

**TESTIMONY OF THE
GREATER NEW YORK HOSPITAL ASSOCIATION
BEFORE THE
NEW YORK STATE ASSEMBLY COMMITTEE ON HEALTH
REGARDING HIV TESTING, COUNSELING, AND INFORMED CONSENT
DECEMBER 20, 2006
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Good morning. My name is Doris R. Varlese, and I am Associate General Counsel at the Greater New York Hospital Association (GNYHA), which represents nearly 300 public and voluntary hospitals and continuing care facilities in the New York metropolitan area, as well as throughout New York State, New Jersey, Connecticut, and Rhode Island. GNYHA members provide services that range from state-of-the art, tertiary care to the most basic primary care, given their roles as safety net providers for many of the communities they serve.

My comments today focus on two amendments that GNYHA and its members believe should be made to the current provisions of the HIV confidentiality statute (Article 27-F of the New York State Public Health Law). The first would permit patients who present for care in the hospital setting (including hospital clinics and emergency departments) to be tested for HIV through a process of “opt out” screening, consistent with the most recent Federal Centers for Disease Control and Prevention (CDC) recommendations. The second would permit patients who are unconscious or lack the ability to consent—and who do not have a legal representative—to be tested for HIV when a health care worker has potentially been exposed to HIV. GNYHA greatly appreciates the opportunity to testify on these important issues.

“Opt Out” Screening

GNYHA believes that Article 27-F of the New York State Public Health Law should be revised to permit patients to consent to HIV testing by means of a general consent form provided when a patient first receives care in the hospital (including in emergency departments). The patient would be advised that HIV testing is a routine part of care and that he or she may elect to decline

or defer testing. To decline testing, the patient would initial a pre-printed box on a general consent form. Testing would remain voluntary, except in the narrow circumstances described below. This approach is consistent with the CDC's recent recommendations that all adults and adolescents aged 13-64 in health care settings be screened for HIV irrespective of risk factors. In this way, voluntary HIV testing will become a routine part of medical care, just as HIV testing is now routine for pregnant women. In the prenatal setting, voluntary HIV screening and appropriate treatment is now the standard of care for all pregnant women; as a result, the number of infants born with HIV has decreased markedly as a result.

GNVHA members believe that eliminating the requirement of a separate, written HIV-specific consent form would result in more at-risk patients being tested for HIV. Those patients who test positive, in turn, would receive post-test counseling that would include information about receiving treatment for HIV as well as information about risk reduction and partner notification. According to the CDC, regions of the United States that have opt-out testing policies have higher HIV testing rates than those that have "opt-in" policies or those that require specific counseling for testing. Further, a recent survey by the Kaiser Family Foundation found that 65% of survey respondents indicated that "HIV testing should be treated just like routine screening for other diseases, and should be included as part of regular check-ups and exams." This amendment, therefore, is consistent with both the CDC's recommendation and the general public's position on HIV testing.

Since Article 27-F was enacted in the 1980s, the medical field has made substantial advances in the treatment of HIV, with life-sustaining antiretroviral therapy now being the standard of care

for treatment for AIDS. This treatment has extended the lives of many people who are being treated for HIV/AIDS, which is, in most cases, a chronic, treatable disease. This evolution of the epidemic from one with few treatment options for those infected with HIV to one with life-sustaining treatments gives rise to the need to respond legislatively so that all of those persons potentially infected will be more likely to be tested and, therefore, more likely to avail themselves of treatment. According to the New York City Department of Health and Mental Hygiene, thousands of people are HIV-positive but do not know they are infected, and more than half of new HIV infections are believed to be transmitted by people who do not know their status. Testing, therefore, can reduce the spread of HIV, since HIV-positive people who are aware of their status can reduce high risk behaviors, thereby slowing the spread of HIV infection. Early diagnosis also permits patients to receive treatment sooner. Removing current barriers to HIV testing that arise from the current separate consent process will ensure that more people are tested, informed of their HIV status, and, if they are HIV-positive, brought into the system for HIV treatment. In addition, HIV screening among all patients aged 13-64, as the CDC recommends, would reduce the stigma associated with risk-based testing.

Occupational Exposures to HIV

Several times a year in many GNYHA member hospitals, health care workers are subject to occupational incidents (e.g., needle sticks) that could potentially expose workers to HIV. In those instances, it is important for the hospital worker to receive as much information as possible regarding the source patient's HIV status in order to make the most informed decision possible as to whether to begin antiretroviral therapy, which, according to the New York State Department of Health AIDS Institute guidelines, ideally should be begun within two hours and

generally no later than 36 hours of exposure for maximum efficacy. In cases where the source patient's medical record contains information regarding the patient's HIV status, that information is provided to the health care worker—if all conditions under the current regulations are met. If the medical record does not contain information regarding the patient's HIV status, a hospital staff member will approach the source patient and seek consent for an HIV test. In most cases, the source patient does consent to an HIV test. However, in cases where the source patient is unconscious or lacks capacity and there is no legal representative available to provide consent, GNYHA member hospitals are unable to obtain consent to an HIV test in a timely manner and therefore are unable to provide vital information to the health care worker that would inform his or her treatment decisions. New HIV rapid testing technology, however, can provide preliminary test results in less than thirty minutes (as compared to one to two weeks prior to the advent of rapid testing). Therefore, if the source patient is tested, the exposed health care worker would have immediate information on which to base a decision as to whether to initiate antiretroviral therapy. GNYHA believes that this narrow exception to the general promise of HIV confidentiality is necessary to protect the safety of health care workers.

To address this situation, GNYHA supports S. 5836, introduced in 2005, that would permit the source patient to be tested for HIV in limited situations as described above and would permit the results to be disclosed to the medical provider of the health care worker who potentially has been exposed to HIV, the health care worker, the source patient, and, if possible, and the legal representative of the source patient, if any. In addition, GNYHA is advocating that, if an HIV test given through this process is positive, that result should not be reportable to the New York State Department of Health's HIV reporting system, nor should it be included in the patient's

medical record unless the patient (assuming the patient later regains capacity) or the patient's representative consents that it be reported and included in the patient's medical record.

Thank you for the opportunity to testify today on these critical issues related to New York State's HIV-testing policy. On behalf of our members, GNYHA looks forward to continuing to work with the New York State Assembly Committee on Health on this important issue.