 12, 2012, amended, reported favorably — Do Pass.

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SB 52—LS 6238/DI 104+



January 13, 2012

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.

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## 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 an individual who is acting:**  
14 (1) **under the supervision of a licensed physician; and**  
15 (2) **within the individual's scope of employment.**  
16 (b) **If a physician or the physician's authorized representative**  
17 **determines that it is medically necessary to conduct an HIV test on**

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1 an individual under the care of a physician, the physician or  
2 physician's authorized representative may order the test if the  
3 physician or the physician's authorized representative:

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

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

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

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

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

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

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

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

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- 1           (e) (7) A court ~~may order a person~~ **has ordered the individual** to
- 2           undergo testing for HIV under IC 35-38-1-10.5(a) or
- 3           IC 35-38-2-2.3(a)(16).
- 4           **(8) Both of the following are met:**
- 5                 **(A) The individual is not capable of providing consent and**
- 6                 **an authorized representative of the individual is not**
- 7                 **immediately available to provide consent or refusal of the**
- 8                 **test.**
- 9                 **(B) A health care provider acting within the scope of the**
- 10                **health care provider's employment comes into contact with**
- 11                **the blood or body fluids of an individual in a manner that**
- 12                **has been epidemiologically demonstrated to transmit HIV.**
- 13            **(e) The state department shall make HIV testing and treatment**
- 14            **information from the federal Centers for Disease Control and**
- 15            **Prevention available to health care providers.**
- 16            **(f) The state department may adopt rules under IC 4-22-2**
- 17            **necessary to implement this section.**

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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.

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