January 19, 2018

Dear Colleague,

The New York State (NYS) Criminal Procedure Law (CPL) § 210.16, passed in 2007, requires testing of criminal defendants indicted for sex offenses for human immunodeficiency virus (HIV) upon the request of the survivor.

The NYS Department of Health (DOH) AIDS Institute has updated guidance regarding HIV testing for the defendant due to improved HIV testing technology. These changes may have implications for health care providers, judges, public health officers, survivors and defendants as they affect the appropriate time frames for choosing certain HIV tests.

It is important to stress that the medical treatment of the survivor in the emergency department (ED) has not changed. The survivor should be evaluated in an ED as soon as possible for treatment and discussion of post-exposure prophylaxis (PEP). Studies have shown that the sooner PEP is initiated, the more likely it is to be effective. If a significant exposure did occur and the decision is made to initiate PEP, it should be initiated ideally within 2 hours and generally no later than 36 hours from the time of the exposure. Decisions regarding initiation of PEP beyond 36 hours post-exposure should be made on a case-by-case basis with the realization of diminished efficacy when timing of initiation is prolonged.

This law also requires healthcare facilities providing treatment to survivors of a sexual offense to offer and make available “appropriate HIV post-exposure treatment therapies in cases where it has been determined, in accordance with guidelines issued by the commissioner, that a significant exposure to HIV has occurred.” These facilities must also inform the survivor that payment assistance for such therapies may be available from the NYS Office of Victim Services (OVS). Facilities can request OVS brochures and forms required for reimbursement at: https://ovs.ny.gov/forms-and-publications.

The following documents have been updated:

- **Defendant Testing Guidance** provides clinical guidance on medical and psychological benefit to the victim, the appropriate HIV test to be ordered for the defendant, circumstances when follow-up testing for the defendant is recommended and indications for discontinuation of PEP.
- **Post-Exposure Prophylaxis for Victims of Sexual Assault Guideline** provides clinical guidance on significant exposure assessment for HIV, hepatitis B and hepatitis C (HCV), treatment recommendations and follow up care.
- **Judges’ Fact Sheet - Court Ordered HIV Testing of Defendants** outlines court responsibilities when the survivor of a sexual assault requests defendant testing for HIV.

The NYSDOH webpage “Court-Ordered HIV Testing of Defendants” also provides links to related information including “Procedures for Submitting Defendant Testing Specimens to Wadsworth Laboratory”, counseling messages for survivors and defendants, consumer brochures for survivors and defendants and FAQs related to the defendant testing law.

Clinical information and resources related to PEP are available through NYSDOH’s Clinical Education Initiative (CEI) at https://ceitraining.org. The CEI line (866-637-2342) is available for clinicians seeking expert guidance for patient-related PEP, sexually transmitted infections, HIV and HCV issues. For additional questions regarding defendant testing, please call the Office of the Medical Director, AIDS Institute at 518-473-8815.

Sincerely,

Lyn Stevens, MS, NP, ACRN
Acting Director, Office of the Medical Director
NYS DOH, AIDS Institute