

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

NYSAAP, District II, Chapters 1, 2 & 3



Memo of Support

Informed Consent Act A.109 / S.320

The NYS American Academy of Pediatrics, representing more than 5,000 pediatricians across the state, strongly supports The Informed Consent Act. This legislation moves prenatal and postpartum healthcare toward family support and away from unhelpful surveillance. It requires healthcare providers to obtain written and verbal specific informed consent before drug testing pregnant people, new parents and their newborns.

Non-consensual drug testing of pregnant people, new parents and their newborns undermines maternal-fetal health and unnecessarily exposes new families to the risk of traumatic family separation. A drug test is not a parenting test. A positive drug test says nothing about a parent's capacity to parent their child or a parent's love for their child. To create a world where the dignity and integrity of all families is valued and supported, we must put an end to punitive and criminalizing responses to drug use.

Every day, low-income Black and Latine pregnant and parenting people and their newborns are tested for drugs in medical settings without consent, reported to the family regulation system, and subjected to family separation. The numbers of such invasive and non-medically based intrusions are clearly indicative of racial disparities in the health care setting. We urge the New York State Legislature to pass the Informed Consent Act, A.109 / S.320, to guarantee that pregnant and parenting people have, at a minimum, the ability to make an informed decision about their family's health at a critical moment. Receiving information about what is being done to your body or your child's body, the medical reason for the procedure and the consequences—medical or otherwise—that may result are critical pieces of information that make for well-informed patients and good health care.

Although New York Public Health Law and Civil Rights Laws set forth general informed consent requirements in the healthcare setting, pregnant people, new parents and their newborns are nevertheless drug tested without notice, much less specific informed consent. There is often no explanation given as to the medical necessity of the test, and in many circumstances, there is no treatment provided in response to a positive drug

test. Even though positive drug tests often do not lead to any medical intervention, hospitals routinely report positive drug tests to family regulation system agencies. **This happens even though New York law makes clear that a positive toxicology test alone does not in and of itself suggest that an infant is harmed or is at risk of harm.**

The Informed Consent Act will require medical providers to obtain oral and written consent from pregnant and perinatal people before drug testing them or their newborns. The act of getting consent will potentially remind physicians that drug testing is not parent testing, and that referral to Child Protective Services is often not in the best interest of children.

The bill is carefully crafted to ensure that in case of a medical emergency, providers may test or verbally screen individuals without their specific and informed consent. Obtaining specific and informed consent prior to administering a drug test is recommended by several leading medical associations, including the American College of Obstetricians and Gynecologists (ACOG), and the American Academy of Pediatrics. ACOG has developed ethical standards around seeking informed consent and opposes non-consensual drug testing as a response to parental drug use.

We urge the legislature to pass the Informed Consent Act this session. The sooner we have patients and physicians aligned as to the optimum health options for pregnant and parenting patients the better.

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