

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.

## SENATE ENROLLED ACT No. 52

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AN ACT to amend the Indiana Code concerning health.

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

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



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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

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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.**

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

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