Bellevue Hospital Center
Management of Occupational Exposure to Blood Borne Pathogens, Policy B-12 revised 5/23/11

The hospital policy B-12 Management of Occupational Exposure to Blood Borne Pathogens has been revised based on the Family Health Care Decisions Act (FHCDA) and amended Public Health Law section 2781(6)(e). The revision reflects the increased opportunities for HIV testing of source patients.

1. **Informed consent is still required in most situations.**
   2. If a patient is unable to consent on his/her own, a legal guardian or legal health care proxy can still be used.
   3. If no legal guardian or health care proxy exists, we can now ask a prioritized list of surrogates for consent. Surrogates can make any type of health care decision if the patient is not competent or likely to become competent in a reasonable time, and there is no legal guardian or health care proxy. **There is no longer an exception for HIV diagnosis or treatment.** Consent can be obtained in person or by phone and must be documented in the source patient’s chart.

4. “Surrogate” is defined as one of the following individuals in the order listed:
   - A. Spouse or partner
   - B. Adult child
   - C. Parent
   - D. Adult sibling
   - E. Friend

5. **Anonymous HIV related testing without consent** can be performed in certain limited cases involving occupational exposures. The results of the HIV testing can be disclosed only to the health care provider of the exposed individual. They cannot be given to the source patient and cannot be documented in the source patient’s medical record.

   A. Anonymous un-consented HIV testing can only be performed when the following conditions are met:
      1. The source patient does not have and is not expected to regain decision making capacity in a reasonable time
      2. the source patient does not have a legal guardian, or a health care proxy or any surrogate.

   B. The only hospital staff authorized to conduct anonymous testing are:
      1. an HIV Counselor from HIV Counseling & Testing Service,
      2. the on-site medicine attending Hospitalist.

**IMPORTANT NOTE:** If the source patient is competent and refuses consent, or the legal guardian, proxy or surrogate refuses consent it is illegal to proceed with testing. It is illegal to coerce a source patient into consenting to an HIV test.
Is the source patient capable of consent?

YES
- Request consent from the source patient

NO
- Does the source patient have a legal guardian (guardian) or legal health care proxy (proxy)?

YES
- Request consent from the guardian or proxy. He/she can consent on behalf of the source patient immediately.

NO
- Is the source patient expected to regain capacity in a reasonable time?

YES
- Wait for the source patient to regain capacity and request consent.

NO
- Does the source patient have a surrogate?

YES
- Request consent from a surrogate in the order listed below:
  1. spouse/partner
  2. adult child
  3. parent
  4. adult sibling
  5. close friend

NO
- Consider anonymous source patient testing if the following conditions are met:
  1. The source patient is not expected to regain capacity in a reasonable time
  2. The source patient does not have a guardian, proxy or surrogate.

If the source patient is competent and refuses consent, or if the guardian, proxy or surrogate refuses consent, it is illegal to proceed with HIV testing. It is a violation of NYS law for a source patient to be coerced in any way into consenting to an HIV test.