



STATE OF NEW YORK

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

Drug means controlled substance as that term is defined in Public Health Law Section 3306

1. No physician, authorized practitioner, nurse practitioner, social worker, hospital and/or any medical medical personnel shall perform a drug and/or alcohol test or drug and/or alcohol screen on a pregnant or perinatal person unless:

a. the pregnant person or perinatal person gives prior written and verbal informed consent specific to the drug and/or alcohol test or drug and/or alcohol screen; and

b. the performance of the drug and/or alcohol test or drug and/or alcohol screen is within the scope of medical care being provided to the pregnant person or perinatal person.

2. No physician, authorized practitioner, nurse practitioner, social worker, hospital, and/or any medical personnel shall perform a drug and/or alcohol test or drug and/or alcohol screen on a newborn unless:

a. the person authorized to consent for newborns, as defined by Public Health Law section 2504(2), gives prior written and verbal informed consent specific to the drug and/or alcohol test or drug and/or alcohol screen; and

b. the performance of the drug and/or alcohol test or drug and/or alcohol screen is within the scope of medical care being provided to the newborn.

3. Written and verbal informed consent to a drug and/or alcohol test or drug and/or alcohol screen shall occur at the time of testing, in language understandable to the pregnant person, perinatal person or the persons authorized to consent for newborns, under circumstances that provide such person sufficient opportunity to consider whether or not to undergo the drug and/or alcohol test or drug and/or alcohol screen 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 and/or alcohol test or drug and/or alcohol screen is voluntary and requires written and verbal informed consent, except when conditions under subdivision 4 of this section are met;

b. a statement that testing positive for drugs and/or alcohol could have legal consequences, including, but not limited to, a report to child protective services, and that the person may want to consult with legal counsel prior to or after consenting to the drug and/or alcohol test or drug and/or alcohol screen;

c. a statement explaining the extent of confidentiality of the test results;

d. a statement of the medical purpose of the test; and

e. a general description of the test.

4. No physician, authorized practitioner, nurse practitioner, hospital, and/or any 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 and/or alcohol test drug and/or alcohol screen.



5. Drug and/or alcohol testing or drug and/or alcohol screening may be performed without consent of the patient or the persons authorized to consent for newborns 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 and/or alcohol testing or drug and/or alcohol screening is performed under these circumstances, the test results must be discussed with the patient or the persons authorized to consent for newborns, in language understandable to the pregnant person, perinatal person or the persons authorized to consent for newborns and shall consist of verbal notification and written notification that is dated, signed and includes the following:

a. a statement that testing or screening positive for drug and/or alcohol 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;

b. a statement that the patient or the persons authorized to consent for newborns 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 and/or alcohol testing or drug and/or alcohol screening and;

d. a statement explaining the extent of confidentiality of the test results.

6. Nothing in this subdivision diminishes any other requirement to obtain informed consent for a drug and/or alcohol test or drug and/or alcohol screen or any other procedure.

This act shall take effect immediately.

Section sixty-five hundred thirty of the education law is amended by adding a new subsection to read as follows:

(51) Performing a drug and/or alcohol test or drug and/or alcohol screen in violation of section twenty-five hundred [exact section number] of the public health law.