



Illinois Hospital Association

April 23, 2008

MEMORANDUM

TO: Chief Executive Officers, Member Institutions
PLEASE ROUTE TO Directors of Maternal and Child Health

FROM: Barb Haller, Director, Health Policy and Regulation

SUBJECT: **PERINATAL HIV PREVENTION ACT AMENDMENTS**

Synopsis: Public Act 95-0702 amends the Perinatal HIV Prevention Act (Act), effective June 1, 2008, to require that a pregnant woman be tested for HIV unless she refuses, or has already been tested during the current pregnancy.

Other changes more closely align the Act with new provisions of the amended AIDS Confidentiality Act, also effective June 1. This memo describes the changed requirements for health care facilities and professionals providing prenatal medical care or labor or delivery services to pregnant women and their newborn infants.

I. OPT-OUT TESTING REQUIRED. “Opt-out HIV testing” occurs when the subject is informed that he or she will be tested for HIV unless he or she refuses. Note that while the amended AIDS Confidentiality Act *allows* a health care facility or provider to institute “opt-out” testing for patients in general, the Perinatal HIV Prevention Act amendment will *require* opt-out testing for this subset of patients: pregnant women receiving prenatal care, or care during labor and delivery. Effective June 1, providers of prenatal care or care during labor and delivery *must* provide the woman with HIV counseling and testing, unless she has already been tested during the current pregnancy, or she refuses. Other new requirements under Public Act 95-0702, effective June 1, 2008 are as follows:

II. REFUSAL

A. The woman’s refusal to be tested for HIV may be verbal or in writing.

- B. Counseling and testing or refusal of testing must be documented in the woman's medical record.

III. COUNSELING must be provided in accordance with the AIDS Confidentiality Act and must include the following:

A. Pre-test Information

- (1) For the health of the pregnant woman, the voluntary nature of testing; benefits of HIV testing, including the prevention of transmission; requirement that HIV testing be performed unless the woman refuses and the methods by which she can refuse
- (2) Benefits for the woman and the newborn, including interventions to prevent HIV transmission
- (3) Side effects of interventions to prevent HIV transmissions
- (4) Statutory confidentiality provisions that relate to HIV and AIDS testing
- (5) Requirement for mandatory testing of the newborn if mother's HIV status is unknown at the time of delivery
- (6) An explanation of the test, including its purpose, limitations, and the meaning of its results
- (7) An explanation of the procedures to be followed.
- (8) The availability of additional or confirmatory testing, if appropriate

B. Formats For Providing Counseling (Pre-test Information). Counseling may be provided in writing, verbally, or by video, electronic, or other means. The woman must be offered an opportunity to ask questions about testing and to decline testing for herself.

C. Testing the Newborn. Consent is presumed for HIV testing of a newborn whose mother's HIV status is unknown, provided that the appropriate counseling has been provided to the mother. Required counseling under this section includes the items in Section III above, as well as the counseling required under the AIDS Confidentiality Act.¹

IV. REPORTING

In an effort to capture the data on women who present with known HIV/AIDS cases, the following requirement has been added to the Act:

(1) ¹ The AIDS Confidentiality Act also requires information regarding the voluntary nature of the test; the right to withdraw consent at any time; the right to anonymity to the extent provided by law with respect to participation in the test and disclosure of test results, and the right to confidential treatment of information identifying the subject of the test and the test results, to the extent provided by law and the availability of referrals for further information or counseling.

“Every health care facility caring for a newborn infant whose mother had been diagnosed HIV positive *prior* to labor and delivery shall report a case of perinatal HIV exposure in accordance with the HIV/AIDS Registry Act, the Illinois Sexually Transmissible Disease Control Act, and rules to be developed by the Department of Public Health.” Currently cases of Pediatric HIV/AIDS are reported on the Illinois Department of Public Health Pediatric HIV/AIDS Confidential Case Report form.

If, after 18 months from the date the report was submitted, a newborn infant is determined to not have HIV or AIDS, the Department is required to remove the infant’s name from all reports, records and files collected or created under this new reporting requirement.

V. RULES

The Department of Public Health will publish updated rules related to these new requirements. IHA will inform you when such rules are adopted. In the meantime, hospitals must comply with the new requirements as set forth in P.A.95-0702.

VI. LINK TO TEXT OF PUBLIC ACT 95-0702

To view the entire text of Public Act 95-0702, please go to <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0702&GA=095>.

Click on “Public Acts.”

I hope this information is helpful. If you have any questions, please contact Barb Haller at bhaller@ihastaff.org or 630.276.5474.