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.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House 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:

Delete everything after the enacting clause and insert the following:

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

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

(1) If ordered by a physician, ~~who has obtained a health care~~ consent ~~under IC 16-36-1 or an implied consent under~~ **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 ~~subsection~~ **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.

~~(c)~~ **(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.

(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**