Project Inform Issues Clarification

May 12, 2010 By Sean Strub

Project Inform issued a statement this afternoon to clarify their definition of “TLC” (particularly to distinguish it from “test and treat” proposals), explain the April to May change in their recommendation to people with HIV on when to commence treatment and address related issues and community concerns expressed in the wake of my blog post a few days ago.

The statement is constructive and sheds light on the rationale behind PI’s approach to these topics. I am gratified that their statement supports a number of the points made in my earlier posts.

I do regret, however, that they did not take this opportunity to publicly agree that it is important that people be appropriately informed of the criminalization liability one assumes, in many states, if one tests positive. Instead, they reiterate support for names-based testing and “simplifying consent” (which usually means elimination of the written informed consent requirement prior to testing, which makes it even less likely people will be informed of the legal risks). This approach is, while popular with many public health officials, unfortunate and a diminution of the rights of people with HIV.

I believe more people would get tested and learn their HIV positive status if *anonymous* testing was more readily available. “Names based” means people who test positive are reported to their state’s health department. There is already an indication in some states, like Colorado, that these lists may be used for HIV criminalization prosecutions. In other places, including counties in Michigan and North Carolina, people who test positive are required to sign statements acknowledging criminal liability if they fail to disclose, or as recently reported from an activist in Mississippi, to sign a statement agreeing not to get pregnant or to get anyone pregnant.

I do not think it is responsible to encourage people to get tested without making sure they understand the potential criminal risks and restrictions they will face, or documents they will be requested/required/encouraged/coerced to sign, if they test positive.

When someone takes an HIV test, they risk putting themselves on a government database that constitutes a viral subclass within the society. In many states, the people on these lists have rights inferior to others. This should not happen at all, but it especially should not happen without a person’s advance knowledge and consent.

However, that knowledge would probably discourage testing, which is perhaps one reason why

people who get tested are rarely advised of it in advance.

Promotion of anonymous testing would provide an alternative for those reluctant to get tested for fear of being reported to the state. Elimination of HIV criminalization statutes is a necessary priority. I hope Project Inform will join with me and the Center for HIV Law & Policy, and others, in our campaign to repeal these statutes.

Unfortunately, Project Inform's new statement, while recognize the barrier these statutes pose, also betrays a surprising lack of sophistication about the issue. Their statement reads: *"...state laws that criminalize transmission of HIV must be amended or eliminated because they, too, are acting as barriers to HIV testing and willingness to engage in care and treatment."*

Actually, most of HIV criminalization statutes are not about *transmission* (transmission is rarely a factor in the prosecutions), but are about whether or not the person who has HIV can prove they *disclosed* that fact prior to consensual intimate contact. Project Inform's language, while inaccurate, echoes that of other organizations and is, more than anything else, indicative of an historic lack of attention to this critical issue. Perhaps that is about to change.

As you read this, there is a man in jail in Texas serving 35 years for having spit at a cop. He didn't transmit HIV to the cop. There's a man serving 40 years in Ohio for failing to disclose his HIV to his girlfriend/roommate. He didn't transmit HIV to her. A young man in Iowa got 25 years for failing to disclose to a guy he met on an online hookup site. No HIV transmission there, either.

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