

February 8, 2005

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Washington State Board of Health
PO Box 47990
1102 SE Quince Street
Olympia, WA 98504-7990



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WA STATE BOARD OF HEALTH

RE: HIV/AIDS Policy Discussion, Chapter 70.24 RCW and Chapters 246-100 and 246-101
WAC

Dear Sirs:

Lifelong AIDS Alliance ("LLAA" or "Lifelong") and our HIV/AIDS service organization partners around Washington thank you for your careful efforts to review and update policy rules regarding HIV testing, counseling and partner notification. Lifelong has submitted two letters of comments previously. After the presentation and discussion at the Board's January meeting, the AIDS service organizations listed below remain concerned about several of the proposed changes.

We share the goals of increased testing, expanded and effective prevention, and improved partner notification that the state seeks to achieve in these rules. We commend the Department of Health ("DOH") and the State Board of Health ("State Board") for their work so far. We submit these comments, our third submission, in order to advocate for additional improvements to the rules.

COMMENTS

ISSUE 1. Destruction of Partner Names After 90 Days, with an Exception for Ongoing Investigations: Proposed new WAC 246-100-072 (4) (b).

We recognize that public health entities may have a legitimate need to retain the names of partners for a limited time period beyond 90 days in rare situations. We commend DOH and the State Board for developing a proposal that has a limited exception to the current rule. However, we are concerned about the vagueness of this proposal. We are concerned about the lack of criteria for what constitutes an "investigation" and the lack of clarity regarding which entity has control of public health records. While we support the crucial need for partner notification, we also respect the privacy of individuals not accused of any crime.

ISSUE 2. Mandatory Health Care Provider Recommendations to Public Health re Partner Notification

Proposed WAC 246-100-072 imposes requirements upon principal health care providers (PHCPs) concerning partner notification. Under the proposed language the principal health care provider can elect one of two options:

- 1) Recommend that the state or local health officer meet with the HIV-infected individual for partner notification; or
- 2) Recommend that the state or local health officer *not* meet with the HIV-infected individual for partner notification, thereby making the principal health care provider responsible for successful completion of partner notification.

The agencies listed below wholeheartedly support HIV testing and early detection of infection as a means to accessing medical and care services. Early detection and access to medical care can mean better health for a longer period of time and better quality of life.

The concerns we have about the draft partner notification responsibility language have to do with three points:

- 1) Our opposition to unfunded mandates that result in unintended consequences; and
- 2) Our goal to maintain a client-centered approach to partner notification; and
- 3) Our belief that the proposed language is too vague regarding the clients in question.

First, the below signed agencies believe that the draft language would result in public health conducting partner notification in 100% of cases. Most providers do not have the time or resources to perform partner notification with the requirements proposed in the current draft of the rules. Therefore, the draft rule would result in providers either discontinuing testing services, or, if they continue with testing, passing all partner notification cases to public health. Not all public health officials in all parts of Washington have the same high levels of expertise, capacity and cultural sensitivity. We understand that DOH personnel can be called for consultation and to assist in partner notification and we appreciate the expertise of DOH personnel. However, the proposed rule in question effectively gives partner notification to local health officials on a standing basis and we recognize that their capacity and cultural sensitivity will be tested as a result of the proposed language.

Second, the proposed process excludes clients from partner notification beyond the listing of names. This proposed exclusion of the client and primacy of public health personnel is an unwarranted change. Testing initiatives are most successful when the people tested are treated as responsible decision makers. This proposal erodes the recognition of the person getting tested as an active, responsible agent and may have the unintended result of a greater preference for anonymous testing.

Third, the proposed language raises questions concerning which HIV-positive persons this rule would cover. The proposed rule is unclear as to whether the population in question is "newly diagnosed persons," "persons diagnosed previously," or both. Also, the rule does not resolve the confusion over where the primary responsibility for partner notification rests; as written, the primary responsibility may be with the testing agent, with the primary care provider, and/or with the HIV-consultant. The proposal also should indicate whether it is intended to apply to chronically-infected patients new to Washington State or new to providers.

If health care providers are not adequately assisting patients with partner notification, the state should allocate additional resources in order to achieve improved provider education and support. We urge DOH and the Board to consider a performance audit of partner notification practices among public health officials in the state. This audit (we suggest under the auspices of the

Governor's Advisory Council on HIV/AIDS) would help in answering concerns about expertise and sensitivity.

We note our continuing support of public health authorities' involvement in partner notification when patients request that participation or the situation properly warrants it (e.g. when a client is not competent to perform notification or when a client can list partner names, but refuses to notify).

ISSUE 3. Availability of Anonymous and Confidential Testing

Proposed WAC 246-100-207 (1) provides:

(1) Any person ordering or prescribing an HIV test for another, except for seroprevalent studies under chapter 70.24 RCW or provided under subsections (2) and (3) of this section or provided under WAC 246-100-208(1), shall:

(b) Unless the person has been previously tested and declines receipt of information, provide verbal or written information that is culturally, linguistically and developmentally appropriate to the individual being tested regarding HIV including:

(iv) As appropriate, the availability of anonymous HIV testing and the differences between anonymous testing and confidential testing

We support retaining the current language of WAC 246-100-207 (c):

" (c) Inform, orally or in writing, the individual to be tested of the availability of anonymous HIV testing and of the differences between 'anonymous HIV testing' and 'confidential HIV testing';"

The proposal to add the words "as appropriate" is unwarranted and we question what criteria would be used in deciding who is told of the two tests and the differences between the two. Persons considering having a test for HIV have the right to know that they may receive either an anonymous or confidential HIV test. The patient's right to know should outweigh an uninformed consent on the issue.

We urge that the rules clearly indicate the availability of anonymous and confidential testing at each applicable provision of these rules. Thus we support keeping the current provision in WAC 246-100-209(1):

" (i) Anonymous HIV testing is available through the local health department, home testing kits, or may be available through other community sources, and explain the differences between 'anonymous HIV testing' and 'confidential HIV testing';"

We also urge retaining other rules with language that addresses the availability of anonymous HIV testing. For example, the current language of WAC 246-100-209 (1): "(iv) Unless HIV testing is anonymous..." should be retained.

ISSUE 4. Separate Written Informed Consent

Proposed WAC 246-100-207 (c) provides:

(NEW c) Obtain or ensure verbal or written informed specific consent of the individual to be tested separate from other consents prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW and document the consent of the individual being tested in the medical record; and.....

The below signed organizations strongly support reducing the barriers to HIV testing. Testing is the key step necessary for early access to care for those who test positive. However, the fact remains that an HIV diagnosis can significantly impact a person's life. Risks include denial of insurance, denial of housing, denial of employment and recurring discrimination. These ramifications are not associated with other STDs or life-threatening illnesses; a positive test result for gonorrhea will not result in a client losing their health insurance, home or employment. This difference dictates that providers take a more sensitive and cautionary approach with HIV/AIDS than that required of other sexually transmitted diseases. The patient's separate written consent to testing signals delivery and receipt of important information.

We support requiring separate written informed consent to HIV testing. Revisions to the code should establish that a separate written informed consent, duly noted in a patient's records, is the acceptable standard for a patient receiving an HIV test.

ISSUE 5. Counseling Standards and Requirements

Proposed WAC 246-100-209 (NEW b) requires health care providers and other persons providing pretest counseling to assist individuals at risk of acquiring HIV to:

- (b) Assist the individual to set and reach a specific and realistic behavior-change goal to reduce the risk of acquiring or transmitting HIV;

This proposal places an unreasonable, unrealistic mandate on health care providers and other entities that conduct tests, in requiring those entities to help the individual reach behavior change goals. Helping the individual achieve the result is beyond the scope of work for those entities that perform HIV testing. Additionally, the rule proposes a requirement that the state would be unable to monitor and enforce. This proposed rule should be revised. At a minimum, we propose that the words "and reach" be removed from the rule.

Conclusion

We will continue to work with DOH, the State Board, public health officials, other AIDS Service organizations and the general community for the development of improved HIV rules which balance individual rights with public health. If you have any questions concerning this important matter, please do not hesitate to contact Sally Clark, Lifelong's Director of Community Resources, at 206.957.1605 (sallyc@LLAA.org).

Sincerely,

Lifelong AIDS Alliance
Gay City Health Project
Pierce County AIDS Foundation
Spokane AIDS Network

cc: Governor's Advisory Council on HIV/AIDS
Mr. Jack Jourden
Mr. John Peppert