



March 30, 2023

The Honorable Jim Wood, DDS  
Chair, Assembly Health Committee  
1020 N St., Room 390  
Sacramento, CA 95814

**SUBJECT: AB 1094 (Wicks) — OPPOSE UNLESS AMENDED**

Dear Assembly Member Wood:

California hospitals are dedicated to providing their patients with the right care at the right time, with their safety as the highest priority. This includes ascertaining what substances may or may not be in a patient's body when they arrive at a hospital. Hospitals are also committed to protecting the rights of patients who may have a substance use disorder.

That's why a careful balancing of these principles — especially for pregnant patients and their newborns — is needed. Existing law strikes the right balance — allowing testing so that physicians know what substances are or aren't in a patient's system while prohibiting the use of those test results to report potential child abuse. **This is why the California Hospital Association and its more than 400 member hospitals and health systems must oppose AB 1094, unless it is amended.**

Existing California law recognizes that pregnant patients who misuse drugs or alcohol need treatment, not referral to the criminal justice system. The law states that a positive toxicology screen at the time of an infant's delivery is not a sufficient basis for reporting child abuse or neglect. Instead, any indication of maternal substance misuse triggers a required assessment of the needs of the mother and child (*see* Health and Safety Code Section 123605 and Penal Code Section 11165.13).

Physicians must know what drugs a patient is taking (or not taking) to properly diagnose and treat the patient. While physicians are already required to obtain a patient's consent to medical tests, AB 1094 would require a physician to obtain a pregnant patient's *informed* consent prior to asking the patient to provide a urine sample for a drug test. In addition, the bill would require the parent's informed consent prior to testing a newborn for drugs. This means that a physician would have to give the patient specified information prior to obtaining consent. This may not be possible given the fact that a patient must be of sound mind to provide informed consent. **An intoxicated patient cannot legally provide informed consent. This means that AB 1094 would prohibit a physician from testing a patient or the patient's newborn for drug toxicity any time a patient is exhibiting signs of possible intoxication.**

While there is an exception in the bill for certain emergency situations in which a physician believes three criteria have been met, the exception is far too narrow. It should go without saying that it is vitally important for physicians to have the best possible information about a patient to make an accurate diagnosis and deliver treatment based on that diagnosis — and not be compelled to consider a three-part legal test or consult a lawyer before obtaining this information.

Even when a pregnant patient consents to testing, the bill would lead to a delay in providing necessary care while the physician and patient follow the detailed and duplicative process outlined in the bill. In addition, AB 1094 gives patients the right to appeal a physician's determination that testing without informed consent was necessary due to an emergency. It's unfair to physicians to subject them to potential liability by requiring them to guess whether a delay in treatment might increase the risk to the patient's or newborn's health. Although the bill is unclear about whom the patient would appeal to, and what the remedy would be if a patient was able to prove that a doctor's determination was incorrect, the bill seems to allow a judge, jury, or other quasi-judicial entity to later second-guess a doctor's determination that drug testing was immediately necessary.

**For these reasons, the California Hospital Association opposes AB 1094, unless it is amended.** CHA would be pleased to work with the author and sponsors to strengthen legal protections and/or education for pregnant patients who are concerned they may be referred to law enforcement due to a positive toxicology test, while allowing medical professionals to treat patients in the best way possible.

If you have any questions, please contact me at [vgonzalez@calhospital.org](mailto:vgonzalez@calhospital.org).

Sincerely,



Vanessa Gonzalez  
Vice President, State Advocacy

cc: The Honorable Buffy Wicks  
The Honorable Members of the Assembly Health Committee  
Rosielyn Pulmano, Chief Consultant, Assembly Health Committee  
Gino Folchi, Consultant, Assembly Republican Caucus