FREQUENTLY ASKED QUESTIONS
WRHA Clinical Practice Guideline
Managing HIV Non-Disclosure in Refusing ( Unable or Unwilling) Persons

(adopted from questions and answers developed by the BC Centre for Disease Control on January 4, 2011 to accompany the BCCDC “Guidelines for Medical Health Officers: approach to people with HIV/AIDS who may pose a risk of harm to others” December 2010)

1. What is the purpose of these clinical practice guidelines?

These guidelines provide guidance to Public Health Nurses (PHNs) and Medical Officers of Health (MOHs) in situations where a person poses a risk to others because they are unable or unwilling to act to prevent transmission of HIV. The primary goal of these guidelines is to assist public health officials in preventing HIV transmission within very challenging psychosocial circumstances.

2. Do these clinical practice guidelines represent a new approach or change to current practice?

No, these guidelines do not represent a new approach or change to current public health practice in the WRHA that has been the standard of care for over 10 years. These guidelines document the approach that is currently used in the Winnipeg Health Region (WHR) to approach situations where a person with HIV refuses to disclose their HIV status and in doing so poses an ongoing risk to others. These guidelines are consistent with and include references to The Public Health Act of Manitoba (C.C.S.M. c. P210) which came into effect April 2009.

3. How often would public health officials use these guidelines?

Situations where an MOH needs to intervene directly with an individual infected with HIV who poses a risk of transmission of HIV to others (and is unwilling or unable to act to prevent transmission of HIV) occur rarely. Actions taken by MOHs in these situations are an uncommon – but important – part of overall strategies for HIV prevention and control.

4. How were these guidelines developed?

These guidelines were developed by Medical Officers of Health with the Population and Public Health Program of the WRHA and by public health nurses on the Healthy Sexuality and Harm Reduction team of the WRHA, with input from other relevant partners including Nine Circles Community Health Centre staff and Manitoba Health staff who have experience working in public health. Although these are the first version of such guidelines in the WRHA, they were developed considering guidelines from other jurisdictions and recommendations by other groups including recommendations from an expert working group convened by the Federal/Provincial/Territorial Advisory Committee on HIV/AIDS and the Canadian Legal HIV/AIDS Network and guidelines produced by the BC Centre for Disease Control in December 2010.
5. Do these guidelines apply to other infectious diseases?

The general principles and the public health legislation on which these guidelines are based apply to any reportable communicable disease where an individual may pose an ongoing risk of harm to others through transmission of the infection, such as syphilis. As such elements of the framework of these guidelines are currently routinely used by public health officials for other reportable communicable diseases where relevant. A guideline specific to HIV non-disclosure has been established due to the need to consider information that is specific to HIV, such as the degree of risk associated with different behaviours and the consideration of viral load and condom use as factors when assessing risk to others.

6. How do these guidelines compare with similar guidelines in other jurisdictions?

Several jurisdictions in Canada have similar guidelines, and others are working on developing them. The best known example of such guidelines comes from the Calgary Health Region (Management of Unwilling or Unable Persons with HIV - 2003) and from BC (Guidelines for Medical Health Officers: Approach to people with HIV/AIDS who may pose a risk of harm to others - 2010). Other guidelines incorporate many of the same elements as the WHR guidelines (i.e., principles, values and definitions); the WHR guidelines were adapted based on differences in Manitoba legislation.

7. What principles and values inform the guidelines?

- Prevention and protection are the primary objectives.
- The most effective measures for controlling the spread of HIV within the population include voluntary testing, counseling, education, and health promotion programs.
- HIV prevention strategies adopted in partnership with physicians, other health care providers, and community groups, are most likely to succeed.
- Responses by public health should be proportional to the risk of transmission.
- The “least intrusive, most effective” graduated approach to interventions should be followed.
- Public health interventions must balance the rights of the individual against the duty to protect the public.
- Measures that punish individuals to try and prevent the spread of HIV create stigma and discourage participation in voluntary programs for HIV prevention (such as testing or partner notification).
- All members of the public need to understand how HIV is spread, and how to protect themselves and others.
- Due process and the Charter of Rights and Freedoms must be respected.

8. How do these guidelines incorporate Charter rights?

Charter Rights and Freedoms are respected by the *The Public Health Act* through:

- The inclusion of voluntary measures on behalf of the individual;
- The ability to have Orders reconsidered, reviewed, and reassessed; and
- Use of the courts to impose penalties and for proceedings regarding applications for Orders and Detentions.
9. What resources are available to persons who decide that they would like counsel to represent them when interacting with an MOH?

Public health legislation outlines what a person can do in response to actions taken by an MOH, and these would be communicated when any Orders are issued by an MOH. At any point, a person has the right to involve legal counsel when they are interacting with MOHs, through their own means or through legal assistance services.

10. These guidelines are not prescriptive, but offer guidance to public health officials. How will PHNs and MOHs determine what option for intervention is most appropriate?

Every situation involving a person with HIV who may be putting others at risk of HIV infection will be different, and the actions taken by public health officials will be tailored to the unique circumstances of each case according to clinical judgment and the guideline principles and values. This may include, for example, considering the likelihood that the individual may comply with a potential intervention and recommendations sought from the primary care providers of the individual.

11. These guidelines state that if at any step in the procedure public health officials are satisfied that the person is not putting, or is no longer likely to put, others unknowingly at risk, public health follow-up for such a person may no longer be necessary?

Again, this will be at the discretion of public health officials based on the unique situation. Some people may require longer follow-up than others; however, once public health officials are satisfied that a person no longer poses a risk of transmission to others, further follow-up by public health may not be needed.

12. Do health professionals (such as physicians and nurses) or other professionals (such as social workers or outreach workers) have a responsibility to report suspected cases of HIV non-disclosure to public health officials?

No, health professionals or any other individuals do not have a responsibility to report suspected cases of HIV non-disclosure to public health officials; although their may be an ethical responsibility to do so under certain circumstances which will vary with every situation.

Section 41 of The Public Health Act states that health professionals (defined by the Act as physicians or registered nurses) and people responsible for medical laboratories must report people who are or may be infected with HIV to Manitoba Health. Therefore, only the reporting aspect of these guidelines applies to all health professionals. Those outside the health system, such as social workers and outreach workers, are not required to report; however, if they do, these reports may be investigated by MOHs. The requirement to report is based solely on the presence of the reportable communicable disease and not necessarily contingent upon specific behaviours of the person(s) infected with the communicable disease; hence the statement that there is no mandated responsibility to report HIV non-disclosure.

13. If people can be ordered to take an HIV antibody test, could they also be ordered to complete other HIV related testing, such as CD4 and viral load counts, in order to assess risk?

Yes. An MOH can request examinations, including HIV testing, CD4+ or viral load counts, if this information is needed to assess the risk of transmitting the infection to others. For example,
tests that show an individual consistently has undetectable viral loads may provide evidence of lower potential risk of HIV transmission to others.

14. The guidelines state that individuals with low or undetectable viral loads are less infectious, implying that disease stage and management may be considered when assessing risk. However this does not eliminate the risk as viral loads can fluctuate depending on a number of factors. Is this acceptable?

Having a low or undetectable viral load does reduce an HIV positive person’s ability to pass the infection to others, and an individual with consistently low or undetectable viral loads will be at lower risk to others. Viral loads can change over time; however, this is only one part of what is considered by public health officials in an overall assessment of risk of transmission (along with things such as disclosure, sexual or injection-related behaviours, and circumstances surrounding risk behaviours). Decisions about interventions are based on a comprehensive overall assessment of risk of HIV transmission and not solely on viral load.

15. What happens if public health officials are unable to contact a person to inform them of their intention to warn a potential third party victim of their exposure to HIV without their consent?

Public health officials will make every reasonable attempt to contact a person to inform them of public health’s plan to disclose information about the HIV infected person to a third party (for example, by a letter). What constitutes a “reasonable attempt” to inform will be at the discretion of the MOH, will vary from case to case, and will need to be balanced against potential risks to the third party including risks of partner violence and level of risk of HIV transmission.

16. How are threats of violence, such as pimp to sex worker violence, or patron (“john”) to sex worker violence considered in these guidelines?

The circumstances of each case will be different; however, in general terms public health officials will consider factors such as threats of violence during the assessment process. Domestic violence and disclosing HIV infection in small populations are factors to consider in this context, as well as other factors such as pimp or john to sex worker violence.

17. Are there ways that public health officials could inform a group of people or population about a person who may pose a risk of harm to them while respecting privacy?

Public health officials will consider how best to balance a need to warn about public health risks, the privacy rights of the person with HIV and the potential for public warnings to contribute to HIV stigma and/or lead to decreased HIV testing. A public release of information about a person who poses a risk of HIV transmission to others has never been initiated by Public Health authorities in Manitoba and is unlikely to ever occur. Any consideration of such an extreme measure would require full discussion with the Chief Provincial Health Officer and legal counsel.

A more likely scenario is that an MOH may issue a media release or send general prevention messages to a particular population at risk that does not identify the individual or raise unnecessary fear; for example, a media release that describes how the person who is not disclosing his/her HIV status is meeting partners (such as online) emphasizing to anyone who might be seeking to meet sex partners by such means of the importance of safer sex practices.
18. Once a third party has been warned that they have been placed at risk of contracting HIV do they then have the right to bring their case to police for criminal investigation? If they decide to go this route what role does the MOH play in the investigation?

At any time, a person who believes they have been placed at risk of HIV infection can go to police to initiate a criminal investigation. This initiates a separate process under criminal law, which is different from the processes described in these guidelines that cover the powers of public health officials under *The Public Health Act*. Public health officials would not participate in or facilitate a criminal investigation, but if a criminal investigation leads to a subpoena for information held by the MOH or his/her delegate (such as a public health client chart), this may lead to the release of public health records.

19. Once it is confirmed that a person is HIV-positive, is the person going to be pressured or forced to be on HIV treatment?

No one can be forced to take treatment for HIV. A decision to start HIV treatment is made together with a clinician once all factors have been considered. Research has shown that HIV treatment can potentially reduce one’s ability to transmit the virus, and should be considered when assessing risk. These guidelines are aligned with current practice to connect those diagnosed with HIV/AIDS to medical supports whenever possible. For example, an MOH may issue an Order which requires a person with HIV who poses a risk of transmission to others to present to an HIV physician for appropriate care including treatment, among other requirements to reduce the risk of transmission to others.

20. Who will be monitoring public health actions taken in relation these guidelines and the outcome of these actions?

These guidelines outline the range of actions available to public health officials under public health legislation, and suggest a recommended approach to exercising them. MOHs are clinicians who use their clinical judgment and exercise discretion in the application of these guidelines. Any concerns with regards to an MOH’s response to a person with HIV infection that is unable and/or unwilling to act to prevent further transmission of the virus can be raised through existing complaint processes in regional health authorities, the office of the Chief Provincial Health Officer or the College of Physicians and Surgeons of Manitoba.

21. What are the advantages to a public health approach compared to legal proceedings under the Criminal Code? What evidence is there that the public health approach is better?

A public health approach aims to prevent HIV infection and thereby better the health of the larger population, has more options for intervention (both voluntary and involuntary), and maintains confidentiality to a greater extent. Criminal proceedings are primarily aimed at punishment for activities that put others at risk. At a community level, public health measures are far less likely to stigmatize people with HIV and to drive HIV “underground” (i.e., where people who may have HIV do not come forward for testing, treatment and support, paradoxically leading to more spread of HIV). Public health laws are also more flexible so that actions can best meet the needs of each individual with HIV who may pose a risk of HIV transmission to others.
Although there are no studies evaluating the impact of a public health based approach to persons with HIV who pose a risk of transmission to others, anecdotal evidence has demonstrated that such approaches can lead to behaviour changes that would reduce the risk of transmission to others. Adopting a public health based enforcement approach to these people is recommended by many agencies including the Canadian HIV/AIDS Legal Network and UNAIDS.

22. If a person who is putting someone else at risk of HIV infection can be charged under the criminal law, are public health officials required to turn someone they know is putting someone else at risk of HIV infection over for criminal prosecution?

No. Public health officials must meet ethical standards, such as beneficence (to do good) and maleficence (not to do harm) applicable to all medical doctors licensed by the College of Physicians and Surgeons of Manitoba and registered nurses licensed by the College of Registered Nurses of Manitoba, and to protect the health of the population using powers laid out in The Public Health Act. It should not be necessary for public health officials to refer a matter to the police or a crown prosecutor for criminal investigation as a way to protect the public health from the transmission of HIV, given the range of actions available to public health officials under Manitoba’s public health laws. In the very unlikely event that an MOH thinks a referral to the police or crown prosecutor may be necessary, consultation with the Chief Provincial Health Officer and legal counsel will be sought.

23. Has there been consultation or communication with law enforcement agencies about these guidelines?

The guidelines do not comment on disclosure as it relates to potential charges of sexual assault, aggravated sexual assault, or other criminal charges, which are determined by the Criminal Code of Canada and relevant case law. These guidelines are based on public health legislation and focus on actions that are available under The Public Health Act of Manitoba, and therefore consultation with law enforcement agencies in their development was not necessary. However, communication with law enforcement agencies about the guidelines is ongoing.

24. What opportunity is there for feedback on these guidelines?

As with all WRHA clinical practice guidelines for communicable diseases, these guidelines will be reviewed on a regular basis and revised accordingly. These guidelines will also be posted on the Healthy Sexuality and Harm Reduction webpage of the Winnipeg Health Region website. Feedback from community agency partners will be considered in addition to factors such as changes to legislation and consideration of public health experience in applying the guidelines.