



COMMONWEALTH of VIRGINIA

Department of Health

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MEMORANDUM

DATE: March 30, 2001

TO: District Directors

FROM: Casey W. Riley, Director
Division of HIV/STD

SUBJECT: HIV Spousal Notification

Some questions have recently arisen regarding the HIV spousal notification requirements of the Ryan White CARE Act, and I thought it might be helpful to summarize these Federal requirements. Since April 1, 1997, Ryan White legislation (Public Law 104-146, reauthorized in 2000 as Public Law 106-345) has required states to ensure that a good faith effort is made to notify a spouse of a known HIV-infected patient of potential exposure to HIV and to encourage such spouses to seek HIV testing.

The previous ten years of an HIV-infected patient's marital history should be reviewed and all spouses at risk for infection should be appropriately notified. The following is a summary of the impact of the Ryan White legislation on the Department of Health's HIV partner counseling and referral services:

- Marital status should be obtained and documented on a field record for all HIV-infected patients.
- The interview period for HIV-infected patients, who are not separated or divorced and have never been separated or divorced, is one year from the date of the patient's positive HIV test. Spouses exposed to HIV are notified.
- The partner notification interview period for separated and divorced HIV-infected patients is ten years, in order to identify previous marital partners.
- There is no need to go back ten years for HIV-infected separated or divorced patients with a known infectious period (known negative HIV test date). Spousal notification should encompass the six months prior to the negative test date.

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Attached is a summary of legislative and administrative actions that have been taken by Virginia relative to this issue. If you have any questions, please call me at (804) 786-6267.

Attachments

c: Robert B. Stroube, MD, MPH
Jeff Lake

Spousal Notification Requirements of the Ryan White CARE Act Legislation Summary of Legislative and Administrative Action

The following Virginia legislation supports spousal notification of HIV-infected individuals:

- Section 32.1-36.1 of the Code of Virginia (attached), passed in 1989, states that “the results of every test to determine infection with human immunodeficiency virus shall be confidential. Such information may only be released to the following persons...the spouse of the subject of the test.”
- Section 32.1-36 of the Code of Virginia (attached), passed in 1989, states that “any physician practicing in this Commonwealth shall report to the local health department the identity of any patient of his who has tested positive for exposure to human immunodeficiency virus as demonstrated by such test or tests as are approved by the Board for this purpose.”
- The Commonwealth of Virginia’s Regulations for Disease Reporting and Control states that “when notified about a disease specified in subsection A of this section [Part III, Reporting of Disease], the local health department shall perform contact tracing for HIV infection, infectious syphilis, and tuberculosis and may perform contact tracing for the other diseases if deemed necessary to protect the public health.”

The following administrative procedures are in place for implementing partner notification:

- HIV/STD health counselors routinely conduct partner notification services for HIV and AIDS. For cases reported by the private sector, health counselors contact providers, explain the partner notification process, and request permission to contact their clients. Of the calendar year 2000 cases not interviewed, 22% (110) were the result of private physicians refusing permission to perform interviews.
- Health counselors interview HIV and AIDS cases for all partners within the past year. If they are unable to determine or approximate the time infection occurred and are provided with good locating information, they conduct notification of ex-spouses and other steady partners for the previous ten years. The Department of Health first distributed a memorandum to district directors in 1997 that described the spousal notification requirements under the 1996 reauthorized Ryan White legislation, and stressed the importance of initiating partner notification activities for any spouse within the previous ten years. The Ryan White CARE Act was reauthorized in 2000, with no changes to the spousal notification requirement.

HEALTH LAWS OF VIRGINIA

I. ADMINISTRATIVE PROCESS ACT [from Chapter 1.1:1 of Title 9]

ARTICLE 1. General Provisions

§9-6.14:4.1. Exemptions and exclusions

A. Although required to comply with §9-6.18 of the Virginia Register Act (§9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

...

29. The Board of Health is promulgating the list of diseases that shall be reported to the Department of Health pursuant to §32.1-35.

II. DISEASE PREVENTION AND CONTROL [from Chapter 2 of Title 32.1]

ARTICLE 1. Reporting of Diseases.

§ 32.1-35. List and reports of diseases.

The Board shall promulgate from time to time a list of diseases, including diseases caused by exposure to any toxic substance as defined in §32.1-239, which shall be required to be reported. The Board may classify such diseases and prescribe the manner and time of such reporting.

§ 32.1-36. Reports by physicians and laboratory directors.

- A. Every physician practicing in this Commonwealth who shall diagnose or reasonably suspect that any patient of his has any disease required by the Board to be reported and every director of any laboratory doing business in this Commonwealth which performs any test whose results indicate the presence of any such disease shall make a report within such time and in such manner as may be prescribed by regulations of the Board.
- B. Any physician who diagnoses a venereal disease in a child twelve years of age or under shall, in addition to the requirements of subsection A hereof, report the matter, in accordance with the provisions of §63.1-248.3, unless the physician reasonably believes that the infection was acquired congenitally or by a means other than sexual abuse.
- C. Any physician practicing in this Commonwealth shall report to the local health department the identity of any patient of his who has tested positive for exposure to human immunodeficiency virus as demonstrated by such test or tests as are approved by the Board for this purpose. However, there is no duty on the part of the physician to notify any third party other than the local health department of such test result, and a cause of action shall not arise from any failure to notify any other third party.
- D. Upon investigation by the local health department of a patient reported pursuant to subsection A, the Commissioner may, to the extent permitted by law, disclose the patient's identity and disease to the patient's employer if the Commissioner determines that (i) the patient's

employment responsibilities require contact with the public and (ii) the nature of the patient's disease and nature of contact with the public constitutes a threat to the public health.

The patient's identity and disease state shall be confidential as provided in §§32.1-36.1 and 32.1-41. Any unauthorized disclosure of reports made pursuant to this section shall be subject to the penalties of §32.1-27.

- E. Physicians and laboratory directors may voluntarily report additional information at the request of the Department of Health for special surveillance or other epidemiological studies.

§ 32.1-36.1. Confidentiality of test for human immunodeficiency virus; civil penalty; individual action for damages or penalty.

- A. The results of every test to determine infection with human immunodeficiency virus shall be confidential. Such information may only be released to the following persons:
 1. The subject of the test or his legally authorized representative.
 2. Any person designated in a release signed by the subject of the test or his legally authorized representative.
 3. The Department of Health.
 4. Health care providers for purposes of consultation or providing care and treatment to the person who was the subject of the test or providing care and treatment to a child of a woman who, at the time of such child's birth, was known to be infected with human immunodeficiency virus.
 5. Health care facility staff committees which monitor, evaluate, or review programs or services.
 6. Medical or epidemiological researchers for use as statistical data only.
 7. Any person allowed access to such information by a court order.
 8. Any facility which procures, processes, distributes or uses blood, other body fluids, tissues or organs.
 9. Any person authorized by law to receive such information.
 10. The parents or other legal custodian of the subject of the test if the subject is a minor.
 11. The spouse of the subject of the test.
 12. Departments of health located outside the Commonwealth by the Virginia Department of Health for the purposes of disease surveillance and investigation.
- B. In any action brought under this section, if the court finds that a person has willfully or through gross negligence made an unauthorized disclosure in violation of this section, the Attorney General, any attorney for the Commonwealth, or any attorney for the county, city or town in which the violation occurred may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$5,000 per violation.
- C. Any person who is the subject of an unauthorized disclosure pursuant to this section shall be entitled to initiate an action to recover actual damages, if any, or \$100, whichever is greater. In addition, such person may also be awarded reasonable attorney's fees and court costs.
- D. This section shall not be deemed to create any duty on the part of any person who receives such test results, where none exists otherwise, to release the results to a person listed herein as authorized to receive them.

§ 32.1-37. Reports by persons other than physicians.

- A. The person in charge of any medical care facility, school or summer camp as defined in §35.1-1 shall immediately make or cause to be made a report of a disease required by the Board to be reported when such information is available to that person and that person has reason to believe

Attachment B

Centers for Disease Control and Prevention (CDC) and Health Resources and Services Administration (HRSA)

Examples of Principles and Practices Regarding HIV Spousal Notification that Constitute a Good Faith Effort

SUMMARY: On May 20, 1996, the Ryan White CARE Reauthorization Act was signed into law (P.L. 104-146). Section 8(a) requires that States take "administrative or legislative action to require that a good faith effort be made to notify a spouse of a known HIV-infected patient that such spouse may have been exposed to the human immunodeficiency virus and should seek testing." Under this section, States that fail to take administrative or legislative action will be ineligible to receive grant funds under Part B of the Ryan White CARE Act administered by HRSA.

Currently, CDC requires all health department recipients of HIV prevention funding to "establish standards and implement procedures for partner notification consistent with State/local needs, priorities, and resource availability."

States must certify to CDC that they have taken the administrative or legislative actions necessary to require a good faith effort to ensure that spouses of known HIV-infected individuals are notified of their possible exposure to HIV and referred for testing.

All identifying information regarding HIV-infected patients and spouses must be kept confidential. No personally identifying information shall be disclosed unless required by State law or political subdivision, or unless the individual provides written, voluntary informed consent. Anonymous HIV testing does not preclude effective partner or spousal notification. Unless prohibited by State law or regulation, reasonable opportunities to receive HIV-antibody counseling and testing services anonymously should continue to be offered. Anonymous testing services must be accompanied by appropriate counseling. The availability of anonymous testing services may encourage some persons at risk of HIV, who might otherwise be reluctant to be tested, to seek testing.

The following are examples of public health principles and practices that constitute a "good faith" spousal notification effort by States. States should review these examples, but are not limited to them in considering which policies, systems, or actions will be appropriate for their jurisdictions.