

STATE OF NEW YORK

109

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. L. ROSENTHAL, FORREST, SEAWRIGHT, AUBRY, BICHOTTE HERMELYN, CLARK, ZINERMAN, CARROLL, HEVESI, SIMON, JACKSON, MITAYNES, REYES, GONZALEZ-ROJAS, JEAN-PIERRE, BURGOS, CRUZ, EPSTEIN, OTIS -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting drug or alcohol testing and screening of pregnant or postpartum individuals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 2509-b to read as follows:

§ 2509-b. Drug or alcohol testing and screening for pregnant or postpartum individuals; prohibited. 1. For purposes of this section, "drug" shall mean a controlled substance as that term is defined in section thirty-three hundred six of this chapter.

2. No health care professional licensed, certified, or authorized under title eight of the education law shall:

(a) perform a drug or alcohol test on a person who is pregnant or up to one year postpartum unless:

(i) the pregnant or postpartum individual gives prior written and oral informed consent specific to the drug or alcohol test; and

(ii) the performance of the drug or alcohol test is within the scope of medical care being provided to the individual.

(b) perform a drug or alcohol screen in a hospital on a person who is pregnant or up to one year postpartum unless:

(i) the pregnant or postpartum individual gives prior written and oral informed consent specific to the drug or alcohol screen; and

(ii) the performance of the drug or alcohol screen is within the scope of medical care being provided to the individual;

(c) perform a drug or alcohol screen outside a hospital on a person who is pregnant or up to one year postpartum unless:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (i) the pregnant or postpartum individual gives prior oral informed
2 consent specific to the drug or alcohol screen; and

3 (ii) the performance of the drug or alcohol screen is within the
4 scope of medical care being provided to the individual.

5 3. No health care professional licensed, certified or authorized under
6 title eight of the education law shall:

7 (a) perform a drug or alcohol test on a newborn unless:

8 (i) the individual authorized to consent for the newborn, as defined
9 by subdivision two of section twenty-five hundred four of this title,
10 gives prior written and oral informed consent specific to the drug or
11 alcohol test; and

12 (ii) the performance of the drug or alcohol test is within the scope
13 of medical care being provided to the newborn;

14 (b) perform a drug or alcohol screen in a hospital on a newborn
15 unless:

16 (i) the individual authorized to consent for the newborn, as
17 defined by subdivision two of section twenty-five hundred four of this
18 title, gives prior written and oral informed consent specific to the
19 drug or alcohol screen; and

20 (ii) the performance of the drug or alcohol screen is within the
21 scope of medical care being provided to the newborn;

22 (c) perform a drug or alcohol screen outside a hospital on a
23 newborn unless:

24 (i) the individual authorized to consent for the newborn, as
25 defined by subdivision two of section twenty-five hundred four of this
26 title, gives prior oral informed consent specific to the drug or alco-
27 hol screen; and

28 (ii) the performance of the drug or alcohol screen is within the
29 scope of medical care being provided to the newborn.

30 4. Written and oral informed consent to a drug or alcohol test or drug
31 or alcohol screen shall occur at the time of testing, in language under-
32 standable to the pregnant or postpartum individual, or the individual
33 authorized to consent for the newborn, under circumstances that provide
34 such individual sufficient opportunity to consider whether or not to
35 authorize the drug or alcohol test or drug or alcohol screen and mini-
36 mize the possibility of coercion or undue influence, and shall consist
37 of oral authorization and written authorization that is dated, signed
38 and includes the following:

39 (a) a statement explaining that consenting to a drug or alcohol test
40 or drug or alcohol screen is voluntary and requires written and oral
41 informed consent, except when conditions under subdivision five of this
42 section are met;

43 (b) a statement that testing or screening positive for drugs or alco-
44 hol could have legal consequences, including, but not limited to, a
45 report to child protective services, and that the individual may want to
46 consult with legal counsel prior to or after consenting to a drug or
47 alcohol test or drug or alcohol screen;

48 (c) a statement explaining the extent of confidentiality of the test
49 or screen results;

50 (d) a statement of the medical purpose of the test or screen; and

51 (e) a general description of the test or screen.

52 5. Drug or alcohol testing or drug or alcohol screening may be
53 performed without consent of the patient or the individual authorized to
54 consent for a newborn when, in the health care professional's judgment,
55 an emergency exists and the patient or newborn is in immediate need of
56 medical attention, and an attempt to secure consent would result in

1 delay of treatment that could increase the risk to the patient's or
2 newborn's life or health. In the case that drug or alcohol testing or
3 drug or alcohol screening is performed under these circumstances, the
4 test or screen results shall be discussed with the patient or the indi-
5 vidual authorized to consent for the newborn, in language understandable
6 to the patient or individuals authorized to consent for the newborn and
7 shall consist of oral notification and written notification that is
8 dated, signed and includes the following:

9 (a) a statement that testing or screening positive for drugs or alco-
10 hol could have legal consequences, including but not limited to a poten-
11 tial report to child protective services, and that the patient or indi-
12 vidual authorized to consent for the newborn may want to consult with
13 legal counsel;

14 (b) a statement in the medical record with a description of the emer-
15 gency that necessitated unconsented drug or alcohol testing or drug or
16 alcohol screening; and

17 (c) a statement explaining the extent of confidentiality of the test
18 or screen results.

19 6. No health care professional licensed, certified, or authorized
20 under title eight of the education law shall refuse to treat an individ-
21 ual who is pregnant or up to one year postpartum or a newborn because of
22 the patient or individuals authorized to consent for the newborn's
23 refusal to submit to a drug or alcohol test or drug or alcohol screen.

24 7. Nothing in this section shall diminish any other requirement to
25 obtain informed consent for a drug or alcohol test or drug or alcohol
26 screen or any other procedure.

27 § 2. This act shall take effect immediately.