

**Occupational Exposure and HIV Testing:
Fact Sheet and Frequently Asked Questions
New York State Department of Health AIDS Institute**

New York State Public Health Law (PHL) related to HIV testing has evolved over the years to keep pace with changes in the epidemic and clinical practice. Key provisions were enacted in 2010, 2014, 2015 and 2016 and comprehensive updated *HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information* regulations were finalized and published in the New York State Register on [May 17, 2017](#).

The following changes were adopted and posted in the New York State Register on [March 22, 2023](#):

1. Reducing the timeframe for reporting of new HIV diagnoses from 14 days to 7 days;
2. Requiring the reporting of every case of acute HIV within 24 hours of diagnosis;
3. Requiring the reporting of the results of HIV testing done for purposes of insurance underwriting decisions by the clinician under whose medical license the HIV-testing was ordered.

This document includes all developments since 2010 and represents the current regulatory landscape.

Clinical Background

Post-exposure prophylaxis (PEP) is very effective at preventing transmission of HIV in cases of occupational exposure to HIV-infected blood or body fluids. Health care providers managing cases of occupational exposure should be familiar with [NYS Clinical Guidelines for Post Exposure Prophylaxis to Prevent HIV Infection](#). An HIV exposure is a medical emergency and rapid initiation of PEP—ideally within 2 hours and no later than 72 hours post exposure—is essential to prevent infection. PEP should not be delayed while awaiting information about the source patient’s HIV status/ test result or results of the exposed worker’s baseline HIV test. A seven-day starter pack should be provided and arrangements made for obtaining the supply of PEP drugs to complete the 28-day regimen.

Indications for Post-Exposure Prophylaxis in Cases of Health Care Occupational Exposure

PEP is indicated in response to percutaneous or mucocutaneous exposure with blood or visibly bloody fluid or other potentially infectious material. A specific list outlining indications for PEP can be found in the [NYS Clinical Guidelines](#). All cases of exposure should be reported to the facility’s Occupational Health Office which would assist in evaluating the exposure.

If an experienced HIV provider is not available for consultation, call the Clinical Education Initiative CEI PEP Line at 1-866-637-2342.

HIV Testing of the Source Patient

Known HIV Status: If the HIV status of the source patient is known, the information may be accessed from the medical record to assist in the decision-making process for initiation of PEP.

Unknown HIV Status: If the HIV status of the patient is not known, consent for voluntary HIV

testing of the source patient should be sought as soon as possible after the exposure. In NYS, when the source patient has the capacity to consent to HIV testing, the individual should be informed that HIV testing will be performed unless they object to being tested. Key points about HIV should be provided. If the patient objects to the test, HIV testing cannot be performed.

Patient Unable to Consent: Situations may occur where a source patient is unable to provide consent for HIV testing, for example, if he or she is unconscious, comatose or otherwise incapable of consent. The [Family Health Care Decisions Act \(FHCDA\)](#) stipulates who is able to consent for care. In these cases, clinicians should follow institutional policies related to the FHCDA for obtaining consent for the source patient's HIV test. If the source patient is deceased, anonymous testing should be done. When a patient expires, health care proxy and other surrogacy status ends with death.

No Surrogate is Immediately Available to Consent on the Patient's Behalf: In cases of occupational exposures which create a significant risk of contracting or transmitting HIV infection, an anonymous test may be ordered without consent of the source patient if all the following conditions are met:

- The source patient is comatose or is determined by his or her attending professional to lack mental capacity to consent; and
- The source patient 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, the decision to perform an anonymous test on the source patient may be made immediately if there is no surrogate present to provide consent.

Anonymous Testing of Source Patient

Public health law now allows for anonymous testing to be ordered by health care providers in very specific situations involving occupational exposures. Laboratories are no longer required to have a patient name in order to run an HIV test in these circumstances. A clinician may only order an anonymous test in the specific instance of an occupational exposure involving a source patient who is deceased, comatose or otherwise unable to consent, and there is no surrogate immediately available. The medical benefit of knowing the source person's test result must be documented in the exposed person's medical record. The result may not be placed in the source patient record.

KEY POINT: The result of the source patient's HIV test is provided to the health care provider caring for the exposed worker for purposes of making decisions regarding post-exposure prophylaxis. Patient written authorization for release is not required.

General Medical Consent and Consent for Source Patient Testing in Occupational exposure

Health care facilities may add language to their general medical consent which can facilitate effective and expedited response in instances of occupational exposure. Below is an example of language that may be added to the general medical consent:

"If a healthcare worker involved in my care and treatment becomes exposed to certain bodily fluids resulting in the possibility of transmission of a blood borne disease, my blood will be tested for HIV, Hepatitis B and Hepatitis C to determine risk of exposure."

HIV Testing for the Exposed Health Care Worker

HIV testing should be offered to the exposed health care worker in accordance with NYS public health law governing HIV testing. The key points of information should be provided to the health care worker, including the following important points about baseline testing: 1) a negative baseline test documents that the worker was HIV negative at the time of the exposure; 2) a positive baseline test indicates that the health care worker had previous HIV infection and should start an effective HIV treatment regimen rather than the standard PEP regimen. Laboratory-based fourth-generation antigen/antibody combination HIV tests (rather than point-of-care HIV tests) should be obtained at baseline, week 4, and week 12 post-exposure. HIV testing at 6 months post-exposure is no longer recommended.

Documentation Requirements

For the Source Patient

When an HIV test is requested of the source patient or his or her surrogate, the following items should be documented:

- The offer of an HIV test;
- If the patient or surrogate objects to the HIV test;
- For patients with newly diagnosed HIV infection, the name of the provider/facility with whom the follow-up appointment was made.

If an anonymous test is conducted in cases where the patient is not able to consent and a surrogate is not immediately available, the law does not preclude the source patient from being informed that a test was conducted. However, you cannot inform the source patient of the test result or place it in his or her medical record.

For the Exposed Individual

The medical benefits of knowing the source patient's test result must be documented in the exposed person's medical record. Additional information shall be documented in accordance with standard practices and requirements.

FREQUENTLY ASKED QUESTIONS

FAQ 1: If the source patient declines testing in a case of occupational exposure, may we test him or her anonymously?

No. If the source patient declines testing, no HIV test may be conducted.

FAQ 2: If a source patient is tested anonymously for an occupational exposure, can we inform the patient when they have regained consciousness that testing was conducted?

Yes. The law does not preclude the source patient from being informed that a test was conducted. However, you cannot inform the patient of the result or place it in the individual's medical record. A confidential test could be ordered with the patient's consent at that point so the individual would have the benefit of knowing the result of the HIV test.

FAQ 3: How does this standard address HIV testing for a deceased source patient when the next of kin or other person representing the estate is available?

In a situation in which a source patient is deceased, anonymous testing should be done. When a patient expires, health care proxy and other surrogacy status ends with death. In these cases, it is important to note that the result of the anonymous test is only provided to the health care provider of the exposed person and would not be provided to the next of kin or person representing the estate.

Important Resources

Occupational Exposure Resources For Emergency Responders: A host of resources related to emergency responders and occupational exposure to blood borne pathogens can be found on the [DOH website](#). For more information, Office of the Medical Director, AIDS Institute at 518-473-8815

Clinical Education: The [HIV Clinical Education Initiative](#) provides comprehensive training resources on HIV care and treatment including on-line training on post-exposure prophylaxis related to occupational exposure, non-occupational exposure, and sexual assault. Visit www.ceitraining.org.

HIV Guidelines: The New York State Department of Health [HIV Clinical Guidelines Program](#) oversees the development, dissemination and implementation of state-of-the-art clinical guidelines on a wide range of topics including post-exposure prophylaxis related to occupational exposure, non-occupational exposure, and sexual assault. Visit www.hivguidelines.org.