

Summary Guidance

Recalcitrant Behaviors Among HIV/AIDS Infected Populations: Guidance for Local Public Health Department Response to Health Threat to Others Situation

INTRODUCTION

The following presents a summary of information presented throughout this document that offers guidance for addressing situations where HIV-infected individuals intentionally fail to disclose their HIV status to a sex or needle-sharing partner prior to engaging in such activities. Detailed in this document are steps for identifying these individuals who can pose a health threat to others situation based on the proven allegations of a sex or needle-sharing partner, third party¹ referral, or epidemiological findings of the local health department. Divisional Guidance is also provided for working with the circuit courts who work with health threat to other (HTTO) situations as mandated by Michigan law.

Information presented in this summary will highlight essential elements of the *Health Threat to Others Guidance*. The Michigan Department of Community Health (MDCH), Division of Health, Wellness and Disease Control (DHWDC) recognizes the complexities associated with implementing Michigan Compiled Law (MCL.333.5201), and suggest that the standards and recommendations offered through the guidance be enforced after collaborative input from your local public health officer, and if necessary, DHWDC staff.

The guidance in this document applies to Local Health Departments that receive categorical funds only. For those departments that do not receive categorical funding, HTTO situations should be referred to the appropriate State Disease Intervention Specialist (DIS)/Partner Counseling and Referral Services (PCRS) staff person. See attachment D of the guidance.

Part A: Recommendations for Local Public Health Department Response to a Health Threat to Others Situation

A request for local health department intervention to deal with a health threat to others situation will typically prompt local health department staff to take the appropriate action in accordance with program standards summarized below:

- 1) Record the referral information on the Model Intake Referral Form
See Attachment A.

¹ Third Party: An individual who is not an employee of the local health department or epidemiologically related to a case, but who has knowledge that possible transmission of HIV may have intentionally occurred.

- 2) Determine merit of the referral by conducting the appropriate preliminary investigative activity² in accordance with the program standards for identifying a health threat in Section I, Part A of the guidance. If the information obtained has merit, proceed to Section I, Part B of the guidance.

If the referral information from a sex or needle-sharing partner of the HIV-infected individual lacks sufficient merit, (unreliable evidence) the case should *not* be considered a health threat to others, and the investigation terminated. If the referral for intervention was made by a ‘third party’ additional steps are required. For additional guidance on this subject, see the section for ‘Responding to Request for Health Department Intervention in the Absence of HIV/AIDS Diagnosis’ on page 4 of the document. **[Note:** Making the decision to proceed with a request for assistance with a HTTO should be a collaborative effort and may involve input from the local health officer, the HIV/AIDS program coordinator and/or other experienced staff.]

Part B: Issuance and Contents of a Warning Notice

Once an individual is considered a “health threat to others,” the local health department is required to issue a warning notice. See details on the contents of a warning notice on page 5 of the guidance.

The warning notice may require the individual to participate in education, counseling, or treatment programs and undergo medical testing to verify the individual’s infectious status as a health threat to others. Local health departments have significant authority to regulate the conditions that are set forth in a warning notice. The sample warning notice provided in Attachment B provides the recommended content that is specific and individually based. Warning notices may be delivered by certified or registered mail or personally by a representative of the local health department.

Departmental recommendations encourage the personal delivery of warning notices. See Section I, Part B of the guidance for further information.

Part C: Failure to Comply With a Warning Notice

If the individual fails to cooperate with the conditions set forth in the warning notice, or continues the activity, the health department may petition the circuit court for relief. Relief may include supervised detention for up to six months. Please refer to page 9 of the guidance for additional instruction on this subject matter.

Part D: Emergency Detention

In an emergency situation (e.g. total disregard for the welfare of the public’s health is evident), Michigan law permits the emergency detention of the individual (without prior

² Investigative Activity: Application of specific Partner Counseling and Referral Services (PCRS) methods to verify the presence of an HIV/AIDS diagnosis, and credibility of referral source/s.

warning) when there is reasonable cause to believe that the individual is a carrier (diagnosed as having HIV/AIDS) and a health threat to others. However, prior to this action, the health officer must first file a affidavit with the circuit court and convince the court that there is just cause to issue an arrest warrant for the individual. Refer to page 11 of the guidance for additional information.

Section II: Confidentiality Concerns

Michigan HIV/AIDS Confidentiality laws (MCL 333.5131) allow for the release of information about an HIV-infected person to the Department, a local health department or other health care provider for one or more of the following reasons: 1) to protect the health of an individual, 2) to prevent further HIV transmission, and 3) for diagnosis and care for a patient. Sharing information about an individual who is a health threat is permissible under this statute. **[Note:** The Division of Health, Wellness and Disease Control however, does not support the release of any identifying information about these individuals to any news, or media-based publications or broadcast without the consultation and agreement of all relevant legal and public health authorities.]

Section III: MDCH Centralized Recalcitrant Case File

Purpose:

The centralized recalcitrant case file is an internal record keeping system, developed and maintained by the MDCH, DWHDC that allows for the confidential collection and maintenance of 'health threat to other' case information. This system establishes criteria for entering case information, access to case information by authorized departmental personnel, and the establishment of security features.

Two conditions must be met for the individual who is identified as a health threat to be entered into the centralized file system. They are listed below:

- The individual has been confirmed as HIV-infected, and has been issued a warning notice.
- A health officer or medical director or designee has made a formal written request to have information about the individual entered into the system.

Local health officers or their designee are required to submit recalcitrant case information to the State PCRS program coordinator for case management purposes. Instructions are provided below for submitting recalcitrant case information.

Submitting Recalcitrant Information:

Submissions to the centralized data system can occur through completion of the model intake form (Attachment A.) The local health officer, medical director or their designee

are required to complete the form, and mail it to the PCRS Coordinator at the Michigan Department of Community Health, 3056 W. Grand Blvd. Suite 3-150, Detroit, Michigan, 48202. Information should be submitted within three business days. Forms may also be faxed to the PCRS Coordinator's secured fax number of (313) 456-4427. The PCRS Coordinator will be responsible for entering the information into the recalcitrant case file data system.

Health officers, medical directors or their designee should submit new information regarding a particular individual within the system via the model referral form to the PCRS Coordinator at the Michigan Department of Community Health.

Section IV: Qualified Service Agreement

Carrying out the mandates required by MCL 333.5201 may require local health departments to establish some type of agreement with agency administrators that facilitate the exchange of specific information about the client and or access to the client e.g., delivery of HIV prevention counseling to clients housed in a correctional facility. See model agreement in Attachment G.

Under this type of agreement, written procedures outline how local public health would request access to the client by contacting a designated staff member of the agency to schedule a confidential appointment. At no time would the purpose or need for access to the client be disclosed to the agency. The only information that could be shared is simply the need to meet with the client to discuss a private health matter. Refer to page 16 of the guidance for additional details.

Section V. Educational Protocol

Provisions within MCL 333.5201 can require individuals who are identified as a HTTO to undergo counseling in an effort to prevent or control disease transmission. Refer to page 17 of the guidance for additional details.