STATE OF NEW YORK

109--A

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, GALLAGHER, CUNNINGHAM, SOLAGES, RAGA -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

(a) "drug" shall mean a controlled substance as that term is defined in section thirty-three hundred six of this chapter.

(b) "drug or alcohol test" shall mean a test using a biological sample, including, but not limited to, urine or hair, for the presence of drugs or alcohol.

(c) "drug or alcohol screen" shall mean the use of a validated verbal or written tool or questionnaire by a health care professional licensed, certified, or authorized under title eight of the education law to determine use of drugs or alcohol by a pregnant or postpartum person.

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

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

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(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:

(i) the pregnant or postpartum individual gives prior 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.

3. 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 newborn unless:

(i) the individual authorized to consent for the newborn, as defined by subdivision two of section twenty-five hundred four of this title, 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 newborn;

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

(i) the individual authorized to consent for the newborn, as defined by subdivision two of section twenty-five hundred four of this title, 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 newborn;

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

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

4. Written and oral 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 or postpartum individual, or the individual authorized to consent for the newborn, under circumstances that provide such individual sufficient opportunity to consider whether or not to authorize the drug or alcohol test or drug or alcohol screen and minimize the possibility of coercion or undue influence, and shall consist of oral 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 oral informed consent, except when conditions under subdivision five of this section are met;

(b) a statement that testing or screening positive for drugs or alcohol could have legal consequences, including, but not limited to, a report to child protective services, and that the individual 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 or alcohol testing or drug or alcohol screening may be performed without consent of the patient or the individual authorized to consent for a newborn when, in the health care professional's judgment, an emergency exists and the patient or newborn is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment that could increase the risk to the patient's or newborn's life or health. In the case that drug or alcohol testing or drug or alcohol screening is performed under these circumstances, the test or screen results shall be discussed with the patient or the individual authorized to consent for the newborn, in language understandable to the patient or individuals authorized to consent for the newborn and shall consist of oral notification and written notification that is dated, signed and includes the following:

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

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

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

6. No health care professional licensed, certified, or authorized under title eight of the education law shall refuse to treat an individual who is pregnant or up to one year postpartum or a newborn because of the patient or individuals authorized to consent for the newborn's refusal to submit to a drug or alcohol test or drug 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. This act shall take effect immediately.