

By: Coleman

H.B. No. 3472

A BILL TO BE ENTITLED

AN ACT

relating to diagnostic testing of pregnant women and certain newborns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 81.090, Health and Safety Code, is amended to read as follows:

Sec. 81.090. DIAGNOSTIC ~~[SEROLOGIC]~~ TESTING DURING PREGNANCY AND AFTER BIRTH.

SECTION 2. Section 81.090, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (h), (i), (j), (k), and (l) and adding Subsections (a-1), (c-1), and (c-2) to read as follows:

(a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at the first examination and visit;

(2) submit the sample to an appropriately certified ~~[a]~~ laboratory ~~[approved under this section]~~ for diagnostic testing approved by the United States Food and Drug Administration for:

(A) ~~[a standard serologic test for]~~ syphilis ~~[approved by the board];~~

(B) ~~[a standard serologic test for]~~ HIV infection ~~[approved by the board];~~ and

(C) ~~[a standard serologic test for]~~ hepatitis B infection ~~[approved by the board]~~; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(a-1) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at an examination in the third trimester of the pregnancy;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(b) A successor is presumed to have complied with this section if the successor in good faith obtains a record that indicates compliance with Subsections (a) and (a-1), if applicable.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother on admission for delivery; and

(2) submit the sample to an appropriately certified ~~[a]~~ laboratory ~~[approved under this section]~~ for diagnostic testing approved by the United States Food and Drug Administration for:

(A) ~~[a standard serologic test for]~~ syphilis ~~[approved by the board]~~;

1 (B) ~~[a standard serologic test for]~~ HIV infection  
2 ~~[approved by the board]~~; and

3 (C) ~~[a standard serologic test for]~~ hepatitis B  
4 infection ~~[approved by the board]~~.

5 (c-1) If the physician or other person in attendance at the  
6 delivery does not find in the woman's medical records results from  
7 the diagnostic test for HIV infection performed under Subsection  
8 (a-1), the physician or person shall instruct the laboratory to  
9 expedite the processing of the diagnostic test for HIV infection  
10 under Subsection (c)(2)(B) so that the results are received less  
11 than six hours after the time the sample is submitted.

12 (c-2) If the physician or other person in attendance at the  
13 delivery does not find in the woman's medical records results from a  
14 diagnostic test for HIV infection performed under Subsection (a) or  
15 (a-1) and the diagnostic test for HIV infection was not performed  
16 before delivery under Subsection (c), the physician or other person  
17 in attendance at delivery shall:

18 (1) take or cause to be taken a sample of blood or  
19 other appropriate specimen from the newborn child less than two  
20 hours after the time of birth;

21 (2) submit the sample to an appropriately certified  
22 laboratory for a diagnostic test approved by the United States Food  
23 and Drug Administration for HIV infection; and

24 (3) instruct the laboratory to expedite the processing  
25 of the test so that the results are received less than six hours  
26 after the time the sample is submitted.

27 (h) A ~~[The department is not required to approve a]~~

1 laboratory under this section must be certified as required by  
2 ~~[Subsection (d) or provide a list of approved laboratories under~~  
3 ~~Subsection (e) as long as]~~ the Clinical Laboratory Improvement  
4 Amendments of 1988 (42 U.S.C. Section 263a), and subsequent  
5 amendments~~[, are in effect]~~.

6 (i) Before conducting or causing to be conducted a  
7 diagnostic ~~[standard serologic]~~ test for HIV infection under this  
8 section, the physician or other person shall advise the woman that  
9 the result of a test taken under this section is confidential as  
10 provided by Subchapter F, but that the test is not anonymous. The  
11 physician or other person shall explain the difference between a  
12 confidential and an anonymous test to the woman and that an  
13 anonymous test may be available from another entity. The physician  
14 or other person shall make the information available in another  
15 language, if needed, and if resources permit. The information  
16 shall be provided by the physician or another person, as needed, in  
17 a manner and in terms understandable to a person who may be  
18 illiterate if resources permit.

19 (j) The result of a ~~[standard]~~ test for HIV infection under  
20 Subsection (a)(2)(B), (a-1), ~~[or]~~ (c)(2)(B), or (c-2) is a test  
21 result for purposes of Subchapter F.

22 (k) Before the ~~[blood]~~ sample is taken, the health care  
23 provider shall distribute to the patient printed materials about  
24 AIDS, HIV, hepatitis B, and syphilis. A health care provider shall  
25 verbally notify the patient that an HIV test shall be performed if  
26 the patient does not object. If the patient objects, the patient  
27 shall be referred to an anonymous testing facility or instructed

1 about anonymous testing methods. The health care provider shall  
2 note on the medical records that the distribution of printed  
3 materials was made and that verbal notification was given. The  
4 materials shall be provided to the health care provider by the  
5 department [~~Texas Department of Health~~] and shall be prepared and  
6 designed to inform the patients about:

7 (1) the incidence and mode of transmission of AIDS,  
8 HIV, hepatitis B, and syphilis;

9 (2) how being infected with HIV, AIDS, hepatitis B, or  
10 syphilis could affect the health of their child;

11 (3) the available cure for syphilis;

12 (4) the available treatment to prevent  
13 maternal-infant HIV transmission; and

14 (5) methods to prevent the transmission of the HIV  
15 virus, hepatitis B, and syphilis.

16 (1) A physician or other person may not conduct a diagnostic  
17 [standard] test for HIV infection under Subsection (a)(2)(B),  
18 (a-1), or (c)(2)(B) if the woman objects. A physician or other  
19 person may not conduct a diagnostic test for HIV infection under  
20 Subsection (c-2) if a parent, managing conservator, or guardian  
21 objects.

22 SECTION 3. Sections 81.090(d), (e), and (f), Health and  
23 Safety Code, are repealed.

24 SECTION 4. (a) Sections 81.090(a), (c), (h), (i), and (k),  
25 Health and Safety Code, as amended by this Act, apply only to a test  
26 performed on or after the effective date of this Act. A test  
27 performed before the effective date of this Act is covered by the

1 law in effect immediately before the effective date of this Act, and  
2 the former law is continued in effect for that purpose.

3 (b) Sections 81.090(a-1), (c-1), and (c-2), Health and  
4 Safety Code, as added by this Act, and Sections 81.090(b), (j), and  
5 (l), Health and Safety Code, as amended by this Act, apply only to a  
6 physician or other person attending a pregnant woman during  
7 gestation or at delivery of an infant on or after January 1, 2010.

8 SECTION 5. This Act takes effect September 1, 2009.