

STATE OF NEW YORK

4821

2021-2022 Regular Sessions

IN SENATE

February 12, 2021

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Women's Issues

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:

1 Section 1. The public health law is amended by adding a new section
2 2509-b to read as follows:

3 § 2509-b. Drug or alcohol testing and screening for pregnant persons;
4 prohibited. 1. For purposes of this section, "drug" shall mean a
5 controlled substance as that term is defined in section thirty-three
6 hundred six of this chapter.

7 2. No physician, authorized practitioner, nurse practitioner, social
8 worker, hospital and/or any medical personnel shall perform a drug or
9 alcohol test or drug or alcohol screen on a pregnant or perinatal person
10 unless:

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

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

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

20 (a) the person authorized to consent for a newborn, as defined by
21 subdivision two of section twenty-five hundred four of this title, gives
22 prior written and verbal informed consent specific to the drug and/or
23 alcohol test or drug and/or alcohol screen; and

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

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

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

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

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

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

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

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

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

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

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

46 (c) a statement in the medical record with a description of the emer-
47 gency that necessitated unconsented drug and/or alcohol testing or drug
48 and/or alcohol screening; and

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

51 6. No physician, authorized practitioner, nurse practitioner, hospi-
52 tal, and/or any medical personnel shall refuse to treat a pregnant or
53 perinatal person or a perinatal person's newborn child due to the
54 person's refusal to submit to a drug and/or alcohol test or drug and/or
55 alcohol screen.

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

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

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

9 § 3. This act shall take effect immediately.