

Legal and Ethical Issues

AIDS and HIV are reportable conditions in Washington State, by statute WAC 246-101.

HIV and AIDS are reportable

AIDS (medically diagnosed) and symptomatic HIV infection have been reportable conditions in Washington since 1984 and 1993 respectively. In 1999, asymptomatic HIV infection also became reportable.

Reporting of HIV and AIDS cases assists local and state officials in tracking the epidemic. It also allows for effective planning and intervention to be provided in the effort to reduce the transmission of HIV to other people.

What does 'reportable' mean?

In the case of HIV or AIDS, providers who diagnose a person must submit a confidential case report to the local health jurisdiction within 3 days.

Are HIV positive results from an *anonymous* test reportable?

Positive HIV results obtained through anonymous testing are not reportable. However, once a patient with positive results seeks medical care for conditions related to HIV or AIDS, the provider is required to report the case to the local health departments.

Spousal notification

Spousal notification continued

Federal Public Law 104-146 (1996) requires that states take action to require that a "good faith effort" be made to notify all spouses of HIV-infected persons. A "spouse" is defined as anyone who is or has been the marriage partner of an HIV-infected individual within 10 years prior to the HIV diagnosis.

"Notification" means that if the test result is positive, the individual testing positive will be counseled about the importance of notifying spouses and partners and will be given the choice to notify his/her spouse(s), to allow the health care provider to notify the spouse(s) or refer to the local health jurisdiction for assistance in notifying the spouse(s).

Confidentiality

All medical records are confidential and must be maintained in a manner that protects that confidentiality. There are special requirements around HIV and AIDS, found in WAC 246-101 and RCW 70.24.105.

What does 'confidential' mean?

Confidentiality of medical information means that a person's medical information (including HIV testing and HIV results) may not be disclosed to anyone unless the individual signs a release of information form. However, there are exceptions to this.

Medical information can be disclosed under certain circumstances including:

- When it is given from one health provider to another health care provider for related on-going medical care of the patient
- In a life or death emergency
- To a third party payor (insurance provider)
- In the case of reporting notifiable conditions to the local health jurisdiction or the DOH

Violation of the above-mentioned laws is a misdemeanor and may result in civil liability actions for reckless or intentional disclosure up to \$10,000 or actual damages, whichever is greater.

It is the responsibility of the county's health officer to investigate potential breaches of confidentiality of HIV identifying information and report those to the DOH.

Why are there additional confidentiality protections for HIV, mental health, substance abuse and other selected records?

Some areas of the medical record have additional confidentiality requirements because disclosure of the information to the wrong person or agency could mean additional harm to the patient. It has been determined that there exists a level of prejudice, fear and discrimination directed at people with these medical conditions. Therefore, there is a balance between civil protection and information access.

Disability and Discrimination

People with AIDS and HIV are also protected by federal law under Title II of the Americans with Disability Act of 1990 (ADA) and Section 504 of the Federal Rehabilitation Act of 1973, as amended.

In Washington State, the Washington Law Against Discrimination (WLAD) regulates "disabled" status and explicitly prohibits discrimination on the basis of HIV and Hepatitis C Infection. RCW 49.60.174. The WLAD is enforced by the Washington State Human Rights Commission.

Discrimination

Persons with HIV infection and/or AIDS who feel discriminated against on the basis of their disease may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services, or the Washington State Human Rights Commission.

WSHRC jurisdiction information can be found on its website, www.hum.wa.gov. The WSHRC does not investigate anonymous complaints, and may have to release a complaint under the State's Public Disclosure ACT. In certain circumstances, OCR will not disclose a complainant's identity.

Disability

HIV infection and AIDS are medical conditions that are considered disabilities under the Washington State Law Against Discrimination (RCW 49.60) and the federal Americans with Disability Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973.

From what does the law protect the individual with HIV infection or AIDS from?

These laws mean that it is illegal to discriminate against people who have AIDS or are HIV infected, on the basis of their medical condition. It is also illegal to discriminate against someone who is 'believed' to have AIDS or HIV infection, even though that person is not, in fact, infected. The areas covered in the law are:

- Employment
- Rental, purchase or sale of apartment, house or real estate
- Places of public accommodation (restaurants, theaters, etc.)
- Health care, legal services, home repairs, and other personal services available to the general public
- Applying for a loan or credit card, or other credit transaction
- Certain insurance transactions

Note: Federal and state jurisdictions differ.

The laws also protect HIV infected and AIDS-diagnosed people from employment discrimination

Employers may not discriminate against persons with HIV infections or AIDS in:

- Employment
- Recruitment
- Hiring
- Transfers
- Layoffs
- Terminations
- Rate of pay
- Job assignments

- Leaves of absence, sick leave, any other leave or fringe benefits available by virtue of employment

Note that state and federal laws do not cover all employers. For example, state law does not cover employers with fewer than eight employees, religiously controlled non-profits, and Indian tribes.

**Employers must provide a discrimination-free environment
Employers must provide a discrimination-free environment**

Employers are required to provide and maintain a working environment free of discrimination. They must assure that no harassment, intimidation or adverse action personnel distinction is made in terms and conditions of employment based on HIV status.

If a worksite situation develops that poses the threat of discrimination, it is best practice for the employer to provide education and supervision to employees in order to end harassment, the use of slurs and/or intimidation. An employer should promptly investigate allegations of discrimination, take appropriate action, and not retaliate against the person who complained.

If someone is in a situation in which they feel they are being discriminated against, they should first document the discrimination, speak with their supervisor, and follow the entity's internal process to file a discrimination charge. However, it is not necessary to follow an internal grievance process. If these remedies do not work, a person should contact the Office for Civil Rights or the Washington State Human Rights Commission. An aggrieved person can also file directly in state court. A complaint must be filed within 180 days of the alleged discriminatory incident.

Reasonable accommodation

Employers are responsible for providing reasonable worksite accommodations which will enable a qualified, disabled employee or job applicant to perform the essential tasks of his/her particular job.

Reasonable accommodation means modifications to a worksite or job, in the context of the entire employer's operation, such as:

- Providing special equipment
- Altering the work environment
- Allowing flex-time
- Providing frequent rest breaks
- Allowing the person to work at home (telecommute)
- Restructuring the job

An employee with a disability must self-identify and request a

reasonable accommodation. The employer must engage in an interactive process with the requestor. The reasonable accommodation grant may not be exactly the same one as requested by the employee, but can be equally effective. The employer does not have to change the essential nature of its work, or engage in undue hardship or heavy administrative burdens. The essential functions of the job must be accomplished, with or without reasonable accommodations.

Potentially prejudicial information

When a person goes for a job interview or is hired:

- It is best practice for an employer to not ask questions directed at the perception or presence of HIV infection or AIDS unless the employer has obtained a “bona fide occupational qualification” (BFOQ) from the Washington State Human Rights Commission. RCW 49.60.172 and WAC 246-100-204.
- It is best practice for an employer to not ask “lifestyle” questions such as inquiring about an applicant’s religion, living arrangements, sexual orientation, or gender identity.

*Note: Chapter 49.60 RCW, the Washington Law Against Discrimination, prohibits discrimination based on age, creed, religion, race, color, national origin, sex, sexual orientation and gender identity, HIV and Hepatitis C status, whistleblower retaliation, marital status (housing and employment), families with children (housing), or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service.

Exceptions to this are applicants for the U.S. military, the Peace Corps, the Job Corps, and persons applying for U.S. citizenship, under federal law, which supersedes state law.

Behaviors Endangering the Public Health

Washington State law (RCW 70.24) and rules (WAC 246-100 and 246-101) gives state and local health officers the authority and responsibility to carry out certain measures to protect the public health from the spread of sexually transmitted disease (STD), including HIV.

Authorities and responsibilities of the Health Officer

The local health officer is the physician hired to direct the operations of the local county's health department or health district.

Authorities and responsibilities of the Health Officer, continued

Included in the broad responsibilities of the health officer is the authority to:

- interview persons infected with an STD
- notify sexual or needle-sharing partners of exposure to disease
- order persons suspected of being infected to receive examination, testing, counseling or treatment
- issue orders to cease and desist from specific conduct that endangers the public health of others

Court enforcement of these orders can be sought. State law delineates the standards that must be met before action by the health officer may be taken.

For HIV, Washington State law permits an additional step - the detention of an HIV-infected person who continues to endanger the health of others. After all less restrictive measures have been exhausted, the law allows for a person to be detained for periods up to 90 days after appropriate hearings and rulings by a court. This detention must include counseling.

Reporting non-compliance

By state law and rule, health care providers are required to provide instruction on infection control measures to the patient who is diagnosed with a communicable disease. They are also required to report certain information to the local health officer where there are either impediments to or refusal to comply with prescribed infection control measures.

For example, in cases of behaviors endangering when a health care provider has knowledge that a specific patient is failing to comply with prescribed infection control measures (e.g., acquisition of a new STD, sex without disclosure of HIV status prior to sexual partners, failure to disclose HIV status to needle-sharing partners, or donating or selling HIV-infected blood, etc.) they should contact the local public health officer to discuss the circumstances of the case and to determine if the name of the person should be reported for investigation and follow-up.

Case investigation

The health officer or other authorized representative will investigate the case if credible evidence exists that an HIV-infected person is engaging in conduct endangering the public health.

There are also other laws and regulations concerning behaviors endangering and occupational exposures. These may be specific to professions and to the jurisdictions of public health officers. For more specific information, talk with public health officials in your area, call the Washington State Hotline at 1-800-272-2437, or ask a knowledgeable person to provide the information to your group.