

FY 2013 Directives Report – Friday August 10, 2012 Update and Discussion

Robert Riester shared what directives are and how they work with the Planning Council.

How to Submit a Directive:

Submitting a directive to the Denver HIV Resources Planning Council (DHRPC) requires that the applicant proposing a new directive complete the Directive Submission Application Form. **The Leadership Committee of the Planning Council will convene to review all submitted directives, and shall provide the submitter with a written response regarding the directive within one (1) month of submission.**

1. The Issue or Need necessitating this Directive
2. How it may be used to impact a specific service model
3. Present the Data that validates the Need for this Directive
4. Outline and define outcomes of Directive
5. Monetary amount of application

He discussed DOHR's role in directives as well as lessons learned over the years in implementing directives.

- DOHR must implement Directive within a timely manner. Directive must be implemented to ensure impact within Fiscal Year.
- If applicable DOHR to provide bi-annual (mid-year and year end) updates on Directives based on clients served and outcomes in written format to the Planning Council

He gave an update on the proposed FY 2012 directive for oral health care as an example of how the process works and lessons learned.

Robert shared the one FY 2013 directive received first by the Leadership and presented for consideration today to the Planning Council from Carol Lease, a Planning Council member and a grantee of Part A funds: Confidentiality and Privacy of HIV/AIDS Records for Services Funded under the Denver Office of HIV Resources. The directive reads:

This Directive will fill a gap in standards concerning the use of confidential HIV records of individuals who receive services funded through the Mayor's Office of HIV Resources (MOHR). The need was identified when an AIDS Service Organization (ASO) spent down its MOHR funding before the end of the grant period and closed its doors in late 2010. PLWHA who had received services from the ASO transferred to other ASOs or were already receiving services from other ASOs.

When the former Executive Director of the defunct ASO began working at another ASO, she contacted those PLWHAs informing them of her new position and offering them the opportunity to transfer their Medical Case Management services to her new employer if they wanted to do so. This information was verified by the Executive Director in an e-

mail I received earlier this year. As a condition of their medical, substance abuse, mental health or social work licensing, almost all ASOs are legally and ethically bound by state, federal and professional licensing to adhere to standards concerning PLWHA records retention, dissemination and disposal.

This Directive will impact all services providers by providing a consistent standard for all ASOs who provide services funded through DOHR in the retention and disposal of confidential records of PLHWAs.

The data that validates the need for this Directive is represented in various Needs Assessments by the Denver HIV Resources Planning Council that shows that stigma continues to affect the care and treatment seeking behaviors of PLWHAs. PLWHAs must be able to trust ASOs to maintain the highest level of confidentiality and privacy in maintaining records

Implement standards that assure that the confidentiality and privacy of PLWHAs who receive services funded through MOHR are consistent regardless of external licensing requirements that the specific ASO must meet.

Leadership Committee Recommendations:

- *Incorporate retention and disposal of client records through the contracts executed by DOHR.*
- *Through the City process have DOHR initiate an investigation to see if ethical violations occurred.*

The Planning Council discussed the directive in detail and explored a number of options for addressing the situation that occurred and ensuring this doesn't happen again going forward.

- The easiest way to correct the situation is to include language in the contracts, as for an investigation, the agency is now closed, so the investigation would be into the individual. If the investigation revealed actions to pursue, they would most likely be criminal rather than ethical.
- Are case management agencies covered by HIPPA? This is questionable and would need to be determined by the Attorney General's Office.
- Discussion of whether the actions violated Denver TGA standards or HRSA universal standards. The standards do not address the closing of an agency.
- DOHR indicated that the contracts are the rules and the contracts neglected to cover this situation; not sure that retroactively trying to investigate something that was a gap in the rules is useful

➤ **Motion: To adjust and approve the directive as follows:**

- **Incorporate retention and disposal of client records through the contracts executed by DOHR.**

- **DOHR will request that the City Attorney's Office initiate an investigation of legal, ethical and regulatory implications of this incident and future requirements for record retention.**
(Note: DHRPC Directives)

The Planning Council discussed the motion:

- Not interested in what happened in the past, but we need to be sure this doesn't happen again. Not convinced, however, that the individual involved understands how serious this is. (DOHR responded that the office has communicated with this person who is aware of the ethical concerns of DOHR and the Planning Council.)
- Don't want to pursue criminal action. We need to close the loophole.

Following discussion, Bob Bongiovanni amended his motion to read:

- **Final Motion: To adjust and approve the directive as follows:**
 - **DOHR will request the opinion of the City Attorney's Office regarding the ethical and regulatory requirements for record retention**
 - **Incorporate retention and disposal of client records through the contracts executed by DOHR.**

Final Motion passed with 16 votes in the affirmative and one abstention.