



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 40
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. West and Galonski

Elizabeth Molnar, Attorney

Summary

- Requires a physician, physician assistant, or advanced practice registered nurse who provides prenatal care to a pregnant woman to test her for HIV, syphilis, and gonorrhea at certain times during the woman's pregnancy.
- Specifies that a pregnant woman may refuse testing.

Detailed Analysis

HIV Testing

The bill requires a licensed health care professional who provides prenatal care to a pregnant woman to test her for the human immunodeficiency virus (HIV) at specified times during her pregnancy, unless she refuses. Current statutory law permits, but does not require, HIV testing, if any individual, not just a pregnant woman, consents to medical or other health care treatment.¹

The licensed health care professionals subject to the bill's HIV testing requirements are as follows: (1) physicians, (2) physician assistants, and (3) advanced practice registered nurses who are designated as clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners.²

Testing during pregnancy

A licensed health care professional who provides prenatal care during a woman's pregnancy must do both of the following, unless the woman refuses:

¹ R.C. 3701.242, not in the bill.

² R.C. 3701.2410(A).

1. When first examining the woman, cause an HIV test to be conducted;³
2. When first examining the woman during the third trimester, test the woman for HIV under the following circumstances – when a test was not conducted earlier in the pregnancy or the health care professional determines that activities posing a risk of HIV infection have occurred since the most recent HIV test.⁴

To decide if a third trimester test is needed, the bill requires a licensed health care professional to conduct an assessment to determine whether any activities posing a risk of HIV infection have occurred. In conducting the assessment, the health care professional must consider information available from the U.S. Centers for Control and Prevention (CDC) concerning risk factors for transmission.⁵

Testing at delivery

A licensed health care professional who provides care to a pregnant woman at delivery must determine whether an HIV test was conducted during the third trimester. If the woman's medical records indicate that a test was not performed, the health care professional must test the woman, except if she refuses.

However, if a third trimester test was performed, the health care professional must instead determine whether activities posing a risk of infection have occurred since the most recent test. To do so, the health care professional must consider CDC risk factors for transmission and ask the woman about such activities. If the health care professional determines such activities have occurred, the professional must test the woman unless she refuses.⁶

Informing the woman

Under the bill, before an HIV test is conducted, the licensed health care professional must inform the pregnant woman that the test will be conducted and of her right to refuse.⁷ This differs from existing statutory law, which permits an HIV test to be conducted when any individual has consented to medical or other health care treatment generally, but aligns with current administrative rules requiring consent for the HIV test itself (unless an exception applies); both the Revised Code and Administrative Code require that an individual be informed of the right to an anonymous HIV test.⁸

³ R.C. 3701.2410(B)(1).

⁴ R.C. 3701.2410(B)(2).

⁵ *Id.*

⁶ R.C. 3701.2410(C).

⁷ R.C. 3701.2410(D)(1).

⁸ R.C. 3701.242(A), not in the bill, and Ohio Administrative Code (O.A.C.) 3701-3-11.

Multiple providers

If a woman's medical records indicate another licensed health care professional has complied with any given testing requirement for the pregnancy, the treating provider is not required to also comply with that requirement.⁹

Positive test results

The bill requires a licensed health care professional to provide post-test counseling in the event of a positive test result. The counseling must be done in accordance with existing law governing counseling for positive HIV test results, which requires counseling to include information about the HIV test result; the next step to confirm the test result; the nature of HIV; resources for medical treatment, social services, and further counseling; the importance of following safer sex practices; and Ohio's HIV disclosure laws.¹⁰

Documentation

With respect to a pregnant woman's medical records, the bill requires a licensed health care professional who causes an HIV test or assessment to be performed during the pregnancy to do both of the following:

1. Document any test or assessment conducted by the licensed health care professional;
2. Document any refusal of an HIV test offered.¹¹

Rulemaking

The Director of Health may adopt rules as the Director considers appropriate to implement the bill. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).¹²

Testing for syphilis and gonorrhea during pregnancy

The bill adds to existing law a third trimester testing requirement for syphilis and gonorrhea. Current law already requires a physician to test a pregnant woman for syphilis and gonorrhea within ten days of the first examination. The tests are required unless it is the opinion of the physician that the woman's condition does not permit taking specimens for such tests. If tests are not conducted, specimens must be taken as soon after delivery as the physician deems advisable. Existing law also permits the local health commissioner to waive the test requirement if the tests are contrary to the woman's religious beliefs.¹³

⁹ R.C. 3701.2410(D)(2).

¹⁰ R.C. 3701.2410(E) (referring to R.C. 3701.242, not in the bill) and O.A.C. 3701-3-11.

¹¹ R.C. 3701.2410(F).

¹² R.C. 3701.2410(G).

¹³ R.C. 3701.50(B).

Under the bill, a licensed health care professional¹⁴ must conduct an assessment when first examining the pregnant woman during the third trimester in order to determine whether any activities posing a risk of infection have occurred since the most recent test, if any. In conducting the assessment, the health care professional must consider CDC information concerning risk factors for syphilis or gonorrhea transmission.

Unless the woman refuses, or the health care professional determines the woman's condition does not permit the test to be conducted, a test for syphilis and gonorrhea must be performed if a test was not conducted previously during the pregnancy or if it is determined that activities posing a risk of infection occurred more recently than the latest test. If an assessment is not conducted because the health care professional determines the woman's condition does not permit the test, the test must be performed after delivery in accordance with existing law.¹⁵

Similar to the HIV testing provisions described above, the bill contains the following provisions applicable to third trimester syphilis and gonorrhea tests:

1. The woman must be informed of the test and her right to refuse;¹⁶
2. In the case of multiple providers, a woman does not need to be retested if another provider has already complied with the bill's requirements;¹⁷
3. Tests, assessments, and refusals must be documented in the woman's medical record.¹⁸

History

Action	Date
Introduced	02-12-19

H0040-I-133/ts

¹⁴ “Licensed health care professional” includes a physician, physician assistant, and an advanced practice registered nurse who is designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner. R.C. 3701.50(A).

¹⁵ R.C. 3701.50(C)(1).

¹⁶ R.C. 3701.50(C)(2).

¹⁷ R.C. 3701.50(C)(3).

¹⁸ R.C. 3701.50(C)(4).