STATE OF NEW YORK

5478--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 12, 2019

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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 persons; 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 physician, authorized practitioner, nurse practitioner, social worker, hospital and/or any medical personnel shall perform a drug or alcohol test or drug or alcohol screen on a pregnant or perinatal person unless:

(a) such pregnant person or perinatal person gives prior written and verbal informed consent specific to the drug and/or alcohol test or drug and/or alcohol screen; and

(b) the performance of the drug and/or alcohol test or drug and/or alcohol screen is within the scope of medical care being provided to such pregnant person or perinatal person.

3. No physician, authorized practitioner, nurse practitioner, social worker, hospital, and/or any medical personnel shall perform a drug or alcohol test or drug or alcohol screen on a newborn unless:

(a) the person authorized to consent for a newborn, as defined by subdivision two of section twenty-five hundred four of this title, gives

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

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prior written and verbal informed consent specific to the drug and/or alcohol test or drug and/or alcohol screen; and

(b) the performance of the drug and/or alcohol test or drug and/or alcohol screen is within the scope of medical care being provided to the newborn.

4. Written and verbal informed consent to a drug or alcohol test or drug or alcohol screen shall occur at the time of testing, in language understandable to the pregnant person, perinatal person or the persons authorized to consent for newborns, under circumstances that provide such person sufficient opportunity to consider whether or not to undergo such drug or alcohol test or drug or alcohol screen and minimize the possibility of coercion or undue influence, and shall consist of verbal authorization and written authorization that is dated, signed and includes the following:

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

(b) a statement that testing or screening positive for drugs and/or alcohol could have legal consequences, including, but not limited to, a report to child protective services, and that the person may want to consult with legal counsel prior to or after consenting to a drug or alcohol test or drug or alcohol screen;

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

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

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

5. Drug and/or alcohol testing or drug and/or alcohol screening may be performed without consent of the patient or the persons authorized to consent for minors when, in the physician's judgment, an emergency exists and the person is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to such person's life or health. In the case that drug and/or alcohol testing or drug and/or alcohol screening is performed under these circumstances, the test or screen results shall be discussed with the patient or the persons authorized to consent for newborns, in language understandable to the pregnant person, perinatal person or the persons authorized to consent for newborns and shall consist of verbal notification and written notification that is dated, signed and includes the following:

(a) a statement that testing or screening positive for drug and/or alcohol could have legal consequences, including but not limited to a potential report to child protective services, and that the patient may want to consult with legal counsel;

(b) a statement that the patient or the persons authorized to consent for newborns may appeal the determination that unconsented testing or screening was necessary due to emergency;

(c) a statement in the medical record with a description of the emergency that necessitated unconsented drug and/or alcohol testing or drug and/or alcohol screening; and

(d) a statement explaining the extent of confidentiality of the test or screen results.

6. No physician, authorized practitioner, nurse practitioner, hospital, and/or any medical personnel shall refuse to treat a pregnant or perinatal person or a perinatal person's newborn child due to the

person's refusal to submit to a drug and/or alcohol test or drug and/or alcohol screen.

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

§ 2. Section 6530 of the education law is amended by adding a new subdivision 51 to read as follows:

51. Performing a drug or alcohol test or drug or alcohol screen in violation of section twenty-five hundred nine-b of the public health law.

§ 3. This act shall take effect immediately.