

New York State Department of Health Policy Statement and Guidelines to Prevent Transmission of HIV and Hepatitis B Through Medical/Dental Procedures

Background

All medical and scientific data confirm that the risk of transmission of human immunodeficiency virus (HIV) and hepatitis B (HBV) through medical/dental procedures is remote and largely preventable through strict adherence to barrier precautions and infection control practices that decrease the opportunity of blood-to-blood exposure for both health care personnel and patients.

After more than 10 years of experience and millions of procedures, there is still only one documented case in which a health care worker with HIV transmitted the virus to patients. Ongoing and completed studies involving more than 15,000 patients of health care personnel infected with HIV, including surgeons and dentists, have revealed no infection of patients through medical procedures. Evaluation of AIDS cases that have no identified risk also has not implicated an infected health care worker in transmission.

The risk of hepatitis B virus (HBV) transmission through medical/dental procedures is several times greater than HIV. Twenty clusters of hepatitis B transmission to patients have been reported and investigated over the past 20 years. These cases commonly involved a breakdown in infection control during procedures where the health care worker's hands were within a body cavity and injury to the worker caused bleeding into the patient. Most reported clusters of hepatitis B in the U.S. occurred prior to 1985. The decrease in such reports in recent years may reflect the adoption of universal precautions and increased use of hepatitis B vaccine among health care workers.

Since the advent of the AIDS epidemic, both the Centers for Disease Control (CDC) and the New York State Department of Health (NYSDOH) have issued recommendations to health care workers and health care facilities emphasizing the importance of strict adherence to infection control standards and universal barrier precautions to minimize exposure to blood-borne pathogens in medical/dental settings.

In January 1991, the NYSDOH issued a policy statement and guidelines concerning HIV-infected medical personnel. This policy emphasizes voluntary testing of health care workers and case-by-case evaluation of HIV-infected personnel who perform invasive procedures to determine if they pose a significant risk to patients. The policy states that HIV infection alone is not sufficient justification to limit the professional duties of health care professionals unless specific factors compromise a worker's ability to meet infection control standards or to provide quality patient care.

In July 1991, the CDC issued "Recommendations for Preventing the Transmission of HIV and Hepatitis B to Patients During Exposure-prone Invasive Procedures." In September, Congress passed a law directing all states to adopt the CDC recommendations or

equivalent standards.

These actions prompted the NYSDOH to again review all scientific and medical data bearing on the risk of HIV transmission through medical/ dental procedures. In conducting this evaluation, the department consulted widely with infection control experts and with representatives of medical, dental and hospital associations, and consumer groups.

On October 8, 1991, the NYSDOH issued for public comment a proposed “Policy Statement and Action Plan to Prevent Transmission of HIV through Medical/Dental Procedures.” The document reaffirmed the state's existing HIV-prevention/protection policies. It also outlined proposed state initiatives to strengthen infection control training and practice for health care practitioners. A total of 36 interested groups or individuals representing a broad range of interests provided written comment or testified at a public hearing held on November 4, 1991. The overwhelming majority of those providing comment endorsed the state's policy and action plan; some also provided specific suggestions for modifications or adjustments.

On August 11, 1992, Governor Cuomo signed legislation that formally codifies New York's policies and guidelines to protect all citizens from exposure to HIV, HBV and other blood-borne pathogens during medical/dental procedures, and to safeguard the rights of infected workers.

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Policy Statement

Based on evaluation of all available medical and scientific data, the NYSDOH believes the following HIV and HBV-related policies best safeguard New York's citizens and protect the viability of our health care system.

1. The most effective means of preventing HIV and HBV transmission in health care settings is through strict adherence to universal barrier precautions and established infection control practices which decrease the opportunity of direct exposure to blood and body fluids for both workers and patients.
2. Voluntary testing without fear of disclosure or discrimination is the best means of encouraging people at risk for HTV or HBV to seek counseling and testing.
3. All patients and health care personnel who have been potentially exposed to HTV or HBV through personal risk behavior, blood products or occupational accidents should be strongly counseled to seek testing so they may benefit from medical management.
4. Mandatory HIV screening of New York health care workers would cost millions of dollars and would not produce any appreciable gain in public safety. A negative antibody test does not rule out the presence of infection since it can take some time for measurable antibodies to appear.
5. HIV or HBV infection alone does not justify limiting a health care worker's professional duties. Limitations, if any, should be determined on a case-by-case basis after consideration of the factors that influence transmission risk, including inability or unwillingness to comply with infection control standards or functional impairment which interferes -with job performance.
6. Requiring health care workers to inform patients or employers that they are HIV or HBV positive would only serve as a deterrent to workers seeking voluntary testing and medical evaluation. It also would endanger the professional careers of competent and needed health personnel who pose no risk to patients.

Guidelines

In its ongoing evaluation of the risk associated with potential exposure to HIV and HBV in health care settings, the Department of Health has identified measures the state can take to enhance public safety and to guard against discrimination for HIV- or HBV-infected health care personnel.

1. Mandatory Infection Control Training for Health Care Personnel

New York State has been in the forefront of promoting infection control training and practice to prevent blood-borne disease exposure to health care workers or patients. All

hospitals are required by regulation to train their staffs in infection control techniques, to provide appropriate equipment and to enforce use of universal barrier precautions in situations involving potential exposure to blood or other body fluids. The department also has provided detailed infection control guidelines to all physicians and dentists practicing in New York State.

To increase public safety, New York State has passed legislation to require licensed health care professionals (including physicians, physicians' assistants, specialists' assistants, registered nurses, licensed practical nurses, dentists, dental hygienists, podiatrists, optometrists) to complete a course in infection control and barrier precautions on or before July 1, 1994, and every four years thereafter. Required courses, tailored to the infection control training needs of specific medical and dental specialties, will include work practices and engineering controls, disinfection and sterilization procedures. Course content must be approved by the NYSDOH or the New York State Education Department (NYSED).

Proof of completion of required infection control training must be submitted by health professionals to either the NYSDOH or the NYSED. Physicians with hospital privileges will present the necessary training documentation to the hospital (in lieu of the NYSDOH) during the process of renewing hospital privileges. A waiver of this training requirement may be granted by the NYSDOH to health professionals who demonstrate that such training is not needed due to the nature of their work, or that they have met criteria for equivalency.

2. Enforcement of Infection Control Standards

All licensed health care facilities are responsible under existing regulations for monitoring and enforcing proper use of infection control practices and universal precautions by health care personnel functioning under their jurisdiction. Failure to comply with this requirement will result in NYSDOH citation, potential fines and other disciplinary action against the institution.

Any licensed health care professional who fails to use appropriate infection control techniques to protect patients or fails to ensure that health care workers under his/her supervision do so may be subject to charges of professional misconduct and disciplinary action.

Any patient or employee complaint regarding lax infection control practices in a private medical or dental office will prompt an investigation by the NYSDOH or NYSED. Substantiated lapses in infection control in a private practice setting may result in charges of professional misconduct against any licensed professional in the practice who was directly involved, was aware of the violation or who has responsibility for ensuring that office staff are adequately trained and follow patient protection measures.

The NYSDOH or NYSED will promulgate regulations and/or statutory amendments to implement these more stringent enforcement provisions.

3. Protecting Health Care Workers from Infection

Each health care facility should take the following steps to protect workers from occupational exposure to HIV, HBV and other blood-borne pathogens:

- All health care workers should receive appropriate training for their job titles in infection control techniques, including engineering and work practice controls, universal precautions and work practices that help prevent needle-sticks or other injuries and splashes of blood and body fluids.
- All health care personnel should be provided a safe work environment, including protective equipment, clothing and devices to reduce the risk of occupational exposure to blood and body fluids.
- All health care workers whose job responsibilities involve contact with blood or sharp objects likely to be contaminated with blood should be offered and encouraged to receive the hepatitis B vaccine.
- All health care personnel should receive information about the risks associated with HIV and HBV transmission and the merits of knowing their status if they have personal or occupational risks so they may benefit from medical management.
- All health care workers should be informed that if they have an impaired immune system due to HIV infection or other medical condition, they are at risk of acquiring potentially life-threatening infections, including TB, from patients.
- Information on the availability of voluntary, confidential or anonymous counseling and testing for HIV and HBV should be made available to health care workers.

4. Process for Evaluating Infected Health Care Workers

To ensure that public protection is a primary consideration and that health care personnel are afforded appropriate and equitable treatment, the NYSDOH will establish a uniform process and criteria for evaluating HIV/HBV-infected health care workers to determine if practice limitations are warranted.

Evaluation Criteria:

The evaluation of a health care worker should be based on the premise that HIV or HBV infection alone is not sufficient justification to limit a health care worker's professional duties. The determination of whether an individual health care worker poses a significant risk to patients which warrants job modification, limitation or restriction requires a case-by-case evaluation which considers the multiple factors that can influence risk. Periodic re-evaluation of an HIV-infected health care worker may be appropriate if physical or mental functioning changes due to disease progression.

Factors that may have a bearing on the ability of health care workers, including those with blood-borne infections, to provide quality health care include:

- physical or mental condition that may interfere with the worker's ability to perform assigned tasks or regular duties;
- lack of compliance with established guidelines to prevent transmission of disease and/or documentation or evidence of previous transmission of blood-borne pathogens;
- the appropriateness of techniques as related to performance of procedures;
- any health condition that would pose a significant risk to others.

Institutional Review Process:

Under NYSDOH regulations, all licensed health care institutions are responsible for ensuring that their employees, medical staff and volunteers do not have physical or mental impairments related to HIV or HBV infection or any other condition that would interfere with the performance of their duties or pose a risk to patients.

Consistent with this regulation, health care facilities are responsible for establishing a mechanism for evaluating health care workers with HIV or HBV infection. This requirement should not be misconstrued to foster or condone involuntary screening of employees for HIV or HBV by health care institutions.

New York State law prohibits HIV testing of any citizen without written, informed consent. All health care workers should be counseled about the importance of learning their HIV and HBV status if they have been potentially infected through personal behavior or occupational exposure.

Institutional evaluations of individual workers known to be infected with HIV or HBV shall be based on the NYSDOH criteria, and shall involve consultation with experts who can provide a balanced perspective. Such experts include an infectious disease physician and/or hospital epidemiologist with an understanding of HIV and HBV, a representative from the infected health care worker's practice area and the personal physician of the infected worker. All matters related to such evaluations must be handled confidentially.

Any modification of work practice must seek to impose the least restrictive alternative in accordance with federal disability laws. Any worker who believes that his/her employment has been restricted or terminated without just cause may ask for a second opinion from a NYSDOH review panel and/or file a complaint with the State Human Rights Commission.

State-Appointed Review Panels:

The NYSDOH will establish and oversee a voluntary evaluation process to provide guidance to HIV/ HBV-infected health care workers who seek consultation. Access to state-appointed panel review will be available to infected health care workers who perform procedures that might increase the risk of worker-to-patient blood exposure. State panels will function as a primary evaluation resource for practitioners who are not affiliated with institutions, or as a second

opinion for workers affiliated with health facilities who have been evaluated by their institutions.

Each panel will include a public health official, an infectious disease expert, an expert in infection control/ epidemiology. In addition, an individual from the infected practitioner's area of practice and the individual's private physician may be asked to serve as members of the panel.

The purpose of such panels is to provide timely advice and consultation on an individual's risk of blood-borne disease transmission through his/her professional practice, and to recommend practice limitations, modifications or restrictions where the evidence suggests there is a significant risk to patients.

The evaluation process will be confidential except for the following circumstances:

- To adequately evaluate workers who are institutionally based, the panel – directly or through its designees – may need to request information about the worker's practice from the facility.
- If practice restrictions are recommended, the individual involved shall assure — and verify to the panel – that all health facilities where he/she practices are informed. If assurance is not forthcoming, the panel will inform such facilities. Within all facilities, the normal rules of confidentiality apply.

NYSDOH Consultation:

Staff of the NYSDOH will be available to any individual, institution or organization to discuss concerns about the management of employees with HIV or HBV. In addition, the department will provide information, confidentially or anonymously, on the process for accessing the state review panels described above.

Enforcement of Practice Restrictions:

Health care institutions will be responsible for ensuring that any practice limitations recommended by institutional panels are followed in the facility by health care workers who are in their employ or who provide patient care from their facilities. If practice limitations are recommended for a community-based physician or dentist, periodic monitoring to ensure compliance will be performed by the NYSDOH or NYSED with the professional's consent. If a health care professional does not follow the practice restrictions or if compliance is uncertain, the appropriate state licensing/certification/permit board will be notified. The professional may be charged with professional misconduct for negligent practice in violation of the State Education Law.

Confidentiality of A Health Care Worker's HTV Status:

HIV-infected health care workers are entitled to protections under the New York State HIV Confidentiality Law as are all citizens. Such workers are not required to disclose their HTV

status to patients or employers. Health care facilities are under no obligation under New York law to disclose to patients the status of an infected health care worker in their employ; such disclosure, without the consent of the worker, would likely violate New York's HIV Confidentiality Law.

Notification of patients that they were exposed to the blood of a health care worker should be based on documentation of an injury to a worker that could have resulted in the worker's blood coming into direct contact with a patient's bloodstream or mucous membranes. In such circumstances, the patient should be advised to receive testing for potential HIV or HBV exposure. The NYSDOH will be available to assist hospitals in determining if a significant risk of exposure to blood-borne pathogens warrants notification to patients.

5. Quality Assurance Protections

Hospital quality assurance programs and, under their umbrella, infection control policies and procedures, are key mechanisms for preventing disease transmission within health care settings. To further reduce the low risk of HIV or HBV transmission through medical procedures, hospitals should take the following actions:

- Assure that infection control policies and procedures for the prevention of blood-borne infections are in place and being monitored for compliance.
- Review existing policies and procedures to assure that mechanisms are in place for reporting and managing circumstances where an employee is exposed to a patient's blood or there has been mutual blood exposure between a patient and employee (i.e., during a procedure where injury to a worker resulted in both parties having contact with the other person's blood).
- Form cooperative work groups to review surgical techniques to identify changes in practice or other alternatives to reduce any risk of potential injury to a health care worker that could result in blood exposure to patients.