

1 AN ACT concerning public health.

2 WHEREAS, The majority of children who are infected with
3 human immunodeficiency virus (HIV) acquire the virus from their
4 mothers during pregnancy; and

5 WHEREAS, More than one million Americans are infected with
6 HIV, and 40,000 new cases of HIV occur each year; and

7 WHEREAS, More than one-quarter of persons with HIV do not
8 know they are infected and contribute to up to 70% of new cases
9 of HIV each year; and

10 WHEREAS, Pregnant women, particularly women of color, are
11 at high risk for acquiring HIV, but often do not know they
12 carry the risk of transmitting the virus to their newborns; and

13 WHEREAS, More than 99% of mother-to-newborn transmissions
14 of HIV can be prevented if a pregnant woman is tested for HIV
15 and treated with medications before the birth of her child; and

16 WHEREAS, National recommendations for preventing
17 mother-to-newborn HIV infection from authorities, including
18 the Institute of Medicine, the Centers for Disease Control and
19 Prevention, the American College of Obstetricians and
20 Gynecologists, the American Academy of Pediatrics, the
21 Presidential Advisory Council on HIV/AIDS, and the National

1 Congress of Black Women, indicate that the most effective way
2 to prevent mother-to-newborn HIV transmission is through
3 routine prenatal testing of all pregnant women with the right
4 to refuse; and

5 WHEREAS, Nearly 300 babies have been born with HIV in
6 Illinois since 1994 since it was demonstrated that prenatal HIV
7 testing and treatment can prevent mother-to-newborn HIV
8 infection; and

9 WHEREAS, The earlier in a pregnancy a woman is identified
10 as having HIV, the greater the opportunity to provide her with
11 more effective care for herself and prevent transmission of HIV
12 to her newborn; and

13 WHEREAS, The public health will be served by expanding the
14 availability of informed, voluntary, and confidential HIV
15 testing and making HIV testing a routine part of general
16 medical care, as recommended by the United States Centers for
17 Disease Control and Prevention; therefore

18 **Be it enacted by the People of the State of Illinois,**
19 **represented in the General Assembly:**

20 Section 5. The Perinatal HIV Prevention Act is amended by
21 changing Sections 10 and 15 as follows:

1 (410 ILCS 335/10)

2 Sec. 10. HIV counseling and offer of HIV testing required.

3 (a) Every health care professional who provides health care
4 services to a pregnant woman shall, unless she has already been
5 tested during the current pregnancy, provide the woman with HIV
6 counseling, as described in subpart (d) of this Section, and
7 shall test her for HIV unless she refuses. A refusal may be
8 verbal or in writing. ~~recommend HIV testing, unless she has~~
9 ~~already received an HIV test during pregnancy. HIV testing~~
10 ~~shall be provided with the woman's consent.~~ A health care
11 professional shall provide the counseling and recommend the
12 testing as early in the woman's pregnancy as possible. For
13 women at continued risk of exposure to HIV infection in the
14 judgment of the health care professional, a repeat test should
15 be recommended late in pregnancy or at the time of labor and
16 delivery. ~~The health care professional shall inform the~~
17 ~~pregnant woman that, should she refuse HIV testing during~~
18 ~~pregnancy, her newborn infant will be tested for HIV.~~ The
19 counseling and testing or refusal of testing ~~recommendation of~~
20 ~~testing~~ shall be documented in the woman's medical record.

21 (b) Every health care professional or facility that cares
22 for a pregnant woman during labor or delivery shall, unless she
23 has already been tested during the current pregnancy, provide
24 the woman with HIV counseling, as described in subpart (d) of
25 this Section, and ~~recommend~~ HIV testing unless she refuses. A

1 refusal may be verbal or in writing. ~~HIV testing shall be~~
2 ~~provided with the woman's consent. No counseling or offer of~~
3 ~~testing is required if already provided during the woman's~~
4 ~~pregnancy.~~ The counseling and testing or refusal of testing ~~and~~
5 ~~offer of testing~~ shall be documented in the woman's medical
6 record. The health care facility shall adopt a policy that
7 provides that as soon as possible within medical standards
8 after the infant's birth, the mother's HIV test result, if
9 available, shall be noted in the newborn infant's medical
10 record. It shall also be noted in the newborn infant's medical
11 record if the mother's HIV test result is not available because
12 she has not been tested or has declined testing. Any testing or
13 test results shall be documented in accordance with the AIDS
14 Confidentiality Act.

15 (c) Every health care professional or facility caring for a
16 newborn infant shall, upon delivery or as soon as possible
17 within medical standards after the infant's birth, provide
18 counseling as described in subsection (d) of this Section to
19 the parent or guardian of the infant and perform rapid HIV
20 testing on the infant, when the HIV status of the infant's
21 mother is unknown.

22 (d) The counseling required under this Section must be
23 provided in accordance with the AIDS Confidentiality Act and
24 must include the following:

25 (1) For the health of the pregnant woman, the voluntary
26 nature of the testing, ~~and~~ the benefits of HIV testing,

1 including the prevention of transmission, and the
2 requirement that HIV testing be performed unless she
3 refuses and the methods by which she can refuse.

4 (2) The benefit of HIV testing for herself and the
5 newborn infant, including interventions to prevent HIV
6 transmission.

7 (3) The side effects of interventions to prevent HIV
8 transmission.

9 (4) The statutory confidentiality provisions that
10 relate to HIV and acquired immune deficiency syndrome
11 ("AIDS") testing.

12 (5) The requirement for mandatory testing of the
13 newborn if the mother's HIV status is unknown at the time
14 of delivery.

15 (6) An explanation of the test, including its purpose,
16 limitations, and the meaning of its results.

17 (7) An explanation of the procedures to be followed.

18 (8) The availability of additional or confirmatory
19 testing, if appropriate. Counseling may be provided in
20 writing, verbally, or by video, electronic, or other means.
21 The woman must be offered an opportunity to ask questions
22 about testing and to decline testing for herself.

23 (e) All counseling and testing must be performed in
24 accordance with the standards set forth in the AIDS
25 Confidentiality Act, including the ~~written~~ informed consent
26 provisions of Sections 4, 7, and 8 of that Act, with the

1 exception of the requirement of consent for testing of newborn
2 infants.

3 Consent for testing of a newborn infant shall be presumed
4 when a health care professional or health care facility seeks
5 to perform a test on a newborn infant whose mother's HIV status
6 is not known, provided that the counseling required under
7 subsection (d) of this Section and the AIDS Confidentiality Act
8 has taken place.

9 (f) The Illinois Department of Public Health shall adopt
10 necessary rules to implement this Act by July 1, 2008.

11 (Source: P.A. 93-566, eff. 8-20-03; 94-910, eff. 6-23-06.)

12 (410 ILCS 335/15)

13 Sec. 15. Reporting.

14 (a) A health care facility shall adopt a policy that
15 provides that a report of a preliminarily HIV-positive woman
16 and a report of a preliminarily HIV-exposed newborn infant
17 identified by a rapid HIV test conducted during labor and
18 delivery or after delivery shall be made to the Department's
19 Perinatal HIV Hotline within 24 hours after birth. Section 15
20 of the AIDS Confidentiality Act applies to reporting under this
21 Act, except that the immunities set forth in that Section do
22 not apply in cases of willful or wanton misconduct.

23 (b) The Department shall adopt rules specifying the
24 information required in reporting the preliminarily
25 HIV-positive woman and preliminarily HIV-exposed newborn

1 infant and the method of reporting. In adopting the rules, the
2 Department shall consider the need for information,
3 protections for the privacy and confidentiality of the infant
4 and parents, the need to provide access to care and follow-up
5 services to the infant, and procedures for destruction of
6 records maintained by the Department if, through subsequent HIV
7 testing, the woman or newborn infant is found to be
8 HIV-negative.

9 (c) The confidentiality provisions of the AIDS
10 Confidentiality Act shall apply to the reports of cases of
11 perinatal HIV made pursuant to this Section.

12 (d) Health care facilities shall monthly report aggregate
13 statistics to the Department that include the number of
14 infected women who presented with known HIV status, the number
15 of pregnant women rapidly tested for HIV in labor and delivery,
16 the number of newborn infants rapidly tested for HIV-exposure,
17 the number of preliminarily HIV-positive pregnant women and
18 preliminarily HIV-exposed newborn infants identified, the
19 number of families referred to case management, and other
20 information the Department determines is necessary to measure
21 progress under the provisions of this Act. Health care
22 facilities must report the confirmatory test result when it
23 becomes available for each preliminarily positive rapid HIV
24 test performed on the woman and newborn.

25 (e) The Department or its authorized representative shall
26 provide case management services to the preliminarily positive

1 pregnant woman or the parent or guardian of the preliminarily
2 positive newborn infant to ensure access to treatment and care
3 and other services as appropriate if the parent or guardian has
4 consented to the services.

5 (f) Every health care facility caring for a newborn infant
6 whose mother had been diagnosed HIV positive prior to labor and
7 delivery shall report a case of perinatal HIV exposure in
8 accordance with the HIV/AIDS Registry Act, the Illinois
9 Sexually Transmissible Disease Control Act, and rules to be
10 developed by the Department. If after 18 months from the date
11 that the report was submitted, a newborn infant is determined
12 to not have HIV or AIDS, the Department shall remove the
13 newborn infant's name from all reports, records, and files
14 collected or created under this subsection (f).

15 (Source: P.A. 94-910, eff. 6-23-06.)