

Guidelines for Legal and Operational Protection of Confidential HIV and Communicable Disease Public Health Reports and Records

Background

It is the duty of state and local health officers to investigate and control HIV and communicable diseases. Colorado Board of Health Rules and Regulations require that information about communicable disease be shared between the state and local health departments, and that this information remain confidential. The Colorado Department of Public Health and Environment (CDPHE) assures the Centers for Disease Control and Prevention (CDC) and all 50 states with which it has interstate reciprocal agreements, that all agencies with which it lawfully shares Human Immunodeficiency Virus (HIV) surveillance information are bound by the same legal restrictions as CDPHE. Public health agencies and contractors must hold public health reports and records as strictly confidential and not release information upon subpoena, search warrant, or discovery proceedings except under specific circumstances permitted by law (C.R.S. § 25-4-1404(1); C.R.S. § 25-1-122(4)).

Rationale

The protection of confidentiality of reportable conditions requires a consistent, long-term, and statewide approach. The statutes that protect public health records (as defined below) apply simultaneously to both CDPHE and local health agencies. Furthermore, CDPHE may have additional requirements in its contracts with local health agencies concerning the confidentiality of records, when information is collected using the resources from the contract. Even though a local health agency may be the specific recipient of a subpoena for public health records, the actions taken by the local health agency affect not only CDPHE, but all other local health agencies in Colorado, because of the potential to set legal precedents. As a result, these guidelines have been developed to assure that a highly protective approach is administered by all public health agencies in the state and that there is close collaboration between CDPHE and the affected local health agency. These guidelines are intended to provide assistance in the practical application of state law and regulations and to provide examples pertaining to the protection of records. An additional goal is the development of a well-trained workforce who is committed to confidentiality protection.

Definitions

- 1) **Public health reports and records:** All information regarding a case of a reported disease, including lab reports, medical reports, demographics, risk factor information, follow-up investigations, partner notification/contact tracing records, counseling notes, and HIV prevention case management notes and records. In other words, there is no distinction made as to where the data came from; if the information is in the file or folder of the public health agency and is not a clinic chart, it is a public health report and is subject to the confidentiality protections listed in C.R.S. § 25-1-122 (4) and C.R.S. § 25-4-1404 (1). If the information came from a clinic chart, it is nonetheless a public health report once it is placed in the file, folder, or database of the public health surveillance/investigation/counseling/case management worker or program. No distinction should be made between clinical information and “epi” information - both are considered public health records if they are physically located in the public health file/folder/database.

- 2) Medical records: All information in medical charts held in a clinic or office by a health care practitioner. If a local health agency has, for example, a sexually transmitted disease (STD) clinic, then the information about a patient in the chart located in the clinic is a medical record and is subject to the confidentiality protections afforded all medical records by C.R.S. § 18-4-412.

Comments: The same information, e.g. positive urethral culture for N. gonorrhoea, may appear in both a clinic chart and a public health record. Different statutes protect the confidentiality, based on the location of the information. In general, epidemiologic and prevention information collected after a case is reported, such as named partners, risk factors, and case management, should not intentionally be photocopied and placed in the medical record.

Guidelines for Local Health Agencies and Contractors

1. Review and ensure the organization's compliance with:
 - Colorado statutes related to HIV
 - Colorado statutes related to communicable diseases
 - Colorado Board of Health Rules and Regulations pertaining to HIV
 - Colorado Board of Health Rules and Regulations pertaining to Communicable Diseases
 - Definitions for HIV Prevention Interventions and Standards of Practice as shown in the Colorado Department of Public Health and Environment "HIV Prevention Guidelines".
2. Ensure that all employees who have "need to know" status and access to confidential HIV or communicable disease information sign confidentiality agreements. Keep file copies of all signed Confidentiality Agreements.
3. Contact the CDPHE Executive Director, State Epidemiologist, Chief Medical Officer, or Office of Legal and Regulatory Affairs Attorney when questions arise. These CDPHE employees will be able to provide technical assistance regarding the practical interpretation of HIV and communicable disease statutes and Board of Health Rules and Regulations.
4. Prevent attempts by outside agencies to obtain unauthorized access to public health reports, records and staff testimony.
5. Upon receipt of a subpoena for any HIV or communicable diseases record or staff testimony:
 - Notify your agency's official legal counsel. Note: Because of client-attorney privilege and for the purpose of legal representation, you may share public health reports and records information with your agency's official legal counsel.
 - Notify the CDPHE State Epidemiologist, or Chief Medical Officer, or Office of Legal and Regulatory Affairs Attorney within 24 hours after being served with a summons, complaint, or other pleading in a case which involves any HIV or communicable diseases related reports, records or services or records.
 - CDPHE staff may contact the Attorney General's Office for additional legal advice, as needed.