

Nirav R. Shah, M.D., M.P.H.
Commissioner



Sue Kelly
Executive Deputy Commissioner

October, 2012

Dear Colleague,

The purpose of this letter is to inform you that form DOH-4054, "Informed Consent to Perform HIV Testing and Authorization for Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood or Body Fluids," is discontinued.

Amendments to Public Health Law Article 27-F made by the Laws of 2010, Chapter 308, are intended to streamline the process of HIV testing. Changes in the law for HIV testing, effective September 1, 2010, allow for oral consent for rapid testing and the ability to share source patient information with the medical provider of an exposed person without consent.

When an exposure occurs, occupational or non-occupational, the source patient should be approached and the situation explained including the benefits of knowing HIV status for the treatment of the healthcare worker. Consent for testing should be obtained.

New York State (NYS) guidelines for Post Exposure Prophylaxis Following an Occupational Exposure state: Rapid HIV testing is strongly recommended for the source patient. For organizations subject to OSHA regulations, rapid testing is mandated for the source patient for occupational exposures (AIII) (www.hivguidelines.org).

Rapid HIV test consent may be obtained orally and must be noted by the ordering clinician in the patient's medical chart.

A facility can include language around occupational exposure testing and disclosure in its general consent form. If a patient consents and later becomes the source of an occupational exposure, it would be the responsibility of the facility to inform the patient or his surrogate before the testing was conducted or as soon after as practical that the testing took place and to note the test and the result in the patient's medical record.

Situations may occur in an instance of occupational exposure where a source patient is unable to provide consent for HIV testing. The Family Health Care Decisions Act stipulates who is able to consent for care in circumstances like this. In cases of occupational exposures which create a significant risk of contracting or transmitting HIV infection, an anonymous test may be ordered without any consent at all if all of the following conditions are met:

- the source person is deceased, comatose or is determined by his or her attending professional to lack mental capacity to consent, and
- the source person is not expected to recover in time for the exposed person to receive appropriate medical treatment, and

- there is no person immediately available who has legal authority to consent in time for the exposed person to receive appropriate medical treatment, and
- the exposed person will benefit medically by knowing the source person's HIV test results.

Since treatment decisions for the exposed person need to be made expeditiously, with therapy ideally beginning within two hours post exposure, under the health regulations in 10 NYCRR §§ 63.3(d)(7) and 63.8(n), *the decision to perform an anonymous test on the source patient may be made immediately if there is no surrogate present to provide consent.*

If the test is not a rapid test, or if your agency prefers written consent in the case of occupational exposure, you may create your own consent form, as long it is consistent with one of the Department of Health's model forms (DOH-2556 or DOH-5019). The Department of Health has also developed model forms for authorizations to disclose HIV-related information (DOH-2557 or DOH-5032). <http://www.health.ny.gov/diseases/aids/forms/informedconsent.htm>

Contact Lyn Stevens, MS, NP, ACRN at lcs02@health.state.ny.us or call 518-473-8815 if you have any questions.

Sincerely,

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