Article 25, Title 1 of the Public Health Law is amended by adding a new section to read as follows:

Drug testing of pregnant person, perinatal person and/or their newborn prohibited.

1. Notwithstanding any other provision of law, no physician, authorized practitioner, nurse practitioner, social worker, hospital, or any other medical personnel shall perform a drug test or drug screen on a pregnant person or perinatal person without the prior written and verbal informed consent of the patient.

   a. Drug means controlled substances as that term is defined in Public Health Law section 3306.

2. Notwithstanding any other provision of law, no physician, authorized practitioner, nurse practitioner, social worker, hospital, or any other medical personnel shall perform a drug test on a newborn without the prior written and verbal informed consent of the persons authorized to consent for minors by Public Health Law section 2504(2).

   a. Drug means controlled substances as that term is defined in Public Health Law section 3306.

3. Written and verbal informed consent to a drug test shall occur at the time of testing, in language understandable to the pregnant person, perinatal person or the persons authorized to consent for minors, under circumstances that provide the pregnant person, perinatal person, or persons authorized to consent for minors sufficient opportunity to consider whether or not to undergo the drug test and minimize the possibility of coercion or undue influence, and shall consist of verbal authorization and written authorization that is dated, signed and includes the following:

   a. a statement explaining that consenting to a drug test is voluntary and requires written and verbal informed consent, except when conditions under subsection 4 are met;
   b. a statement that testing positive for controlled substances could have legal consequences, including but not limited to a report to child protective services, and that the patient may want to consult with legal counsel prior to or after consenting to the drug test;
   d. a statement explaining the extent of confidentiality of the test results;
   e. a general description of the test.

4. No physician, authorized practitioner, nurse practitioner, hospital, or any other medical personnel shall refuse to treat a pregnant or perinatal person or a perinatal person’s newborn child due to the person’s refusal to submit to a drug test or drug screen.
5. Drug testing may be performed without consent of the patient or the persons authorized to consent for minors when, in the physician's judgement, an emergency exists, and the person is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to the person’s life or health. In the case that drug testing is performed under these circumstances, the test results must be discussed with the patient or the persons authorized to consent for minors in language understandable to the pregnant person, perinatal person or the persons authorized to consent for minors and shall consist of verbal notification and written notification that is dated, signed and includes the following:

a. a statement that testing positive for controlled substances could have legal consequences, including but not limited to a potential report to child protective services, and that the patient may want to consult with legal counsel prior to or after consenting to the drug test;
b. A statement that the patient or the persons authorized to consent for minors may appeal the determination that unconsented testing was necessary due to emergency;
c. a statement in the medical record with a description of the emergency that necessitated unconsented drug testing and;
d. a statement explaining the extent of confidentiality of the test results.

This act shall take effect immediately.