

VILLAGE CARE PUBLIC POLICY OBSERVER

News and Observation

FROM ALBANY, NEW YORK CITY AND WASHINGTON, D.C.

August 3, 2010

Volume 2, Issue 5

Governor Signs Two Critical Bills

HIV TESTING

After years of debate in Albany, marked at times by a divided AIDS advocacy, Governor Paterson has signed legislation that streamlines HIV testing, making it part of a general signed medical care consent, remaining in effect until it expires, or is revoked. The new law also requires that health providers follow federal Centers for Disease Control and Prevention (CDC) guidelines and offer HIV testing to patients aged 13 to 64.

The new legislation (S.8227/A.11487) amends state law on HIV counseling and testing, taking another step in conforming with CDC recommendations on the routinization of HIV testing.

For more than two decades, New York law has required a separate, written informed consent before administering an HIV test, as well as calling for pre- and post-testing counseling information. The law was established in 1988, and much has changed in the testing for HIV as well as treatment for the disease.

For years, physicians and a handful of HIV providers argued that a separate written consent process was a significant barrier to HIV testing urged elimination of the written process. They argued that more aggressive efforts were needed to reach individuals who are HIV-positive but unaware of their status. There was, however, a determined and vocal core of HIV advocates who argued for retention of written consent, contending that patients' rights are better secured through such a separate process. They also contended that the barrier to testing was less about the form that it was about physician unwillingness to talk about issues such as drug use and sexual practices with their patients. The debate over changing state law, which went on for years, was construed by the opposing sides as a conflict over public health needs versus preserving civil liberties. The HIV community was divided on this issue, with advocates for both sides frequently traveling to Albany to promote or oppose changes. In the end, both sides got a little of what they wanted but not everything.

Perhaps one of the biggest barriers to HIV testing is that most physicians as well as clinics and other health care settings do not routinely offer an HIV test to everyone. Outdated perceptions and practices encourage HIV testing only to be administered for those individuals deemed at risk for HIV. This leaves many individuals whom a physician might erroneously judge not to be at risk without the opportunity to take a test. This legislation, by eliminating some of the barriers to consent, as well as mandating the routine offer of an HIV test in most medical settings, should have the effect of expanding HIV testing.

The new law will accomplish the following:

- Allow the consent to an HIV test to be incorporated into a general consent for medical care, with a clearly marked place adjacent to signature where a patient may decline an HIV test. This would eliminate the need for a separate, written informed consent to an HIV test.
- Allow for oral consent to an HIV rapid test (with documentation noted in the medical record), which would update current law to reflect advances in medical testing technologies. By the act of an individual agreeing to have their finger pricked or allowing the insertion of a swab to gather saliva strictly for the purpose of conducting an HIV rapid test, an individual is indicating their consent to an HIV test.
- Require all hospitals, diagnostic and treatment facilities, and private primary care offices to offer an HIV test routinely to all their patients ages 13-64 as part of medical care. This also includes emergency rooms, except in cases where the patient is not able to consent.
- Allow for the anonymous testing of HIV in cases of potential occupational exposure where the patient is unable to consent.

The journey to passage of this legislation was long and arduous. At one time, for example, five different HIV testing bills were before the state Legislature for consideration, each with its own unique constituency and opponents. On numerous occasions opponents would be in Albany on the same day, visiting with the same offices, to argue wholly different and conflicting opinions. The end result was no action for many years. However, despite the widespread differences of opinion, in the end most HIV advocacy groups rallied around this bill and were pleased with the passage of this legislation.

SYRINGE ACCESS BILL

In a move expected to enhance the state's syringe exchange program Governor David Paterson has signed into law that clarifies that someone in possession of syringes, including syringes with residue from controlled substances, is not in violation of the penal code as long as that individual is participating in a syringe exchange program.

This bill (A.8396-A/S.5620-A) was put forth by the Governor earlier this year.

The legislation was necessary because despite the two decades that syringe exchange programs have been in existence in New York, under state law it was still a crime to possess syringes unless medically necessary. Injection drug users complained of harassment by the police and even arrests and prosecutions

for having in their possession syringes. Meanwhile, public health law has allowed for the creation of syringe exchange and syringe access programs as part of efforts to reduce the spread of HIV, hepatitis and other diseases easily transmitted through blood.

With the passage of this legislation, the state's public health and criminal laws are no longer in conflict. Injection drug users who are participating in a syringe exchange program will no longer have to worry about arrest or prosecution by law enforcement authorities merely for having syringes in their possession. The law also requires the Division of Criminal Justice Services to inform law enforcement agencies of the change in state law.

For more information,
please contact:
Matthew Lesieur
Director of Public Policy
154 Christopher Street
New York, NY 10014
matthewl@villagecare.org
(212) 337-5601