



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

August 1, 2008

Dear Commissioner or Director of Public Health:

The purpose of this letter is to inform you of a change in federal law that has implications for the local health departments in New York State (NYS) regarding emergency responders' access to confidential health information in cases of potential occupational exposure to HIV. Since 1989, NYS regulations have provided a process for disclosure of protected information that included a defined role for local health departments to become involved in certain situations, as needed. Specifically, consultation with local health departments regarding risk of transmission and disclosure is provided for. Until recently, the NYS regulations were superseded in certain instances by federal law.

As background, the original Ryan White law, enacted in 1990, contained provisions by which emergency response agencies (i.e., fire departments, police departments, emergency medical services) were to have a "designated officer" to field calls from employees regarding possible exposures to communicable diseases and obtain the disease status of the patients in those exposures from the medical facility providing treatment to that patient. This language was included in subsequent reauthorizations of the Ryan White law until 2006, when Public Law 109-415 eliminated them.

Despite these changes to the federal law, emergency response agencies in NYS can still access HIV test results on patients when there has been a bona fide risk exposure. NYS regulations now govern the manner in which disclosure of the HIV status of a patient may be made to emergency responders. Section 63.8(m) of Title 10 of the New York Codes, Rules and Regulations (attached) provides for disclosure in such instances. Section 63.8(m) differs from the previous federal law as follows:

- (1) The federal law required disclosure to a "designated officer" of the emergency response employer. Under Part 63.8(m), such disclosure may be made to the physicians or other medical providers of the emergency responders.
- (2) The federal law did not require knowledge of the HIV status of the emergency responder for disclosure of the patient's HIV status. NYS regulations for disclosure require that the emergency responder's status is HIV-negative. If the emergency

responder's HIV status is unknown, an HIV test must be offered and administered with consent of the emergency responder.

The following steps are now required when a significant risk exposure occurs. The involvement of local health departments as a resource for consultation in this process is underlined:

1. An incident report documenting the details of the exposure, including witnesses to the incident, if any, is on record with supervisory staff.
2. A request for disclosure of the patient's HIV status is made to the patient's physician or to the medical provider designated by the hospital or clinic to which the patient is brought. This request may be made by the exposed person (emergency responder) or by his or her physician as soon as possible after the alleged exposure if a decision relating to the initiation or continuation of post-exposure prophylactic treatment is being considered.
3. The medical provider of the emergency responder or the medical provider designated by the hospital or clinic must review, investigate and evaluate the incident and certify that:
 - (a) the information is necessary for immediate decisions regarding initiation or continuation of post-exposure prophylactic treatment for the emergency responder; and
 - (b) the emergency responder's status is either HIV negative or unknown and that if the person's status is unknown, the emergency responder has consented to an HIV test; and
 - (c) if the emergency responder's test result becomes known as positive prior to the receipt of the patient's HIV status, no disclosure of the patient's HIV status will be made to the emergency responder.
4. Documentation of the request is placed in the medical record of the emergency responder.
5. If the patient's physician or the medical provider designated by the hospital or clinic determines that a risk of transmission has occurred or is likely to have occurred in the reasonable exercise of his/her professional judgment, the patient's physician or medical provider designated by the hospital or clinic may release the HIV status of the patient, if known. The patient's physician or medical provider in the hospital or clinic may consult with the local director or commissioner of public health to determine whether a risk of transmission exists. If consultation occurs, both the medical provider of the hospital or clinic and the local director or commissioner of public health must be in agreement if the HIV information is to be disclosed. In the disclosure process the name of the patient shall not be provided to the EMS provider. Rediscovery of the HIV status of the source is prohibited except when made in conformance with Public Health Law Article 21, Title III.

Although preventing exposures to blood and body fluids is the primary means of preventing occupationally acquired HIV infection, appropriate post exposure management is an important element of workplace safety. Each emergency response agency is required to have plans in place for post exposure management. Emergency response agencies in NYS are being notified about the change in federal law. They are asked to update their policies and procedures and to make sure that personnel know of the steps to be taken in situations involving potential exposures to

HIV. Hospitals in NYS are also being notified, with a similar request to update their policies and procedures.

At this time, we ask that you review and update your Department's policies and procedures to ensure that they are in compliance with section 63.8(m) and that you notify any appropriate staff of the correct procedures to be followed when contacted by a patient's physician or medical provider in the hospital or clinic. In cases of significant exposure, seeking medical treatment immediately is crucial. NYS Department of Health (NYSDOH) guidelines recommend that post exposure prophylaxis (PEP) should be initiated as soon as possible, ideally within two (2) hours and generally no later than 36 hours post-exposure.

NYSDOH AIDS Institute recommendations for PEP following occupational exposure are based on careful review of available studies and constitute the considered opinion of expert HIV clinicians. They are available for review on the NYSDOH HIV Guidelines Website at www.hivguidelines.org. If you need clinical assistance please contact the NYSDOH HIV Clinical Education Initiative's PEP, Testing & Diagnosis Center of Excellence (212-604-2980). This Center provides education and technical assistance to providers regarding PEP. This Center operates the PEP Line (1-888-448-4911), a 24-hour provider consultation line for the management of PEP.

Attached for your reference is a copy of Part 63.8(m) and letters from the Department to emergency response agencies and hospitals in NYS notifying them of the status of the federal law and applicable NYS regulations. Thank you for your attention to this matter.

Sincerely,

Guthrie S. Birkhead, M.D., M.P.H.
Deputy Commissioner
Office of Public Health

Attachments: Part 63.8(m) of Title 10 NYCRR
Letter to emergency response agencies
Letter to hospitals