

Enrolled House Bill 2706

Sponsored by Representatives GREENLICK, WIRTH; Representative BERGER, Senators BATES, MONNES ANDERSON, WINTERS (at the request of Michelle R. Adler, M.D., Abbas A. Hyderi, M.D.)

CHAPTER

AN ACT

Relating to testing of blood of pregnant women; creating new provisions; and amending ORS 433.017 and 433.045.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 433.045 is amended to read:

433.045. (1) Except as provided in ORS **433.017**, 433.055 (3) and 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining informed consent as described in subsection (2) or (7) of this section.

(2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider or facility shall comply with the requirement of subsection (1) of this section through a procedure substantially similar to that specified in ORS 677.097. Any other person shall comply with this requirement through use of such forms, procedures and educational materials as the Department of Human Services shall specify.

(3) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any Department of Human Services rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

(4) Any person who complies with the requirements of this section shall not be subject to an action for civil damages.

(5) An HIV test shall be considered diagnosis of venereal disease for purposes of ORS 109.610.

(6) As used in this section:

(a) "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(b) "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance producer, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them. For purposes of subsection (3) of this section, "person" does not include an individual acting in a private capacity and not in an employment, occupational or professional capacity.

(7) Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the use of such a test must be revealed to the applicant and the written consent thereof obtained. The consent form shall disclose the purpose of the test and the persons to whom the results may be disclosed.

SECTION 2. ORS 433.017 is amended to read:

433.017. (1) Every licensed physician attending a pregnant woman in this state for conditions relating to her pregnancy during the period of gestation or at the time of delivery shall, as required by rule of the Department of Human Services, take or cause to be taken a sample of blood of every woman so attended at the time of the first professional visit or within 10 days thereafter. The blood specimen thus obtained shall be submitted to a licensed laboratory for such tests related to any infectious condition which may affect a pregnant woman or fetus, as the department shall by rule require, **including but not limited to an HIV test as defined in ORS 433.045.**

(2) Every other person permitted by law to attend a pregnant woman in this state, but not permitted by law to take blood samples, shall, as required by rule of the department, cause a sample of blood of such pregnant woman to be taken by a licensed physician, and have such sample submitted to a licensed laboratory for the tests described under subsection (1) of this section.

(3) In all cases under subsections (1) and (2) of this section the physician shall request consent of the patient to take a blood sample. No sample shall be taken without such consent.

SECTION 3. The amendments to ORS 433.017 and 433.045 by sections 1 and 2 of this 2005 Act apply to samples of blood of pregnant women taken or caused to be taken on or after the effective date of this 2005 Act.

Passed by House May 16, 2005

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate July 1, 2005

.....
President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

.....
Secretary of State