

## LEGISLATIVE BILL 285

Approved by the Governor February 28, 2018

Introduced by Linehan, 39; Pansing Brooks, 28.

A BILL FOR AN ACT relating to public health and welfare; to amend section 71-502.03, Reissue Revised Statutes of Nebraska, and section 71-531, Revised Statutes Cumulative Supplement, 2016; to provide a duty to test pregnant women, eliminate written informed consent and exemption provisions, and change posttest counseling and treatment provisions relating to testing for human immunodeficiency virus infection; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-502.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-502.03 (1) Every physician, or other person authorized by law to practice obstetrics, who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation or at delivery shall take or cause to be taken a sample of the blood of such woman at the time of the first examination and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause such a sample of the blood of such pregnant women to be taken by a physician, duly licensed to practice either medicine and surgery or obstetrics, or other person authorized by law to take such sample of blood and have such sample submitted to an approved laboratory for a standard serological test for syphilis. The results of all such laboratory tests shall be reported to the Department of Health and Human Services on standard forms prescribed and furnished by the department. For the purpose of this section, a standard serological test shall be a test for syphilis approved by the department and shall be made at a laboratory approved to make such tests by the department. Such laboratory tests, as are required by this section, shall be made on request at the Department of Health and Human Services Laboratory. A fee may be established by rule and regulation by the department to defray no more than the actual cost of such tests. Such fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the portion of the certificate entitled For Medical and Health Use Only whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. No birth certificate shall show the result of such test. If no test was made, the reason shall be stated. The department shall provide the necessary clerical, printing, and other expenses in carrying out this section.

(2) Every physician or other person authorized by law to practice obstetrics who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation shall administer or cause to be administered a test of the pregnant woman's blood for the presence of the human immunodeficiency virus infection unless the pregnant woman has given written informed consent that she does not want to be tested.

Sec. 2. Section 71-531, Revised Statutes Cumulative Supplement, 2016, is amended to read:

~~71-531 (1)(a) No person may be tested for the presence of the human immunodeficiency virus infection unless he or she has given written informed consent for the performance of such test. The written informed consent shall provide an explanation of human immunodeficiency virus infection and the meaning of both positive and negative test results.~~

~~(b) If a person signs a general consent form for the performance of medical tests or procedures which informs the person that a test for the presence of the human immunodeficiency virus infection may be performed and that the person may refuse to have such test performed, the signing of an additional consent for the specific purpose of consenting to a test related to human immunodeficiency virus is not required during the time in which the general consent form is in effect.~~

~~(2) If a person is unable to provide consent, the person's legal representative may provide consent. If the person's legal representative cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate medical care.~~

~~(1) (3) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. If an anonymous test is requested, a health care provider shall confidentially refer such person to a site which provides anonymous testing.~~

~~(4) This section shall not apply to:~~

~~(a) The performance by a health care provider or a health facility of a human immunodeficiency virus test when the health care provider or health~~

~~facility procures, processes, distributes, or uses a human body part for a purpose specified under the Revised Uniform Anatomical Gift Act and such test is necessary to assure medical acceptability of such gift for the purposes intended;~~

~~(2) When (b) The performance by a health care provider or a health facility performs of a human immunodeficiency virus test when such test is performed with the consent and written authorization of the person being tested and such test is for insurance underwriting purposes, written information about the human immunodeficiency virus is provided, including, but not limited to, the identification and reduction of risks, the person is informed of the result of such test, and when the result is positive, the person being tested shall be referred for posttest treatment, counseling;~~

~~(3) When (c) The performance of a human immunodeficiency virus test is performed by licensed medical personnel of the Department of Correctional Services on an individual when the subject of the test is committed to such department, the . Posttest counseling shall be required for the subject if the test is positive. A person committed to the department Department of Correctional Services shall be informed by the department (a) (i) if he or she is being tested for the human immunodeficiency virus, (b) (ii) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (c) (iii) of the test result and the meaning of such result. Posttest counseling shall be required for the subject of the test if such test is positive. ;~~

~~(d) Human immunodeficiency virus home collection kits licensed by the federal Food and Drug Administration; or~~

~~(e) The performance of a human immunodeficiency virus test performed pursuant to section 29-2290 or sections 71-507 to 71-513 or 71-514.01 to 71-514.05.~~

Sec. 3. Original section 71-502.03, Reissue Revised Statutes of Nebraska, and section 71-531, Revised Statutes Cumulative Supplement, 2016, are repealed.