

# **SOCIAL and PUBLIC POLICY REVIEW**

Volume 5, Issue 2, 2011

## **The Conflict Between HIV Reporting and Privacy Issues – Public Policy Questions**

**David Ruggeri**, *East Central College, United States*

---

Ruggeri, D. (2011) “The Conflict Between HIV Reporting and Privacy Issues – Public Policy Questions”,  
*Social and Public Policy Review*, 5, 2, pp. 19-22

## **The Conflict Between HIV Reporting and Privacy Issues – Public Policy Questions**

**DAVID RUGGERI**

East Central College, United States

### **Introduction**

In August of 2008 the Centers for Disease Control and Prevention (CDC) released a report stating that more new HIV infections, the virus that causes AIDS, occurred in the United States than was previously estimated. The CDC held that 56,300 new HIV infections occurred in the US during 2006, approximately 40% higher than their prior estimate of 40,000 new cases (CDC, 2008). According to the CDC the prior estimate was developed using “limited data and less precise methods.”

This discrepancy between estimated and actual new HIV infections in the United States is an opportunity to place HIV/AIDS on the national agenda. During the early 1980s the HIV/AIDS epidemic was beginning to gather the attention it deserved, primarily via grassroots organizations and select non-profits. However, due to a lack of education at that time coupled with policy makers’ reluctance to become associated with HIV/AIDS causes a national policy never came to fruition.

Without a national policy the battle against HIV/AIDS lacks clear and measurable goals, proper funding, allocation of resources, accountability, and has created confusion and conflict on the part of physicians and public health workers. This conflict can be seen in the clash between patient confidentiality and accurate reporting to both government agencies and other third parties, such as procedures to contact a patient’s past and present sexual partner(s).

### **Reporting recommendations**

In an effort to ameliorate both the incidence and prevalence of HIV the CDC , in late 2006, revised their recommendations in health-care settings relating to HIV testing of adults, adolescents, and pregnant women. The CDC believes that everyone should be informed if they are infected with HIV due to the important health benefits of early disease detection (CDC, 2006). This policy revision concerning HIV testing recommendations is an attempt to decrease the number of persons who are unaware of their HIV positive status, earlier detection, decrease the number of babies born with HIV, reduce the stigma of HIV testing, and enable those who are infected to take necessary steps to protect their partners. By gaining the knowledge that one is HIV negative precautions can also be taken to eliminate

possible exposure and if one tests positive for HIV medical treatment can begin almost immediately and appropriate preventative actions can be taken to protect any current and future partners. By gaining this knowledge, previous at risk partners can be informed of possible exposure and the necessary steps for testing and, if necessary, appropriate treatment options can be taken.

Under these new recommendations, in a clinical setting a patient will be informed that HIV testing is part of routine care. Due to the fact that this test is now considered routine care specific signed consent would no longer be required as general consent for medical care is sufficient to encompass consent for HIV testing (Bayer and Fairchild, 2006). However, a patient will still possess the ability to opt-out of the HIV test by informing their caregiver they do not wish to have a HIV test conducted.

The responsibility is now shifted onto the patient. This is not the only responsibility that the patient may bear. If a patient tests positive for HIV it falls upon that individual to inform any past, present or future individuals they may have or may possibly expose in the future. With these revised recommendations a growing number of previously undiagnosed patients will become informed that they are HIV positive, however these recommendations do not address informing past partners of possible exposure.

As the numbers of documented HIV cases grow an important public policy question arises: do medical provider and public health officials have an ethical responsibility to inform those persons who may have been exposed to this disease? At a minimum, the medical care provider would counsel the patient and stress the importance of notifying any persons who were or will be at risk of exposure, but beyond that little can be done due to confidentiality laws.

However, this ethical obligation is not absolute and the Council on Ethical and Judicial Affairs of the American Medical Association has advised physicians that if they are aware that an HIV-positive patient is endangering a third party, they “should, within the constraints of the law: (1) attempt to persuade the infected patient to cease endangering the third party; (2) if persuasion fails, notify authorities; and (3) if the authorities take no action, notify the endangered third party (Bradley *et al.*, 2002). With little to no authority and enforcement procedures medical providers and public health officials are reduced to appealing to the scruples of the patient whose motives for not revealing past partners may range from embarrassment, denial, and/or apathy.

### **Public Policy Questions**

Policy makers have continued to demonstrate that they hold an ethical responsibility to protect individuals from the reckless behaviour of not only themselves but from others as well. By examining this altruistic precedent, it is vexing that only thirty-seven (37) states have enacted some form of HIV/AIDS

specific partner notification laws that either allow and/or require physicians and/or other public health personnel to notify partners who may be in a sexual or needle sharing relationship which could have exposed them to the virus (Bennett *et al.*, 2006).

Why only thirty-seven (37) states? It is not because we live in a society that does not place value on protecting its citizens. Numerous utilitarian policies are in place; many, which can be argued, are overly paternalistic. Every state has a seatbelt law, speed limits, and smoking bans are becoming increasingly common. As of July 1, 2008 13,689 municipalities are covered by a 100% smoke free provision in workplaces, and/or bars/restaurants affecting 65.1% of the US population (American Nonsmokers' Rights Foundation, 2008).

The lack of accountability in the area partner notification is leading to increased stress and confusion on the part of physicians and health care professionals and does little to accomplish the goals of stopping the spread of HIV. Due to this, a national HIV/AIDS policy is needed and not just recommendations from the CDC. The ideal that the notification of a third party that may be at risk depends solely on that individual's state reporting laws is non-decision making in action at the federal level.

One reason that few federal policies have been implemented to protect and inform a person of their potential exposure is the stigma of HIV/AIDS itself. Also, few politicians want to champion such a volatile and sensitive subject that, frankly, most constituents wish to ignore. For example, HIV more severely and disproportionately affects black people than any other racial/ethnic group in the US due to increased rates of poverty, other STDs, and drug use (CDC, 2008). This constituency has long struggled to mobilize and be heard at the federal level.

Additionally, there is the issue of conflicting public policies. The contradiction between confidentiality laws, such as HIPAA, and the policies and suggestions regarding the notification of potentially exposed partners only serves to further complicate and confuse members of the public health community. Insert the additional variable of the legal environment and the potential for punitive damages against medical providers whom are deemed to have wrongfully disclosed a patients' HIV status, it is not surprising that these contradicting policies has continued to handcuff the very persons whom have dedicated their lives to improving the overall health of society.

For these reasons many policy makers have steered away from HIV/AIDS initiatives in lieu of more constituent responsive and non-polarizing policies. The war against HIV/AIDS is stagnant and a clear national policy would produce an immediate and dramatic positive affect for all. This policy must not only clearly define the reporting issue, but also establish a protective framework for healthcare providers and public health officials so they are not hindered in achieving their goals of reducing both the incidence and prevalence of HIV/AIDS.

## References

- American Nonsmokers' Rights Foundation. (2008) *Overview list – How many Smokefree Laws?*, Berkeley, CA, pp. 1-2
- Bayer, R. and Fairchild, A.L. (2006) "Changing the Paradigm for HIV Testing - The End of Exceptionalism", *The New England Journal of Medicine*, 355, 7, pp. 647-649
- Bennett, R.B., Holland S.L., and Conti, C.A. (2006) "Ethical Dilemmas in Primary Care: Applying Objective Standards to Individual Patients", *Resident and Staff Physician*, 52, 9, pp 30-38.
- Bradley, T., Bradley, H., and Boyle, B. (2002) "Legal Issues Associated With Disclosure of Patient's HIV-Positive Status to Third Parties", *The Body*, Summer, 2002 <http://www.thebody.com/content/art33211.html>
- Centers for Disease Control and Prevention. (2006) "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings", Atlanta, GA: MMWR 2006; 55 (No. RR-14), pp. 1-17
- Centers for Disease Control and Prevention. (2008) *Estimates of New HIV Infections in the United States*, Atlanta, GA, pp. 1-6