



# HIV/AIDS Service Providers of Vermont

Testimony of Chuck Kletecka - iH.98 – February 25, 2015

## History

Vermont statutes include confidentiality protections for communicable diseases. Some statutes were created by this committee about 15 years ago to address unique identifier HIV reporting. Some of that language was changed when Vermont switched to names-based reporting.

H.98 strips much of the statutory language related to confidentiality and reporting requirements for communicable diseases, some of which is specific to HIV/AIDS. We are concerned about many of these proposed changes. Stigma around HIV/AIDS other diseases still exists, and it is important that our laws protect the privacy of Vermonters. VDH and the HIV community have met and have agreed upon some provisions. There are still some outstanding disagreements.

### **1. Subdivision (a) (p.4, lines 19-21) – Agreement**

Eliminate the strikethrough of:

“In the case of the human immunodeficiency virus (HIV), “reason to believe” shall mean personal knowledge of a positive HIV test result.”

- A potential reporter should have actual knowledge of a positive HIV test result.

### **2. Subdivision (a) (p.5, lines 2-4) – Agreement**

Eliminate the strikethrough of

“Nonmedical community-based organizations shall be exempt from this reporting requirement”

- These organizations are exempt from reporting.

### **3. Subdivision (a) (p.5, line 9-18) – Agreement**

Keep strikethrough.

### **4. Subdivision (b)(1) and (2) (p.5, line 19-p.6, line 13) – Agreement**

Replace (b)(1) and (2) with the following:

(b) Public health records that relate to HIV or AIDS that contain any personally identifying information, or any information that may indirectly identify a person and was developed or acquired by state or local public health agencies, shall be confidential and shall only be disclosed following notice to the individual subject of the public health record or the individual’s legal representative and pursuant to a written authorization voluntarily executed by the individual or the individual’s legal representative. Disclosures to other states, the federal government, and other programs, departments, or agencies of state government shall be permitted, without notice pursuant to this section, to other states’ infectious disease surveillance programs for the sole purpose of comparing the details of case reports identified as possibly duplicative, provided such information shall be shared using the least identifying information first so that the individual’s name shall be used only as a last resort.

- This eliminates some old language that is no longer necessary or relevant.

**5. Subdivision (c) (p.6, line 14-19) – No agreement**

Eliminate the strikethrough of (c).

- This would retain the language that currently states that the re-disclosure of information is not allowed without the individual's permission.

**6. Subdivision (e) (p.7, line 7 – p.8, line 14) – No agreement**

Eliminate the strikethrough of (e).

- Penalties should continue to be imposed for the unauthorized disclosure of information. (1) and (2) provide for civil penalties for disclosure of all communicable diseases. (3) provides for criminal penalties for certain HIV/AIDS related disclosures. (4) sets forth the damages under a private cause of action for the acts described in this section.

- Without this provision, in addition to any HIPAA cause of action that HHS may choose to pursue, the penalties under current Vermont statute would be limited to \$50-100.

**7. Subdivision (f) (p.8, line 16-p.9, line 2) – No agreement**

Replace the language that is struck in (f) with the following:

The Department may collect, process, or store individually identifying information concerning HIV/AIDS on any networked or non-networked computer or server which conforms to VDH encryption and privacy protection policy.

- It is important that VDH be mandated in statute to conform to encryption and privacy protection policy.

**8. Subdivision (g) (p.9, line 3-8) – No agreement**

Eliminate the strikethrough.

- A person should be advised that positive test results will be reported and that they have the option of getting tested at an anonymous testing site as an alternative if they so choose.

**9. Subdivision (i) (p.9, line 12 – p.10, line 6) - Agreement**

Replace the language that is struck in (i) with the following:

“(i) Annually, the Department of Health shall evaluate the systems and confidentiality procedures developed to implement networked and non-networked electronic reporting, including system breaches and penalties for disclosure by state personnel. The Department shall provide this information to, and solicit input from, the Vermont HIV/AIDS Community Advisory Group (CAG) regarding the success of the Department’s security measures.

- This eliminates some old language and requires VDH to evaluate confidentiality procedures.

**10. Subdivision (j) (p. 10, line 7-9) - Agreement**

Replace the language in (j) with the following:

“The Department shall work with the community-based organizations to advance, disseminate, and educate the public and health care providers about the benefits of HIV testing and the use of current available testing technologies.”

- This eliminates old language and requires VDH to work with the community re: education.