NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

May 2, 2014

Dear Colleague:

On April 1, 2014, Public Health Law Section 2781 related to HIV testing in New York State, and Section 2135 related to confidentiality of HIV reports, were amended. These recent changes were enacted to further increase HIV testing in the State and promote linkage and retention in care for HIV-positive persons.

There are over ten thousand people living with HIV in New York State who are unaware of their HIV status. In 2010, Public Health Law Article 27-F was amended to require that HIV testing be offered to all persons between the ages of 13 and 64 receiving hospital or primary care services with limited exceptions, including a requirement for written, informed consent, except in the case of rapid testing. The Centers for Disease Control and Prevention (CDC) recommends routine HIV screening in healthcare settings. Before April 1, New York State was one of only two states in the nation to have laws inconsistent with this federal guidance. Removing the requirement for written consent eliminates a barrier to expanded testing.

Surveillance data from 2012 show that approximately 46,000 people, or 35 percent of the 132,000 persons living with diagnosed HIV infection, had no reported laboratory data documenting they received HIV care. Many of these persons have complex needs as pertains to housing, employment, substance use and mental health issues. Broader sharing of data will enable health departments and healthcare providers to work together to determine which patients are truly out of care and what kind of assistance is needed for them to return. The recently enacted amendment allows local and state health departments to share HIV surveillance information with healthcare providers involved in treatment, for purposes of patient linkage and retention in care.

Key provisions of the legislation include:

- Elimination of the requirement for written consent prior to ordering an HIV-related test in any circumstance outside of correctional facilities.
- Oral notification to be provided to the individual being tested or, if such individual lacks capacity to consent, to the person lawfully authorized to consent to healthcare for such individual.
- The individual to be tested must be told each time an HIV test will be done prior to testing and given the opportunity to decline. All HIV tests must be documented in the patient's medical record.
- Information about HIV testing will be provided via posters, brochures, videos or by providers to the patient with the opportunity to accept or refuse testing.

- When used for purposes of patient linkage and retention in care, patient-specific identifying information may be shared between local and state health departments and healthcare providers currently treating the patient.

These new provisions apply to all HIV testing in New York State and not just for testing as offered to persons between the ages of 13-64 in clinical settings.

For additional information, please visit the Department's website www.nyhealth.gov. Questions may be sent to hivtestlaw@health.state.ny.us

Thank you for your dedication and contribution to keeping New Yorkers healthy.

Sincerely,

Nirav R. Shah, M.D., M.P.H.
Commissioner of Health