



# County of Erie

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COMMISSIONER OF HEALTH

**HEALTH ADVISORY #234**

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## **SHARING OF CONFIDENTIAL HEALTH INFORMATION IN CASES OF OCCUPATIONAL EXPOSURE TO HIV**

*Please distribute immediately to staff in the Departments of Emergency Medicine, Laboratory Medicine, Critical Care, Family Practice, Internal Medicine, Infectious Disease, Infection Control, Pediatrics, and all inpatient and outpatient units.*

### **SUMMARY**

- Provisions in accordance with the Ryan White law of 1990 enabled emergency response agencies to obtain confidential health information in cases of potential occupational exposures to specific communicable diseases. However, such provisions were eradicated by Public Law 109-415 in 2006.
- Although access to confidential health information is restricted, emergency responders are still permitted to attain the HIV status of a patient provided there has been a legitimate risk exposure.
- As of April 2008, Section 63.8(m) of Title 10 of the New York Codes, Rules and Regulations has established criteria that must be satisfied in order for HIV case status to be disclosed. The document is attached to this advisory.
- Using Section 63.8(m) of Title 10 of the New York Codes, Rules and Regulations as a reference, Deputy Commissioner Dr. Guthrie S. Birkhead has issued the following guidelines for local health departments to follow when a bona fide HIV risk exposure occurs:
  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:
  - the information is necessary for immediate decisions regarding initiation or continuation of post-exposure prophylactic treatment for the emergency responder; **and**
  - 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**
  - 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. Redisclosure of the HIV status of the source is prohibited except when made in conformance with Public Health Law Article 21, Title III.

## **BACKGROUND**

The Ryan White law of 1990 allowed emergency response agencies to designate an official responsible for obtaining a patient's disease status when an emergency responder encountered a potential occupational exposure to a communicable disease while treating that particular patient. However, the provisions set forth by the Ryan White law were eradicated by Public Law 109-415 in 2006.

As of April 2008, Section 63.8(m) of Title 10 of the New York Codes, Rules and Regulations has established requirements that must be met in order for patient health information to become readily available when emergency response agencies including fire departments, police departments, and emergency medical services experience a potential occupational HIV exposure. Section 63.8(m) explicitly describes circumstances in which HIV case status disclosure is permitted.

According to Deputy Commissioner Dr. Birkhead, in addition to the established guidelines for local health departments to follow when significant HIV risk exposure occurs, Section 63.8(m) has altered two aspects of federal law:

1. The federal law required disclosure of a patient's HIV status 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.

## **PREPAREDNESS**

New York State emergency response agencies, local health departments, and hospitals continue to be informed about the changes in federal law in regards to sharing of confidential health information in cases of occupational HIV exposures. Each health entity has been instructed to review and update their policies and protocols in accordance with Section 63.8(m).

## **TREATMENT AND PROPHYLAXIS**

The New York State Department of Health recommends that if an emergency responder has been potentially exposed to HIV, post exposure prophylaxis should be administered within two hours of exposure and no later than 36 hours since the exposure.

Thank you for your attention to this important matter. If you have questions or concerns regarding occupational exposures to HIV, please contact the Erie County Department of Health at (716) 858-7697, Monday thru Friday, 9:00 AM to 5:00 PM or the AIDS Institute, NYSDOH at (518) 473-8815

### **Health Category Definitions:**

**Health Alert FLASH:** conveys the highest level of importance due to a large-scale, catastrophic public health emergency; warrants immediate action or attention

**Health Alert Priority:** conveys the highest level of importance; warrants immediate action or attention to a health problem or situation

**Health Advisory:** provides important information for a specific incident or situation; may not require immediate action

**Health Update:** provides updated information regarding an incident or situation; no immediate action necessary

**References:**

Birkhead, Gurthrie. Aids Exposure Advisory to Local Health Departments: Guidance Letter to Local Health Departments. [cited 2008 Aug 1]; Available from:  
[http://www.health.state.ny.us/nysdoh/ems/aids/occupational\\_exposure/evaluation/aids\\_exposure\\_letter\\_local\\_health\\_dept.htm](http://www.health.state.ny.us/nysdoh/ems/aids/occupational_exposure/evaluation/aids_exposure_letter_local_health_dept.htm)

**Additional information and links:**

[http://www.health.state.ny.us/nysdoh/ems/aids/occupational\\_exposure/](http://www.health.state.ny.us/nysdoh/ems/aids/occupational_exposure/)

## **Title 10 New York Codes, Rules and Regulation: Part 63.8(m) as of April 2008**

(m) When the requirements of this section have been met, physicians and other diagnostic providers may disclose HIV-related information to physicians or other diagnostic providers of persons whom the protected individual may have exposed to HIV under the circumstances noted below that present a risk of transmission of HIV, except that disclosures related to exposures of emergency response employees governed by federal law shall continue to be governed by such law:

- (1) the incident must involve exposure to blood, semen, vaginal secretions, tissue or the following body fluids: cerebrospinal, amniotic, peritoneal, synovial, pericardial and pleural; and
- (2) a person has contact with the body substances, as noted in paragraph (1) above, of another to mucus membranes (e.g., eyes, nose, mouth), non-intact skin (e.g., open wound, skin with a dermatitis condition, abraded areas) or to the vascular system. Examples of such contact may include needlesticks; puncture wound injuries and direct saturation or permeation of non-intact skin by potentially infectious substances. These circumstances shall not include those delineated in subdivision (d) of section 63.10; and
- (3) the exposure incident occurred to staff, employees or volunteers in the performance of employment or professional duties:
  - (i) in a medical or dental office; or
  - (ii) in a facility regulated, authorized or supervised by the Department of Health, Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, Office of Children and Family Services, Office of Alcoholism and Substance Abuse Services, Department of Correctional Services; or
  - (iii) involved an emergency response employee, paid or volunteer, including an emergency medical technician, a firefighter, a law enforcement officer (e.g., police, probation, parole officer) or local correctional officer or medical staff; and
- (4) an incident report documenting the details of the exposure, including witnesses to the incident, if any, is on record with supervisory staff; and
- (5) a request for disclosure of HIV status is made to the provider of the source or to the medical officer designated by the facility by the exposed person or by the provider of the exposed person 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; and
- (6) the medical provider of the exposed person or the medical officer designated by the facility reviews, investigates and evaluates the incident and certifies that:
  - (i) the information is necessary for immediate decisions regarding initiation or continuation of post-exposure prophylactic treatment for the exposed person; and
  - (ii) the exposed person's status is either HIV negative or unknown and that if the person's status is unknown, the person has consented to an HIV test; and
  - (iii) if such test result becomes known as positive prior to the receipt of the source's HIV status, no disclosure of the source's HIV status will be made to the person; and
- (7) documentation of the request is placed in the medical record of the exposed person; and
- (8) if the provider of the source or the medical officer designated by the facility determines that a risk of transmission has occurred or is likely to have occurred in the reasonable exercise of his/her professional judgment, the provider or medical officer may release the HIV status of the source, if known. The provider or medical officer may consult with the municipal health commissioner or district health officer to determine whether a risk of transmission exists. If consultation occurs, both the provider and the local health officer must be in agreement if the HIV information is to be disclosed. In the disclosure process the name of the source shall not be provided to the exposed person. Redisclosure of the HIV status of the source is prohibited except when made in conformance with Public Health Law Article 21, Title III.