

641—11.40(141) Purpose. To establish, as a part of the partner notification program, a procedure for the notification by a physician or the department of an identifiable third party who is a sexual partner of or who shares intravenous equipment with a person who has tested positive for the human immunodeficiency virus.

11.40(1) This procedure shall be used only when both of the following situations exist:

a. A physician for the infected person is of the good faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of intravenous equipment poses an imminent danger of human immunodeficiency virus infection transmission to the third party.

b. When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

11.40(2) A physician may reveal the identity of a person who has tested positive for the human immunodeficiency virus infection pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to human immunodeficiency virus through contact with a person who tests positive for the human immunodeficiency virus infection.

11.40(3) When the physician is of the good faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

a. Directly by the physician according to the procedures stated in subrules 11.40(4), 11.40(5) and 11.40(10), or

b. By the department at the request of the physician according to subrules 11.40(6) to 11.40(10).

11.40(4) Notification by the physician. Prior to notification of a third party by an infected person's physician, the physician shall make reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection. The written information shall state that due to the nature of the person's continuing contact through sexual intercourse or the sharing of intravenous equipment with a third party, and the physician's belief that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to the person who has tested positive for the human immunodeficiency virus infection:

a. The nature of the disclosure and the reason for the disclosure.

b. The anticipated date of disclosure.

c. The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection shall be deemed satisfied when the physician delivers the written notice in person or directs a written notice to the person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.40(5) When performed by the infected person's physician, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. The third party may be requested by telephone or by ordinary mail to arrange to meet with the physician at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call or letter.

11.40(6) Notification by the department. When referring to the department, the infected person's physician shall first make reasonable efforts to inform the infected person by delivering a written notice in person or by directing a written notice to the person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of referral to the department. The notice shall state that due to the nature of the person's continuing contact through sexual intercourse or the sharing of intravenous equipment with a third party, and the physician's belief that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action by requesting that

the department notify the third party. The notice shall also state that the following information is being reported to the department for purposes of third-party notification:

- a.* The infected person's name and address.
- b.* The third party's name, address, telephone number and any other locating information known to the physician.

NOTE: A copy of the letter provided to the infected person pursuant to this subrule shall accompany the physician's request for third-party notification by the department.

11.40(7) A physician's request to the department to notify a third party shall be made by certified mail, return receipt requested. The department's address for this purpose is: Iowa Department of Public Health, Division of Disease Prevention, AIDS Prevention Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. The request shall include:

- a.* The infected person's name and address.
- b.* The third party's name, address, telephone number and any other locating information known to the physician.
- c.* A statement of the facts and circumstances which satisfy the requirements of subrule 11.40(1).

11.40(8) It shall be the department's responsibility prior to making a third-party notification, when reasonably possible, to provide, in writing, the following information to the person who has tested positive for the human immunodeficiency virus infection:

- a.* The nature of the disclosure and the reason for the disclosure.
- b.* The anticipated date of disclosure.
- c.* The name of the third party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection shall be deemed satisfied when the department directs a written notice to the person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

11.40(9) When performed by the department, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. The third party may be requested by telephone or by restricted certified mail, return receipt requested, to arrange to meet with a department representative at the earliest opportunity to discuss an important health matter. The nature of the matter to be discussed shall not be revealed in the telephone call or letter.

11.40(10) Confidentiality. The infected person's physician and the department shall protect the confidentiality of the third party and the infected person. The identity of the infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to the human immunodeficiency virus infection. If the identity of the infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with the human immunodeficiency virus has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

This rule is intended to implement Iowa Code sections 135.11, 135.39, 139B.1(2) "f," 141.1 to 141.10 and 141.22A(17).