

## APPENDIX F

### POST-EXPOSURE MANAGEMENT: EMPLOYER ISSUES AND RESPONSIBILITIES

Organizations that employ health professionals or other persons who are at risk for occupational exposure to blood, body fluids, or other potentially infectious materials are generally required to establish policies and procedures that guide the management of such exposures. Private employers subject to OSHA must conform to the OSHA Bloodborne Pathogen Standard (OSHA Bloodborne Pathogen Standard 29 CFR, Part 1910.1030, and Compliance Directive CPL 2-2.44D, 11/05/99, Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens), and public employers are subject to PESH regulations. OSHA and PESH standards with regard to occupational exposure to bloodborne pathogens are identical. These regulations require that a management plan be in place.

The employer should ensure that any employee who sustains an occupational exposure has access to post-exposure services **within 1 to 2 hours of a reported event**. Services must be available 24 hours a day, every day. Organizations that do not have on-site occupational health services are encouraged to form agreements or contracts with another facility, Emergency Department, or private practitioner for such services.

#### Definition of Persons Covered:

Post-exposure policies should define **who is included as an “employee”** for purposes of providing care. In addition to staff who are clearly employed by an organization (e.g., nurses, laboratory personnel, housekeepers), consideration must be given to whether other individuals (e.g., medical/nursing students, house staff, attending physicians, volunteers, and pre-hospital care personnel) will be covered by the institution’s policy. In addition, the **scope of services** that will be provided must be delineated (e.g., laboratory testing, occupational health services, prophylactic drugs or vaccines), including whether there are limitations within the categories of individuals covered particularly with regard to Workers’ Compensation benefits.

#### Access to Occupational Health Services:

**HCWs who sustain an occupational exposure should be ensured access to post-exposure services within 1 to 2 hours of a reported event.** This may require 24-hour and weekend coverage. Procedures should identify where workers should go during regular work hours and whether there are differences for those who are working evening, night, or weekend shifts. Organizations that do not have on-site occupational health services should consider forming agreements or contracts with another facility or private practitioner for such services.

#### Post-exposure services for exposures to all bloodborne pathogens include but are not limited to:

- Post-exposure evaluation and follow-up post-exposure vaccinations.
- A full course of post-exposure prophylaxis medications, at no cost to the employee.
- Care provided under the supervision of a licensed physician or other licensed healthcare professional.
- The performance of laboratory tests by an accredited laboratory.
- Supportive counseling.

**Federal law requires covered employers to ensure that all medical evaluations and procedures, vaccines, and post-exposure prophylaxis are made available to the employee within a reasonable time and place and are made available at no cost to the employee** (OSHA, 29 CFR, Part 1910.1030, CPL 2-2.44D, 11/05/99, Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens).

PESH and OSHA’s Bloodborne Pathogen Standards indicate that the covered employer is responsible for all costs associated with an exposure incident. An employer may not require of the employee any out-of-pocket expenditures, such as requiring the employee to utilize workers’ compensation if prepayment is required or compelling an employee to use health insurance to cover these expenses unless the employer pays all premiums and deductible costs associated with the employees’ health insurance. In addition to services listed

above, NYS Guidelines, “HIV Prophylaxis Following Occupational Exposure,” state that the following should be considered by the employer when establishing plans for providing PEP for exposures to HIV. The employer should ensure that:

- PEP will be made available within 1 to 2 hours of exposure, ideally within 1 hour.
- A “starter kit” or 3-day supply of the PEP will be made available to the employee.
- A mechanism is in place to provide the balance of the PEP medications needed to complete the 4-week regimen to the employee at no cost.

#### **Access to Source Patient HIV-Related Information:**

If already part of the healthcare team, the exposed employee may have access to the medical record and know the HIV status of the source patient, as well as information about drug resistance. Alternatively, the patient may have signed an informed consent form (see Appendix C) authorizing disclosure of this information to the exposed worker or to undergo consented HIV testing with disclosure of the test results to the exposed worker. When neither of these situations apply, New York regulations (10 NYCRR part 63.8m) now authorize disclosure of existing HIV-related information to persons who have been exposed in the workplace when significant risk exposure has occurred.

#### **Consented Testing of the Source Patient for HIV:**

- The source individual’s blood should be tested as soon as feasible after consent is obtained to determine HIV infectivity. Informed consent from the source patient should be obtained utilizing the form DOH-4054 (Rev. 6/00) “Informed Consent to Perform a Confidential HIV Test and Authorization for Release of HIV-Related Information for Purposes of Providing Post-Exposure Care to a Healthcare Worker Exposed to a Patient’s Blood or Body Fluids” (see Appendix C). If consent is not obtained for HIV testing, the employer should document that consent cannot be obtained.
- When the source individual is already known to be infected with HBV, HCV, or HIV, testing for the source individual’s known HBV, HCV, or HIV status need not be repeated. Testing for other bloodborne pathogens should still occur.
- With a signed release, results of the source individual’s HIV testing should be made available to the exposed employee.
- Information related to drug regimens, and, if available, resistance information should be made available to the exposed employee to determine the best regimen for the employee.

The employer is responsible for establishing and implementing policies to protect the confidentiality of both the exposed employee and the exposure source (PH Law 27-F & 21 Title 111).

#### **Disclosure of HIV-Related Information Under 10 NYCRR Part 63.8 (m):**

**As of June 1, 2000, health regulations 10 NYCRR part 63.8 (m) permit disclosure of HIV-related information regarding the source individual to exposed individuals and their physicians.** The process for accessing this information is straightforward and should be incorporated into the facility’s occupational exposure protocol. The procedure should be clearly delineated, should identify the designated medical officer responsible for implementing the procedure, and should emphasize the importance of a timely response. Detailed information regarding the regulations follows.

#### **Note: These regulations do not authorize unconsented testing of the source patient.**

Briefly, when an exposure incident occurs, the medical officer at the facility (occupational exposure designee) should:

- Assess the exposure for risk of transmission or potential risk of transmission.
- Obtain consent and test the exposed individual for HIV. The exposed individual must be either HIV negative or of unknown HIV status.
- Ensure that a copy of the exposure incident report and the request for disclosure of the source patient’s HIV status is placed in the medical record of the exposed person.

The medical officer may seek permission of the source patient to review the information contained in his/her medical chart. If the source patient is unavailable, unable to consent, or refuses, then permission to access the information may be obtained if the criteria in the regulations (as delineated below) have been met.

The regulations permit release of HIV-related information without consent of the source patient in the following circumstances:

- The incident must involve exposure to blood or other potentially infectious body fluid.
- The exposed individual must have contact with potentially infectious body substances to mucous membranes, non-intact skin, 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.
- The regulations apply to staff, employees, or volunteers in the performance of employment or professional duties in:
  - A medical or dental office.
  - 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, or the Department of Correctional Services.
  - Emergency response employee (paid or volunteer, including an emergency medical technician, a firefighter, a law enforcement officer or local correctional officer, or medical staff).
- An incident report documenting the details of the exposure is on record with supervisory staff.
- A request for disclosure of the HIV status of the source is made by the exposed person or by that person's provider, as soon as possible after the alleged exposure if the initiation or continuation of post-exposure prophylactic treatment is being considered. The request is placed in the medical record of the exposed person.
- The medical provider for the exposed person or the medical officer designated by the facility reviews, investigates, and evaluates the incident and certifies that the information is necessary for an immediate decision regarding initiation or continuation of PEP for the exposed person provided that the exposed person's status is either HIV negative or unknown, and the person has consented to an HIV test.
- In the event that the exposed person's baseline test results indicate that he/she is already infected with HIV prior to the receipt of the information regarding the source's HIV status, no disclosure of the source's HIV status will be made.
- If the provider of the source patient or the medical officer (e.g., occupational health physician or infectious disease physician) designated by the facility determines through reasonable exercise of professional judgment that a risk of transmission has occurred or is likely to have occurred, he/she may release the HIV status of the source, if known. The release of information is limited to the exposed individual and his/her medical provider.

Procedures to facilitate rapid evaluation and voluntary testing for HIV, HBV, HCV and other bloodborne pathogens and/or disclosure of related information of the source individual should be in place.

#### **Workers' Compensation Program:**

The Workers' Compensation Law (WCL) has specific implications for employees exposed to HIV, as well as those rare cases that result in seroconversion. Individuals who manage such exposures should be familiar with these implications, as they should be able to counsel employees and refer them for legal and medical assistance accordingly.

The following is provided as background information but does not substitute for communicating directly with an organization's Workers' Compensation provider as situations arise.

- **Filing an injury or illness claim**

When an HCW has an occupational exposure, the employer or the healthcare provider who initially treats an injured worker customarily submits the first report to the Workers' Compensation Board and to the insurance carrier. However, an injured worker also may file a claim on his/her own behalf.

Workers who wish to file on their own behalf are required to report the injury to their employer, immediately if possible, but minimally within 30 days. If an immediate claim for benefits is not made, the employee has 2 years from the date of the accident to file with Workers' Compensation. If the employee does not report the accident within 2 years, Workers' Compensation will not consider the claim. Because options for other legal action may be affected by filing a claim with Workers' Compensation, an injured employee may benefit from discussion with an attorney before filing.

- **Documentation of claim**

In order to document a claim of occupationally acquired HIV infection, the employee who sustains an exposure that may cause transmission of HIV should have a confidential baseline HIV antibody test and the recommended series of follow-up testing. It is the responsibility of the claimant to provide evidence that proves the work-related cause of HIV infection. Documentation of a negative HIV test with seroconversion occurring after the injury or exposure is probative evidence of HIV infection resulting from occupational exposure. For this reason, anonymous testing programs, which prohibit the release of person-identified HIV antibody test results, are not recommended in the context of an occupational exposure.

- **Benefits covered in an injury claim**

Workers' Compensation covers only approved medical care. Consequently, in the event of an occupational exposure, all testing and medically recommended treatment generally would be covered. Although provisional guidelines for PEP have been published, it is not clear whether all Workers' Compensation providers will cover antiretroviral drugs for PEP.

### **Impact on Employees Who Become HIV Positive Following Occupational Exposure:**

- **Determination of benefits:** Each claim is reviewed on a case-by-case basis. Benefits are not automatically approved subsequent to filing of a claim. Insurance carriers who represent the employer organization determine whether to accept or dispute the claim made by the worker. Claims of occupationally acquired HIV infection can be expected to prompt a thorough investigation to rule out the possibility that another risk behavior was the cause of HIV infection.
- **Scope of benefits:** Workers' Compensation does not provide cash awards for pain or suffering. At this time, the maximum weekly wage replacement benefit for total disability, regardless of the cause, is \$400. Benefits are based on the worker's income and will not increase unless proposed benefit maximums become law. In some cases, unions may have negotiated for supplemental payments from the employer.
- **Confidentiality of information:** The Workers' Compensation system has historically allowed insurance carriers access to injury reports. However, access to an employee's Workers' Compensation file is strictly limited unless otherwise authorized by the claimant. The employer should disclose what circumstances necessitate filing a "C-2" form, what information is provided to the Workers' Compensation Board and to the insurance carrier, and who has access to that information. The employer also should discuss who within the organization may have access to the information as a result of filing a claim.

If an employee has any questions or concerns about filing a claim with Workers' Compensation, he/she should seek the advice of an attorney. Additional information for employees and employers on Workers' Compensation is available through the board that oversees this program. The appropriate district office of the Workers' Compensation Board should be contacted as necessary for guidance and informational material.